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HOUSE BILL NO. 322

House Amendments in [] - February 9, 2024

A BILL to amend the Code of Virginia by adding a section numbered 54.1-700.1, relating to Cosmetology Compact.

Patron Prior to Engrossment—Delegate Glass

Referred to Committee on Health and Human Services

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-700.1 as follows:

§ 54.1-700.1. Cosmetology Compact.

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Cosmetology Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

COSMETOLOGY COMPACT

Article I. 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 that 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:

1. Provide opportunities for interstate practice by cosmetologists who meet uniform requirements for multistate licensure;

2. Enhance the abilities of member states to protect public health and safety and prevent fraud and unlicensed activity within the profession;

3. Ensure and encourage cooperation between member states in the licensure and regulation of the practice of cosmetology;

4. Support relocating military members and their spouses;

5. Facilitate the exchange of information between member states related to the licensure, investigation, and discipline of the practice of cosmetology; and

6. 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 II. Definitions.

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

"Active [~~duty~~] military [member] " means any individual in full-time duty status in the [~~active~~ ~~uniformed service~~ armed forces] of the United States, including members of the National Guard and Reserve.

"Adverse action" means any administrative, civil, equitable, or criminal action permitted by a member state's laws that 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.

"Alternative program" means a non-disciplinary monitoring or prosecutorial diversion program approved by a member state's licensing authority.

"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 licensing authority in that remote state.

"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.

"Charter member state" means any member state that has enacted legislation to adopt this Compact

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59 where such legislation predates the effective date of this Compact as defined in Article XIII.

60 "Commission" means the government agency whose membership consists of all states that have
61 enacted this Compact, which is known as the Cosmetology Licensure Compact Commission, as defined
62 in Article IX, and which shall operate as an instrumentality of the member states.

63 "Cosmetologist" means an individual licensed in such individual's home state to practice
64 cosmetology.

65 "Cosmetology," "cosmetology services," or "practice of cosmetology" means the care and services
66 provided by a cosmetologist as set forth in the member state's statutes and regulations in the state
67 where the services are being provided.

68 "Current significant investigative information" means:

69 1. Investigative Information that a state licensing authority, after an inquiry or investigation that
70 complies with a member state's due process requirements, has reason to believe is not groundless and, if
71 proved true, would indicate a violation of that state's laws regarding fraud or the practice of
72 cosmetology; or

73 2. Investigative information that indicates that a licensee has engaged in fraud or represents an
74 immediate threat to public health and safety, regardless of whether the licensee has been notified and
75 had an opportunity to respond.

76 "Data system" means a repository of information about licensees, including license status,
77 investigative information, and adverse actions.

78 "Disqualifying event" means any event that shall disqualify an individual from holding a multistate
79 license under this Compact, which the Commission may by rule or order specify.

80 "Encumbered license" means a license in which an adverse action restricts the practice of
81 cosmetology by a licensee or where such adverse action has been reported to the Commission.

82 "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted
83 practice of cosmetology by a state licensing authority.

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

86 "Home state" means the member state that is a licensee's primary state of residence and where that
87 licensee holds an active and unencumbered license to practice cosmetology.

88 "Investigative information" means information, records, or documents received or generated by a
89 state licensing authority pursuant to an investigation or other inquiry.

90 "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and
91 rules governing the practice of cosmetology in a state.

92 "Licensee" means an individual who currently holds a license from a member state to practice as a
93 cosmetologist.

94 "Member state" means any state that has adopted this Compact.

95 "Multistate license" means a license issued by and subject to the enforcement jurisdiction of the state
96 licensing authority in a licensee's home state, which authorizes the practice of cosmetology in member
97 states and includes authorizations to practice cosmetology in all remote states pursuant to this Compact.

98 "Remote state" means any member state other than the licensee's home state.

99 "Rule" means any rule or regulation promulgated by the Commission under this Compact that has
100 the force of law.

101 "Single-state license" means a cosmetology license issued by a member state that authorizes the
102 practice of cosmetology only within the issuing state and does not include any authorization outside of
103 the issuing State.

104 "State" means a state, territory, or possession of the United States and the District of Columbia.

105 "State licensing authority" means a member state's regulatory body responsible for issuing
106 cosmetology licenses or otherwise overseeing the practice of cosmetology in that state.

107 Article III. Member State Requirements.

108 A. To be eligible to join this Compact, and to maintain eligibility as a member state, a state must:

109 1. License and regulate cosmetology;

110 2. Have a mechanism or entity in place to receive and investigate complaints about licensees
111 practicing in that state;

112 3. Require that licensees within the state pass a cosmetology competency examination prior to being
113 licensed to provide cosmetology services to the public in that state;

114 4. Require that licensees satisfy educational or training requirements prior to being licensed to
115 provide cosmetology services to the public in that state;

116 5. Implement procedures for considering one or more of the following categories of information from
117 applicants for licensure: criminal history; disciplinary history; or background check. Such procedures
118 may include the submission of information by applicants for the purpose of obtaining an applicant's
119 background check as defined herein;

120 6. Participate in the data system, including through the use of unique identifying numbers;

7. Share information related to adverse actions with the Commission and other member states, both through the data system and otherwise;

8. Notify the Commission and other member states, in compliance with the terms of the Compact and rules of the Commission, of the existence of investigative information or current significant investigative information in the state's possession regarding a licensee practicing in that state;

9. Comply with such rules as may be enacted by the Commission to administer the Compact; and

10. Accept licensees from other member states as established herein.

B. Member states may charge a fee for granting a license to practice cosmetology.

C. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting a multistate license to provide services in any other member state.

D. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

E. A multistate license issued to a licensee by a home state to a resident of that state shall be recognized by each member state as authorizing a licensee to practice cosmetology in each member state.

F. At no point shall the Commission have the power to define the educational or professional requirements for a license to practice cosmetology. The member states shall retain sole jurisdiction over the provision of these requirements.

Article IV. Multistate License.

A. To be eligible to apply to his home state's licensing authority for an initial multistate license under this Compact, a licensee must hold an active and unencumbered single-state license to practice cosmetology in his home state.

B. Upon the receipt of an application for a multistate license, according to the rules of the Commission, a member state's licensing authority shall ascertain whether the applicant meets the requirements for a multistate license under this Compact.

C. If an applicant meets the requirements for a multistate license under this Compact and any applicable rules of the Commission, the licensing authority in receipt of the application shall, within a reasonable time, grant a multistate license to that applicant and inform all member states of the grant of such multistate license.

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

E. A multistate license granted pursuant to this Compact may be effective for a definite period of time, concurrent with renewal of the home state license.

F. To maintain a multistate license under this Compact, a licensee must:

1. Agree to abide by the rules of the licensing authority, and the state scope of practice laws governing the practice of cosmetology, of any member state in which the licensee provides services;

2. Pay all required fees related to the application and process and any other fees that the Commission may by rule require; and

3. Comply with any and all other requirements regarding multistate licenses that the Commission may by rule provide.

G. A licensee practicing in a member state is subject to all scope of practice laws governing cosmetology services in that state.

H. The practice of cosmetology under a multistate license granted pursuant to this Compact will subject the licensee to the jurisdiction of the licensing authority, the courts, and the laws of the Member state in which the cosmetology services are provided.

Article V. Reissuance of a Multistate License by a New Home State.

A. A licensee may hold a multistate license, issued by the licensee's home state, in only one member state at any given time.

B. If a licensee changes the licensee's home state by moving between two member states:

1. The licensee shall immediately apply for the reissuance of his multistate license in his new home state. The licensee shall pay all applicable fees and notify the prior home state in accordance with the rules of the Commission.

2. Upon receipt of an application to reissue a multistate license, the new home state shall verify that the multistate licensee is active, unencumbered, and eligible for reissuance under the terms of the Compact and the rules of the Commission. The multistate license issued by the prior home state will be deactivated and all member states notified in accordance with the applicable rules adopted by the Commission.

3. If required for initial licensure, the new home state may require a background check as specified

182 in the laws of that state, or compliance with any jurisprudence requirements of the new home state.

183 4. Notwithstanding any other provision of this Compact, if a licensee does not meet the criteria set
184 forth in this Compact for the reissuance of a multistate license by the new home state, then the licensee
185 shall be subject to the new home state requirements for the issuance of a single-state license in that
186 state.

187 C. If a licensee changes the licensee's primary state of residence by moving from a member state to
188 a non-member state, or from a non-member state to a member state, then the licensee shall be subject
189 to the state requirements for the issuance of a single-state license in the new home state.

190 D. Nothing in this Compact shall interfere with a licensee's ability to hold a single-state license in
191 multiple states; however, for the purposes of this Compact, a licensee shall have only one home state
192 and only one multistate license.

193 E. Nothing in this Compact shall interfere with the requirements established by a member state for
194 the issuance of a single-state license.

195 Article VI. Authority of the Compact Commission and Member State Licensing Authorities.

196 A. Nothing in this Compact, nor any rule or regulation of the Commission, shall be construed to
197 limit, restrict, or in any way reduce the ability of a member state to enact and enforce laws, regulations,
198 or other rules related to the practice of cosmetology in that state, where those laws, regulations, or
199 other rules are not inconsistent with the provisions of this Compact.

200 B. Insofar as practical, a member state's licensing authority shall cooperate with the Commission
201 and with each entity exercising independent regulatory authority over the practice of cosmetology
202 according to the provisions of this Compact.

203 C. Discipline shall be the sole responsibility of the state in which cosmetology services are provided.
204 Accordingly, each member state's licensing authority shall be responsible for receiving complaints about
205 individuals practicing cosmetology in that state and for communicating all relevant investigative
206 information about any such adverse action to the other member states through the data system in
207 addition to any other methods the Commission may by rule require.

208 Article VII. Adverse Actions.

209 A. A licensee's home state shall have exclusive power to impose an adverse action against licensee's
210 multistate license issued by the home state.

211 B. A home state may take adverse action on a multistate license based on the investigative
212 information, current significant investigative information, or adverse action of a remote state.

213 C. In addition to the powers conferred by state law, each remote state's licensing authority shall
214 have the power to:

215 1. Take adverse action against a licensee's authorization to practice cosmetology through the
216 multistate license in that member state, provided that:

217 a. Only the licensee's home state shall have the power to take adverse action against the multistate
218 license issued by the home state; and

219 b. For the purposes of taking adverse action, the home state's licensing authority shall give the same
220 priority and effect to reported conduct received from a remote state as it would if such conduct had
221 occurred within the home state. In so doing, the home state shall apply its own state laws to determine
222 the appropriate action.

223 2. Issue cease and desist orders or impose an encumbrance on a licensee's authorization to practice
224 within that member state.

225 3. Complete any pending investigations of a licensee who changes the licensee's primary state of
226 residence during the course of such an investigation. The licensing authority shall also be empowered to
227 report the results of such an investigation to the Commission through the data system as described
228 herein.

229 4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of
230 witnesses, as well as the production of evidence. Subpoenas issued by a state licensing authority in a
231 member state for the attendance and testimony of witnesses or the production of evidence from another
232 member state shall be enforced in the latter state by any court of competent jurisdiction, according to
233 the practice and procedure of that court applicable to subpoenas issued in proceedings before it. The
234 issuing state licensing authority shall pay any witness fees, travel expenses, mileage, and other fees
235 required by the service statutes of the state in which the witnesses or evidence are located.

236 5. If otherwise permitted by state law, recover from the affected licensee the costs of investigations
237 and disposition of cases resulting from any adverse action taken against that licensee.

238 6. Take adverse action against the licensee's authorization to practice in that state based on the
239 factual findings of another remote state.

240 D. A licensee's home state shall complete any pending investigation(s) of a cosmetologist who
241 changes his primary state of residence during the course of the investigation(s). The home state shall
242 also have the authority to take appropriate action(s) and shall promptly report the conclusions of the
243 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 VIII. Active [~~Duty~~] Military and Their Spouses.

Active [~~duty~~] military [~~personnel members~~], or the spouses thereof, shall designate a home state where the individual has a current license to practice cosmetology in good standing. The individual may retain the home state designation during any period of service when that individual is on active duty assignment.

Article IX. 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 states acting jointly and not an instrumentality of any one state. The Commission shall come into existence on or after the effective date of the Compact as set forth in Article XIII.

B. Membership, voting, and meetings.

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

2. The delegate shall be an administrator of the licensing authority of the member state or such administrator's designee.

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

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

5. A member state's licensing authority shall fill any vacancy of its delegate occurring on the Commission within 60 days of the occurrence of such vacancy.

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

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

C. The Commission shall have the following powers:

1. Establish the fiscal year of the Commission;

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

3. Adopt rules and bylaws;

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

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

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

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

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including employees of a member state;

10. Conduct an annual financial review;

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

12. As set forth in the Commission rules, charge a fee to a licensee for the grant of a multistate license and thereafter, as may be established by Commission rule, charge the licensee a multistate

license renewal fee for each renewal period. Nothing herein shall be construed to prevent a home state from charging a licensee a fee for a multistate license or renewals of a multistate license, or a fee for the jurisprudence requirement if the member state imposes such a requirement for the grant of a multistate license;

13. Assess and collect fees;

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

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

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

17. Establish a budget and make expenditures;

18. Borrow money;

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

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

21. Elect a chair, vice-chair, secretary, and treasurer and such other officers of the Commission as provided in the Commission's bylaws;

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

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

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

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

D. The Executive Committee.

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

a. Overseeing the day-to-day activities of the administration of the Compact, including compliance with the provisions of the Compact, the Commission's rules and bylaws, and other such duties as deemed necessary;

b. Recommending to the Commission changes to the rules or bylaws, changes to this Compact legislation, fees charged to compact member states, fees charged to licensees, and other fees;

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

d. Preparing and recommending the budget;

e. Maintaining financial records on behalf of the Commission;

f. Monitoring Compact compliance of member states and providing compliance reports to the Commission;

g. Establishing additional committees as necessary;

h. Exercising the powers and duties of the Commission during the interim between Commission meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the Commission by rule or bylaw; and

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

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

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

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

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

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

4. The Executive Committee shall meet at least annually.

a. Annual Executive Committee meetings, as well as any Executive Committee meeting at which it does not take or intend to take formal action on a matter for which a Commission vote would otherwise be required, shall be open to the public, except that the Executive Committee may meet in a closed, nonpublic meeting when dealing with any of the matters covered under subsection F.

b. The Executive Committee shall give five business days' advance notice of its public meetings,

367 posted on its website and as determined to provide notice to persons with an interest in the public
 368 matters the Executive Committee intends to address at those meetings.

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

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

371 b. Prevent a loss of Commission or member state funds; or

372 c. Protect public health and safety.

373 E. The Commission shall adopt and provide to the member states an annual report.

374 F. Meetings of the Commission.

375 1. All meetings of the Commission that are not closed pursuant to subdivision F 4 shall be open to
 376 the public. Notice of public meetings shall be posted on the Commission's website at least 30 days prior
 377 to the public meeting.

378 2. Notwithstanding subdivision F 1, the Commission may convene an emergency public meeting by
 379 providing at least 24 hours' prior notice on the Commission's website, and any other means a provided
 380 in the Commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking
 381 under subsection L of Article XI. The Commission's legal counsel shall certify that one of the reasons
 382 justifying an emergency public meeting has been met.

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

386 4. The Commission may convene in a closed, nonpublic meeting for the Commission to discuss:

387 a. Noncompliance of a member state with its obligations under the Compact;

388 b. The employment, compensation, or discipline of, or other matters, practices, or procedures related
 389 to, specific employees or other matters related to the Commission's internal personnel practices and
 390 procedures;

391 c. Current or threatened discipline of a licensee by the Commission or by a member state's licensing
 392 authority;

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

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

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

396 g. Trade secrets or commercial or financial information that is privileged or confidential;

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

399 i. Investigative records compiled for law-enforcement purposes;

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

403 k. Legal advice;

404 l. Matters specifically exempted from disclosure by federal or member state law; or

405 m. Other matters as promulgated by the Commission by rule.

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

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

415 G. Financing of the Commission.

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

418 2. The Commission may accept any and all appropriate revenue, donations, and grants of money,
 419 equipment, supplies, materials, and services.

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

426 4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to
 427 meet the same, nor shall the Commission pledge the credit of any of the member states, except by and

428 with the authority of the member state.

429 5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and
430 disbursements of the Commission shall be subject to the financial review and accounting procedures
431 established under its bylaws. However, all receipts and disbursements of funds handled by the
432 Commission shall be subject to an annual financial review by a certified or licensed public accountant,
433 and the report of the financial review shall be included in and become part of the annual report of the
434 Commission.

435 H. Qualified immunity, defense, and indemnification.

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

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

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

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

462 5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a member state's
463 state action immunity or state action affirmative defense with respect to antitrust claims under the
464 federal Sherman Act (15 U.S.C. § 1 et seq.), the federal Clayton Act (15 U.S.C. § 12 et seq.), or any
465 other state or federal antitrust or anticompetitive law or regulation.

466 6. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the member
467 states or by the Commission.

468 Article X. Data System.

469 A. The Commission shall provide for the development, maintenance, operation, and utilization of a
470 coordinated database and reporting.

471 B. The Commission shall assign each applicant for a multistate license a unique identifier, as
472 determined by the rules of the Commission.

473 C. Notwithstanding any other provision of state law to the contrary, a member state shall submit a
474 uniform data set to the data system on all individuals to whom this Compact is applicable as required
475 by the rules of the Commission, including:

476 1. Identifying information;

477 2. Licensure data;

478 3. Adverse actions against a license and information related thereto;

479 4. Non-confidential information related to alternative program participation, the beginning and
480 ending dates of such participation, and other information related to such participation;

481 5. Any denial of application for licensure and the reason(s) for such denial (excluding the reporting
482 of any criminal history record information where prohibited by law);

483 6. The existence of investigative information;

484 7. The existence of current significant investigative information; and

485 8. Other information that may facilitate the administration of this Compact or the protection of the
486 public, as determined by the rules of the Commission.

487 D. The records and information provided to a member state pursuant to this Compact or through the
488 data system, when certified by the Commission or an agent thereof, shall constitute the authenticated
489 business records of the Commission and shall be entitled to any associated hearsay exception in any

relevant judicial, quasi-judicial or administrative proceedings in a member state.

E. The existence of current significant investigative information and the existence of investigative information pertaining to a licensee in any member state will only be available to other member states.

F. It is the responsibility of the member states to monitor the database to determine whether adverse action has been taken against a licensee or licensee applicant. Adverse action information pertaining to a licensee or license applicant in any member state will be available to any other member state.

G. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

H. Any information submitted to the data system that is subsequently expunged pursuant to federal law or the laws of the member state contributing the information shall be removed from the data system.

Article XI. Rulemaking.

A. The Commission shall promulgate reasonable rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact. A rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the powers granted hereunder, or based upon another applicable standard of review.

B. The rules of the Commission shall have the force of law in each member state, provided, however, that where the rules of the Commission conflict with the laws of the member state that establish the member state's scope of practice laws governing the practice of cosmetology as held by a court of competent jurisdiction, the rules of the Commission shall be ineffective in that state to the extent of the conflict.

C. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules shall become binding as of the date specified in each rule.

D. If a majority of the legislatures of the member states rejects a rule or portion of a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, then such Rule shall have no further force and effect in any member state or to any state applying to participate in the Compact.

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

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

G. Prior to adoption of a proposed rule by the Commission, and at least 30 days in advance of the meeting at which the Commission will hold a public hearing on the proposed rule, the Commission shall provide a notice of proposed rulemaking:

1. On the website of the Commission or other publicly accessible platform;
2. To persons who have requested notice of the Commission's notices of proposed rulemaking; and
3. In such other way(s) as the Commission may by rule specify.

H. The notice of proposed rulemaking shall include:

1. The time, date, and location of the public hearing at which the Commission will hear public comments on the proposed rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed rule;

2. If the hearing is held via telecommunication, video conference, or other electronic means, the mechanism for access to the hearing;

3. The text of the proposed rule and the reason therefor;

4. A request for comments on the proposed rule from any interested person; and

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

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

J. Nothing in this article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this article.

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

1. The Commission may adopt changes to the proposed rule, provided the changes do not enlarge the original purpose of the proposed rule.

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

3. The Commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in subsection L, the effective date of the rule shall be no sooner than 45 days after the Commission issues the notice that it adopted or amended the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an

551 emergency rule with five days' notice, with opportunity to comment, provided that the usual rulemaking
552 procedures provided in the Compact and in this article shall be retroactively applied to the rule as soon
553 as reasonably possible, in no event later than 90 days after the effective date of the rule. For the
554 purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- 555 1. Meet an imminent threat to public health, safety, or welfare;
- 556 2. Prevent a loss of Commission or member state funds;
- 557 3. Meet a deadline for the promulgation of a rule that is established by federal law or rule; or
- 558 4. Protect public health and safety.

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

567 N. No member state's rulemaking requirements shall apply under this Compact.

568 Article XII. Oversight, Dispute Resolution, and Enforcement.

569 A. Oversight.

570 1. The executive and judicial branches of state government in each member state shall enforce this
571 Compact and take all actions necessary and appropriate to implement the Compact.

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

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

582 B. Default, technical assistance, and termination.

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

588 2. The Commission shall provide a copy of the notice of default to the other member states.

589 C. If a state in default fails to cure the default, the defaulting state may be terminated from the
590 Compact upon an affirmative vote of a majority of the delegates of the member states, and all rights,
591 privileges, and benefits conferred on that state by this Compact may be terminated on the effective date
592 of termination. A cure of the default does not relieve the offending state of obligations or liabilities
593 incurred during the period of default.

594 D. Termination of membership in the Compact shall be imposed only after all other means of
595 securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the
596 Commission to the governor, the majority and minority leaders of the defaulting state's legislature, the
597 defaulting state's licensing authority, and each member state's licensing authority.

598 E. A state that has been terminated is responsible for all assessments, obligations, and liabilities
599 incurred through the effective date of termination, including obligations that extend beyond the effective
600 date of termination.

601 F. Upon the termination of a state's membership from this Compact, that state shall immediately
602 provide notice to all licensees within that state of such termination. The terminated state shall continue
603 to recognize all licenses granted pursuant to this Compact for a minimum of 180 days after the date of
604 said notice of termination.

605 G. The Commission shall not bear any costs related to a state that is found to be in default or that
606 has been terminated from the Compact, unless agreed upon in writing between the Commission and the
607 defaulting state.

608 H. The defaulting State may appeal the action of the Commission by petitioning the U.S. District
609 Court for the District of Columbia or the federal district where the Commission has its principal offices.
610 The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

611 I. Dispute resolution.

612 1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the

Compact that arise among member states and between member and non-member states.

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

J. Enforcement.

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

2. By majority vote as provided by Commission rule, the Commission may initiate legal action against a member state in default in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event that judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or the defaulting member state's law.

3. A member state may initiate legal action against the Commission in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

4. No individual or entity other than a member state may enforce this Compact against the Commission.

Article XIII. 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 XII.

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.

2. Member states enacting the Compact subsequent to the charter member states shall be subject to the process set forth in subdivision C 24 of Article IX 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 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 180 days after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's 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 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 XIV. Construction and Severability.

674 A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to
675 effectuate the purposes and the implementation and administration of the Compact. Provisions of the
676 Compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the
677 Commission's rulemaking authority solely for those purposes.

678 B. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or
679 provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution
680 of any member state, of a state seeking participation in the Compact, or of the United States, or the
681 applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional
682 by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability
683 thereof to any other government, agency, person, or circumstance shall not be affected thereby.

684 C. Notwithstanding subsection B, the Commission may deny a state's participation in the Compact
685 or, in accordance with the requirements of Article XII, terminate a member state's participation in the
686 Compact, if it determines that a constitutional requirement of a member state is a material departure
687 from the Compact. Otherwise, if this Compact shall be held to be contrary to the constitution of any
688 member state, the Compact shall remain in full force and effect as to the remaining member states and
689 in full force and effect as to the member state affected as to all severable matters.

690 Article XV. Consistent Effect and Conflict with Other State Laws.

691 A. Nothing herein shall prevent or inhibit the enforcement of any other law of a member state that is
692 not inconsistent with the Compact.

693 B. Any laws, statutes, regulations, or other legal requirements in a member state in conflict with the
694 Compact are superseded to the extent of the conflict.

695 C. All permissible agreements between the Commission and the member states are binding in
696 accordance with their terms.

697 **2. That the Board for Barbers and Cosmetology shall promulgate regulations to implement the**
698 **provisions of this act to be effective within 280 days of its effective date.**

699 **[3. That any applicant for a multistate license shall pay the costs of performing any background**
700 **check required by the Cosmetology Compact, as entered into by this act.]**