

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE COSMETOLOGY LICENSURE COMPACT;
5 PROVIDING FOR A MULTISTATE LICENSE FOR COSMETOLOGISTS, PROVIDING FOR CRIMINAL
6 BACKGROUND CHECKS FOR MULTISTATE LICENSURE; PROVIDING DEFINITIONS; AND PROVIDING
7 RULEMAKING AUTHORITY."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. Section 1. Enactment -- provisions. The cosmetology licensure compact is
12 enacted into law and entered into with all other jurisdictions joining the compact in the form substantially as
13 follows:

14 ARTICLE 1

15 PURPOSE

16 The purpose of this compact is to facilitate the interstate practice and regulation of cosmetology with
17 the goal of improving public access to, and the safety of, cosmetology services and reducing unnecessary
18 burdens related to cosmetology licensure. Through this compact, the member states seek to establish a
19 regulatory framework that provides for a new multistate licensing program. Through this new licensing program,
20 the member states seek to provide increased value and mobility to licensed cosmetologists in the member
21 states, while ensuring the provision of safe, effective, and reliable services to the public. This compact is
22 designed to achieve the following objectives, and the member states hereby ratify the same intentions by
23 subscribing hereto:

24 (1) provide opportunities for interstate practice by cosmetologists who meet uniform requirements
25 for multistate licensure;

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

28 (3) ensure and encourage cooperation between member states in the licensure and regulation of

- 1 the practice of cosmetology;
- 2 (4) support relocating military members and their spouses;
- 3 (5) facilitate the exchange of information between member states related to the licensure,
- 4 investigation, and discipline of the practice of cosmetology; and
- 5 (6) provide for the licensure and mobility of the workforce in the profession while addressing the
- 6 shortage of workers and lessening the associated burdens on the member states.

7 ARTICLE 2

8 DEFINITIONS

9 As used in this compact, and except as otherwise provided, the following definitions govern the terms

10 herein:

11 (1) "Active military member" means any person with full-time duty status in the armed forces of the

12 United States, including members of the national guard and reserve.

13 (2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a

14 member state's laws that is imposed by a state licensing authority or other regulatory body against a

15 cosmetologist, including actions against an individual's license or authorization to practice, such as revocation,

16 suspension, probation, monitoring of the licensee, limitation of the licensee's practice, or any other

17 encumbrance on a license affecting an individual's ability to participate in the cosmetology industry, including

18 the issuance of a cease and desist order.

19 (3) "Alternative program" means a nondisciplinary monitoring or prosecutorial diversion program

20 approved by a member state's state licensing authority.

21 (4) "Authorization to practice" means a legal authorization associated with a multistate license

22 permitting the practice of cosmetology in that remote state, which must be subject to the enforcement

23 jurisdiction of the state licensing authority in that remote state.

24

25 (5) "Background check" means the submission of information for an applicant for the purpose of

26 obtaining that applicant's criminal history record information, as further defined in 28 CFR 20.3(d), from the

27 federal bureau of investigation and the agency responsible for retaining state criminal or disciplinary history in

28 the applicant's home state.

1 (6) "Charter member state" means a member state that has enacted legislation to adopt this
2 compact where that legislation predates the effective date of this compact as defined in article 13.

3 (7) "Commission" means the government agency whose membership consists of all states that
4 have enacted this compact, which is known as the cosmetology licensure compact commission, as defined in
5 article 9, and which shall operate as an instrumentality of the member states.

6 (8) "Cosmetologist" means an individual licensed in the individual's home state to practice
7 cosmetology.

8 (9) "Cosmetology", "cosmetology services", or the "practice of cosmetology" means the care and
9 services provided by a cosmetologist as set forth in the member state's statutes and regulations in the state
10 where the services are being provided.

11 (10) "Current significant investigative information" means:

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

15 (b) investigative information that indicates that a licensee has engaged in fraud or represents an
16 immediate threat to public health and safety, regardless of whether the licensee has been notified and had an
17 opportunity to respond.

18 (11) "Data system" means a repository of information about licensees, including but not limited to
19 license status, investigative information, and adverse actions.

20 (12) "Disqualifying event" means any event that must disqualify an individual from holding a
21 multistate license under this compact, which the commission may by rule or order specify.

22 (13) "Encumbered license" means a license in which an adverse action restricts the practice of
23 cosmetology by a licensee or the adverse action has been reported to the commission.

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

26 (15) "Executive committee" means a group of delegates elected or appointed to act on behalf of,
27 and within the powers granted to them by, the commission.

28 (16) "Home state" means the member state that is a licensee's primary state of residence and

1 where that licensee holds an active and unencumbered license to practice cosmetology.

2 (17) "Investigative information" means information, records, or documents received or generated by
3 a state licensing authority pursuant to an investigation or other inquiry.

4 (18) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws
5 and rules governing the practice of cosmetology in a state.

6 (19) "Licensee" means an individual who currently holds a license from a member state to practice
7 as a cosmetologist.

8 (20) "Member state" means any state that has adopted this compact.

9 (21) "Multistate license" means a license issued by and subject to the enforcement jurisdiction of the
10 state licensing authority in a licensee's home state, which authorizes the practice of cosmetology in member
11 states and includes authorizations to practice cosmetology in all remote states pursuant to this compact.

12 (22) "Remote state" means any member state other than the licensee's home state.

13 (23) "Rule" means any rule or regulation promulgated by the commission under this compact that
14 has the force of law.

15 (24) "Single-state license" means a cosmetology license issued by a member state that authorizes
16 the practice of cosmetology only within the issuing state and does not include any authorization outside of the
17 issuing state.

18 (25) "State" means a state, territory, or possession of the United States and the District of Columbia.

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

21 ARTICLE 3

22 MEMBER STATE REQUIREMENTS

23 (1) To be eligible to join this compact, and to maintain eligibility as a member state, a state must:

24 (a) license and regulate cosmetology;

25 (b) have a mechanism or entity in place to receive and investigate complaints about licensees
26 practicing in that state;

27 (c) require that licensees within the state pass a cosmetology competency examination prior to
28 being licensed to provide cosmetology services to the public in that state;

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

(e) implement procedures for considering one or more of the following categories of information from applicants for licensure: criminal history, disciplinary history, or background check. These procedures may include the submission of information by applicants for the purpose of obtaining an applicant's background check as defined herein;

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

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

(h) 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;

(i) comply with the rules as may be enacted by the commission to administer the compact; and

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

(2) Member states may charge a fee for granting a license to practice cosmetology.

(3) Individuals not residing in a member state may 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 may not be recognized as granting a multistate license to provide services in any other member state.

(4) Nothing in this compact may affect the requirements established by a member state for the issuance of a single-state license.

(5) A multistate license issued to a licensee by a home state to a resident of that state must be recognized by each member state as authorizing a licensee to practice cosmetology in each member state.

(6) The commission may not at any point have the power to define the educational or professional requirements for a license to practice cosmetology. The member states must retain sole jurisdiction over the provision of these requirements.

ARTICLE 4

MULTISTATE LICENSURE

(1) To be eligible to apply to their home state's state 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 their home state.

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

(3) If an applicant meets the requirements for a multistate license under this compact and any applicable rules of the commission, the state 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 the multistate license.

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

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

(6) To maintain a multistate license under this compact, a licensee shall:

(a) agree to abide by the rules of the state licensing authority, and the state scope of practice laws governing the practice of cosmetology, of any member state in which the licensee provides services;

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

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

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

(8) The practice of cosmetology under a multistate license granted pursuant to this compact subjects the licensee to the jurisdiction of the state licensing authority, the courts, and the laws of the member state in which the cosmetology services are provided.

ARTICLE 5

1 REISSUANCE OF A MULTISTATE LICENSE BY A NEW HOME STATE

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

4 (2) If a licensee changes their home state by moving between two member states:

5 (a) the licensee shall immediately apply for the reissuance of their multistate license in their new
6 home state. The licensee shall pay all applicable fees and notify the prior home state in accordance with the
7 rules of the commission.

8 (b) Upon receipt of an application to reissue a multistate license, the new home state shall verify
9 that the multistate license is active, unencumbered, and eligible for reissuance under the terms of the compact
10 and the rules of the commission. The multistate license issued by the prior home state will be deactivated and
11 all member states notified in accordance with the applicable rules adopted by the commission.

12 (c) If required for initial licensure, the new home state may require a background check as
13 specified in the laws of that state or the compliance with any jurisprudence requirements of the new home state.

14 (d) Notwithstanding any other provision of this compact, if a licensee does not meet the
15 requirements set forth in this compact for the reissuance of a multistate license by the new home state, then the
16 licensee must be subject to the new home state requirements for the issuance of a single-state license in that
17 state.

18 (3) If a licensee changes their primary state of residence by moving from a member state to a
19 nonmember state, or from a nonmember state to a member state, then the licensee must be subject to the state
20 requirements for the issuance of a single-state license in the new home state.

21 (4) Nothing in this compact may interfere with a licensee's ability to hold a single-state license in
22 multiple states. However, for the purposes of this compact, a licensee may have only one home state and only
23 one multistate license.

24 (5) Nothing in this compact may interfere with the requirements established by a member state for
25 the issuance of a single-state license.

26 ARTICLE 6

27 AUTHORITY OF THE COMPACT COMMISSION

28 AND MEMBER STATE LICENSING AUTHORITIES

(1) Nothing in this compact, nor any rule or regulation of the commission, may 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.

(2) 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.

(3) Discipline must be the sole responsibility of the state in which cosmetology services are provided. Accordingly, each member state's state licensing authority must 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

(1) A licensee's home state has exclusive power to impose an adverse action against a licensee's multistate license issued by the home state.

(2) 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.

(3) In addition to the powers conferred by state law, each remote state's state licensing authority has the power to:

(a) take adverse action against a licensee's authorization to practice cosmetology through the multistate license in that member state, provided that:

(i) only the licensee's home state may have the power to take adverse action against the multistate license issued by the home state; and

(ii) 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 the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine the appropriate action.

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

3 (c) complete any pending investigations of a licensee who changes their primary state of
4 residence during the course of the investigation. The state licensing authority is also empowered to report the
5 results of the investigation to the commission through the data system as described herein.

6 (d) issue subpoenas for both hearings and investigations that require the attendance and
7 testimony of witnesses as well as the production of evidence. Subpoenas issued by a state licensing authority
8 in a member state for the attendance and testimony of witnesses or the production of evidence from another
9 member state must be enforced in the latter state by any court of competent jurisdiction, according to the
10 practice and procedure of that court applicable to subpoenas issued in proceedings before it. The issuing state
11 licensing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service
12 statutes of the state in which the witnesses or evidence are located.

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

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

17 (4) A licensee's home state shall complete any pending investigation of a cosmetologist who
18 changes their primary state of residence during the course of the investigation. The home state also has the
19 authority to take appropriate action and shall promptly report the conclusions of the investigations to the data
20 system.

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

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

1 (7) Joint investigations:

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

5 (b) Member states shall share any investigative, litigation, or compliance materials in furtherance
6 of any joint or individual investigation initiated under the compact.

ARTICLE 8

ACTIVE MILITARY MEMBERS AND THEIR SPOUSES

9 Active military members, or their spouses, shall designate a home state where the individual has a
10 current license to practice cosmetology in good standing. The individual may retain their home state
11 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

(1) 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 states acting jointly and not an instrumentality of any one state. The commission must come into existence on or after the effective date of the compact as set forth in article 13.

20 (2) Membership, voting, and meetings:

21 (a) Each member state must have and be limited to one delegate selected by that member state's
22 state licensing authority.

23 (b) The delegate must be an administrator of the state licensing authority of the member state or
24 their designee.

25 (c) The commission shall by rule or bylaw establish a term of office for delegates and may by rule
26 or bylaw establish term limits.

27 (d) The commission may recommend removal or suspension of any delegate from office.

28 (e) A member state's state licensing authority shall fill any vacancy of its delegate occurring on the

1 commission within 60 days of the vacancy.

2 (f) Each delegate is entitled to one vote on all matters that are voted on by the commission.

3 (g) The commission shall meet at least once during each calendar year. Additional meetings may
4 be held as set forth in the bylaws. The commission may meet by telecommunication, videoconference, or other
5 similar electronic means.

6 (3) The commission has the following powers:

7 (a) establish the fiscal year of the commission;

8 (b) establish code of conduct and conflict of interest policies;

9 (c) adopt rules and bylaws;

10 (d) maintain its financial records in accordance with the bylaws;

11 (e) meet and take actions that are consistent with the provisions of this compact, the commission's
12 rules, and the bylaws;

13 (f) initiate and conclude legal proceedings or actions in the name of the commission, provided that
14 the standing of any state licensing authority to sue or be sued under applicable law may not be affected;

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

17 (h) purchase and maintain insurance and bonds;

18 (i) borrow, accept, or contract for services of personnel, including but not limited to employees of a
19 member state;

20 (j) conduct an annual financial review;

21 (k) hire employees, elect or appoint officers, fix compensation, define duties, grant the individuals
22 appropriate authority to carry out the purposes of the compact, and establish the commission's personnel
23 policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel
24 matters;

25 (l) as set forth in the commission rules, charge a fee to a licensee for the grant of a multistate
26 license and thereafter, as may be established by commission rule, charge the licensee a multistate license
27 renewal fee for each renewal period. Nothing herein may be construed to prevent a home state from charging a
28 licensee a fee for a multistate license or renewals of a multistate license, or a fee for the jurisprudence

- 1 requirement if the member state imposes that requirement for the grant of a multistate license.
- 2 (m) assess and collect fees;
- 3 (n) accept any and all appropriate gifts, donations, grants of money, other sources of revenue,
4 equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all
5 times the commission shall avoid any appearance of impropriety or conflict of interest;
- 6 (o) lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or
7 any undivided interest therein;
- 8 (p) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
9 property, real, personal, or mixed;
- 10 (q) establish a budget and make expenditures;
- 11 (r) borrow money;
- 12 (s) appoint committees, including standing committees, composed of members, state regulators,
13 state legislators or their representatives, consumer representatives, and other interested persons as may be
14 designated in this compact and the bylaws;
- 15 (t) provide and receive information from, and cooperate with, law enforcement agencies;
- 16 (u) elect a chair, vice chair, secretary, and treasurer and other officers of the commission as
17 provided in the commission's bylaws;
- 18 (v) establish and elect an executive committee, including a chair and a vice chair;
- 19 (w) adopt and provide to the member states an annual report.
- 20 (x) determine whether a state's adopted language is materially different from the model compact
21 language in a way that the state would not qualify for participation in the compact; and
- 22 (y) perform such other functions as may be necessary or appropriate to achieve the purposes of
23 this compact.
- 24 (4) The executive committee:
- 25 (a) The executive committee has the power to act on behalf of the commission according to the
26 terms of this compact. The powers, duties, and responsibilities of the executive committee include:
- 27 (i) overseeing the day-to-day activities of the administration of the compact, including compliance
28 with the provisions of the compact, the commission's rules and bylaws, and other duties deemed necessary;

- 1 (ii) recommending to the commission changes to the rules or bylaws, changes to this compact
2 legislation, fees charged to compact member states, fees charged to licensees, and other fees;
- 3 (iii) ensuring compact administration services are appropriately provided, including by contract;
- 4 (iv) preparing and recommending the budget;
- 5 (v) maintaining financial records on behalf of the commission;
- 6 (vi) monitoring compact compliance of member states and providing compliance reports to the
7 commission;
- 8 (vii) establishing additional committees as necessary;
- 9 (viii) exercising the powers and duties of the commission during the interim between commission
10 meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any other
11 powers and duties expressly reserved to the commission by rule or bylaw; and
- 12 (ix) other duties as provided in the rules or bylaws of the commission.
- 13 (b) The executive committee must be composed of up to seven voting members:
- 14 (i) the chair and vice chair of the commission and any other members of the commission who
15 serve on the executive committee must be voting members of the executive committee; and
- 16 (ii) other than the chair, vice chair, secretary and treasurer, the commission shall elect three voting
17 members from the current membership of the commission.
- 18 (iii) The commission may elect ex officio, nonvoting members from a recognized national
19 cosmetology professional association as approved by the commission. The commission's bylaws must identify
20 qualifying organizations and the manner of appointment if the number of organizations seeking to appoint an ex
21 officio member exceeds the number of members specified in this article.
- 22 (c) The commission may remove any member of the executive committee as provided in the
23 commission's bylaws.
- 24 (d) The executive committee shall meet at least annually.
- 25 (i) Annual executive committee meetings, as well as any executive committee meeting at which it
26 does not take or intend to take formal action on a matter for which a commission vote would otherwise be
27 required, must be open to the public, except that the executive committee may meet in a closed, nonpublic
28 session of a public meeting when dealing with any of the matters covered under article 9(6)(d).

1 (ii) The executive committee shall give 5 business days' advance notice of its public meetings,
2 posted on its website and as determined, to provide notice to persons with an interest in the public matters the
3 executive committee intends to address at those meetings.

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

5 (i) meet an imminent threat to public health, safety, or welfare;

6 (ii) prevent a loss of commission or member state funds; or

7 (iii) protect public health and safety.

8 (5) The commission shall adopt and provide to the member states an annual report.

9 (6) Meetings of the commission:

10 (a) All meetings of the commission that are not closed pursuant to article 9(6)(d) must be open to
11 the public. Notice of public meetings must be posted on the commission's website at least 30 days prior to the
12 public meeting.

13 (b) Notwithstanding article 9(6)(a), the commission may convene an emergency public meeting by
14 providing at least 24 hours' prior notice on the commission's website, and any other means as provided in the
15 commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under article
16 11(12). The commission's legal counsel shall certify that one of the reasons justifying an emergency public
17 meeting has been met.

18 (c) Notice of all commission meetings must provide the time, date, and location of the meeting,
19 and if the meeting is to be held or accessible via telecommunication, videoconference, or other electronic
20 means, the notice must include the mechanism for access to the meeting.

21 (d) The commission may convene in a closed, nonpublic meeting for the commission to discuss:

22 (i) noncompliance of a member state with its obligations under the compact;

23 (ii) the employment, compensation, discipline, or other matters, practices, or procedures related to
24 specific employees or other matters related to the commission's internal personnel practices and procedures;

25 (iii) current or threatened discipline of a licensee by the commission or by a member state's
26 licensing authority;

27 (iv) current, threatened, or reasonably anticipated litigation;

28 (v) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

- 1 (vi) accusing any person of a crime or formally censuring any person;
- 2 (vii) trade secrets or commercial or financial information that is privileged or confidential;
- 3 (viii) information of a personal nature when disclosure would constitute a clearly unwarranted
- 4 invasion of personal privacy;
- 5 (ix) investigative records compiled for law enforcement purposes;
- 6 (x) information related to any investigative reports prepared by or on behalf of or for use of the
- 7 commission or other committee charged with responsibility of investigation or determination of compliance
- 8 issues pursuant to the compact;
- 9 (xi) legal advice;
- 10 (xii) matters specifically exempted from disclosure to the public by federal or member state law; or
- 11 (xiii) other matters as promulgated by the commission by rule.
- 12 (e) If a meeting, or a portion of a meeting, is closed, the presiding officer shall state that the
- 13 meeting will be closed and reference each relevant exempting provision, and the reference must be recorded in
- 14 the minutes.
- 15 (f) The commission shall keep minutes that fully and clearly describe all matters discussed in a
- 16 meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions,
- 17 including a description of the views expressed. All documents considered in connection with an action must be
- 18 identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to
- 19 release only by a majority vote of the commission or by order of a court of competent jurisdiction.
- 20 (7) Financing of the commission:
- 21 (a) The commission shall pay, or provide for the payment of, the reasonable expenses of its
- 22 establishment, organization, and ongoing activities.
- 23 (b) The commission may accept any and all appropriate sources of revenue, donations, and grants
- 24 of money, equipment, supplies, materials, and services.
- 25 (c) The commission may levy on and collect an annual assessment from each member state and
- 26 impose fees on licensees of member states to whom it grants a multistate license to cover the cost of the
- 27 operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its
- 28 annual budget as approved each year for which revenue is not provided by other sources. The aggregate

1 annual assessment amount for member states must be allocated based on a formula that the commission shall
2 promulgate by rule.

3 (d) The commission may not incur obligations of any kind prior to securing the funds adequate to
4 meet the same. The commission may not pledge the credit of any member states, except by and with the
5 authority of the member state.

6 (e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts
7 and disbursements of the commission are subject to the financial review and accounting procedures
8 established under its bylaws. All receipts and disbursements of funds handled by the commission must be
9 subject to an annual financial review by a certified or licensed public accountant, and the report of the financial
10 review must be included in and become part of the annual report of the commission.

11 (8) Qualified immunity, defense, and indemnification:

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

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

28 (c) The commission shall indemnify and hold harmless any member, officer, executive director,

1 employee, or representative of the commission for the amount of any settlement or judgment obtained against
2 that person arising out of any actual or alleged act, error, or omission that occurred within the scope of
3 commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing
4 occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or
5 alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

6 (d) Nothing herein may be construed as a limitation on the liability of any licensee for professional
7 malpractice or misconduct, which must be governed solely by any other applicable state laws.

8 (e) Nothing in this compact may be interpreted to waive or otherwise abrogate a member state's
9 state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act,
10 Clayton Act, or any other state or federal antitrust or anticompetitive law or regulation.

11 (f) Nothing in this compact may be construed to be a waiver of sovereign immunity by the member
12 states or by the commission.

13 ARTICLE 10

14 DATA SYSTEM

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

17 (2) The commission shall assign each applicant for a multistate license a unique identifier as
18 determined by the rules of the commission.

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

22 (a) identifying information;

23 (b) licensure data;

24 (c) adverse actions against a license and information related to those;

25 (d) nonconfidential information related to alternative program participation, the beginning and
26 ending dates of the participation, and other information related to the participation;

27 (e) any denial of application for licensure and the reason or reasons for the denial, excluding the
28 reporting of any criminal history record information when prohibited by law;

1 (f) the existence of investigative information;

2 (g) the existence of current significant investigative information; and

3 (h) other information that may facilitate the administration of this compact or the protection of the
4 public, as determined by the rules of the commission.

5 (4) The records and information provided to a member state pursuant to this compact or through
6 the data system, when certified by the commission or an agent of the commission, constitute the authenticated
7 business records of the commission and are entitled to any associated hearsay exception in any relevant
8 judicial, quasi-judicial or administrative proceedings in a member state.

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

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

14 (7) Member states contributing information to the data system may designate information that may
15 not be shared with the public without the express permission of the contributing state.

16 (8) Any information submitted to the data system that is subsequently expunged pursuant to
17 federal law or the laws of the member state contributing the information must be removed from the data system.

18 ARTICLE 11

19 RULEMAKING

20 (1) The commission shall promulgate reasonable rules in order to effectively and efficiently
21 implement and administer the purposes and provisions of the compact. A rule must be invalid and have no
22 force or effect only if a court of competent jurisdiction holds that the rule is invalid because the commission
23 exercised its rulemaking authority in a manner that is beyond the scope and purposes of the compact, or the
24 powers granted hereunder, or based on another applicable standard of review.

25 (2) The rules of the commission have the force of law in each member state, provided however
26 that where the rules of the commission conflict with the laws of the member state that establish the member
27 state's scope of practice laws governing the practice of cosmetology as held by a court of competent
28 jurisdiction, the rules of the commission are ineffective in that state to the extent of the conflict.

1 (3) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this
2 article and the rules adopted under this article. Rules become binding as of the date specified by the
3 commission for each rule.

4 (4) If a majority of the legislatures of the member states rejects a rule or portion of a rule, by
5 enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of
6 adoption of the rule, then the rule has no further force and effect in any member state or to any state applying to
7 participate in the compact.

8 (5) Rules must be adopted at a regular or special meeting of the commission.

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

11 (7) Prior to adoption of a proposed rule by the commission, and at least 30 days in advance of the
12 meeting at which the commission will hold a public hearing on the proposed rule, the commission shall provide
13 a notice of proposed rulemaking:

14 (a) on the website of the commission or other publicly accessible platform;

15 (b) to persons who have requested notice of the commission's notices of proposed rulemaking;
16 and

17 (c) in other ways as the commission may by rule specify.

18 (8) The notice of proposed rulemaking must include:

19 (a) the time, date, and location of the public hearing at which the commission will hear public
20 comments on the proposed rule and, if different, the time, date, and location of the meeting where the
21 commission will consider and vote on the proposed rule;

22 (b) if the hearing is held via telecommunication, videoconference, or other electronic means, the
23 commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking;

24 (c) the text of the proposed rule and the reason for the rule;

25 (d) a request for comments on the proposed rule from any interested person; and

26 (e) the manner in which interested persons may submit written comments.

27 (9) All hearings will be recorded. A copy of the recording and all written comments and documents
28 received by the commission in response to the proposed rule must be available to the public.

1 (10) Nothing in this article may be construed as requiring a separate hearing on each rule. Rules
2 may be grouped for the convenience of the commission at hearings required by this article.

3 (11) The commission shall, by majority vote of all members, take final action on the proposed rule
4 based on the rulemaking record and the full text of the rule.

5 (a) The commission may adopt changes to the proposed rule, provided the changes do not
6 enlarge the original purpose of the proposed rule.

7 (b) The commission shall provide an explanation of the reasons for substantive changes made to
8 the proposed rule as well as the reasons for substantive changes not made that were recommended by
9 commenters.

10 (c) The commission shall determine a reasonable effective date for the rule. Except for an
11 emergency as provided in article 11(12), the effective date of the rule must be no sooner than 45 days after the
12 commission issues the notice that it adopted or amended the rule.

13 (12) Upon determination that an emergency exists, the commission may consider and adopt an
14 emergency rule with 5 days' notice, with opportunity to comment, provided that the usual rulemaking
15 procedures provided in the compact and in this article are retroactively applied to the rule as soon as
16 reasonably possible, and in no event later than 90 days after the effective date of the rule. For the purposes of
17 this provision, an emergency rule is one that must be adopted immediately to:

18 (a) meet an imminent threat to public health, safety, or welfare;

19 (b) prevent a loss of commission or member state funds;

20 (c) meet a deadline for the promulgation of a rule that is established by federal law or rule; or

21 (d) protect public health and safety.

22 (13) The commission or an authorized committee of the commission may direct revisions to a
23 previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency,
24 or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The
25 revision must be subject to challenge by any person for a period of 30 days after posting. The revision may be
26 challenged only on grounds that the revision results in a material change to a rule. A challenge must be made
27 in writing and delivered to the commission prior to the end of the notice period. If no challenge is made, the
28 revision must take effect without further action. If the revision is challenged, the revision may not take effect

1 without the approval of the commission.

2 (14) A member state's rulemaking requirements do not apply under this compact.

3 ARTICLE 12

4 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

5 (1) Oversight:

6 (a) The executive and judicial branches of state government in each member state shall enforce
7 this compact and take all actions necessary and appropriate to implement the compact.

8 (b) Venue is proper and judicial proceedings by or against the commission must be brought solely
9 and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The
10 commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in
11 alternative dispute resolution proceedings. Nothing herein may affect or limit the selection or propriety of venue
12 in any action against a licensee for professional malpractice, misconduct or any such similar matter.

13 (c) The commission is entitled to receive service of process in any proceeding regarding the
14 enforcement or interpretation of the compact and has standing to intervene in such a proceeding for all
15 purposes. Failure to provide the commission service of process renders a judgment or order void as to the
16 commission, this compact, or promulgated rules.

17 (2) Default, technical assistance, and termination:

18 (a) If the commission determines that a member state has defaulted in the performance of its
19 obligations or responsibilities under this compact or the promulgated rules, the commission shall provide written
20 notice to the defaulting state. The notice of default must describe the default, the proposed means of curing the
21 default, and any other action that the commission may take, and it must offer training and specific technical
22 assistance regarding the default.

23 (b) The commission shall provide a copy of the notice of default to the other member states.

24 (c) If a state in default fails to cure the default, the defaulting state may be terminated from the
25 compact upon an affirmative vote of a majority of the delegates of the member states, and all rights, privileges
26 and benefits conferred on that state by this compact may be terminated on the effective date of termination. A
27 cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of
28 default.

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

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

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

(g) The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

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

(3) Dispute resolution:

(a) 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 nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) Enforcement:

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

(b) By majority vote as provided by commission rule, the commission may initiate legal action against a member state in default in the United States 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

1 and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event
2 judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including
3 reasonable attorney fees. The remedies herein may not be the exclusive remedies of the commission. The
4 commission may pursue any other remedies available under federal law or the defaulting member state's law.

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

10 (d) No individual or entity other than a member state may enforce this compact against the
11 commission.

12 ARTICLE 13

13 EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

14 (1) The compact must come into effect on the date on which the compact statute is enacted into
15 law in the seventh member state.

16 (a) On or after the effective date of the compact, the commission shall convene and review the
17 enactment of each of the charter member states to determine if the statute enacted by each charter member
18 state is materially different from the model compact statute.

19 (i) A charter member state whose enactment is found to be materially different from the model
20 compact statute must be entitled to the default process set forth in article 12.

21 (ii) If any member state is later found to be in default, or is terminated or withdraws from the
22 compact, the commission must remain in existence and the compact must remain in effect even if the number
23 of member states should be less than seven.

24 (b) Member states enacting the compact subsequent to the charter member states must be subject
25 to the process set forth in article 9(3)(x) to determine if their enactments are materially different from the model
26 compact statute and whether they qualify for participation in the compact.

27 (c) All actions taken for the benefit of the commission or in furtherance of the purposes of the
28 administration of the compact prior to the effective date of the compact or the commission coming into

1 existence are considered to be actions of the commission unless specifically repudiated by the commission.

2 (d) Any state that joins the compact is subject to the commission's rules and bylaws as they exist
3 on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the
4 commission has the full force and effect of law on the day the compact becomes law in that state.

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

7 (a) A member state's withdrawal may not take effect until 180 days after enactment of the
8 repealing statute.

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

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

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

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

21 ARTICLE 14

22 CONSTRUCTION AND SEVERABILITY

23 (1) This compact and the commission's rulemaking authority must be liberally construed so as to
24 effectuate the purposes, and the implementation and administration, of the compact. Provisions of the compact
25 expressly authorizing or requiring the promulgation of rules may not be construed to limit the commission's
26 rulemaking authority solely for those purposes.

27 (2) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision
28 of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any member

1 state, of a state seeking participation in the compact, or of the United States, or the applicability thereof to any
2 government, agency, person, or circumstance is held to be unconstitutional by a court of competent jurisdiction,
3 the validity of the remainder of this compact and the applicability thereof to any other government, agency,
4 person, or circumstance may not be affected.

5 (3) Notwithstanding article 14(2), the commission may deny a state's participation in the compact
6 or, in accordance with the requirements of article 12, terminate a member state's participation in the compact, if
7 it determines that a constitutional requirement of a member state is a material departure from the compact.
8 Otherwise, if this compact must be held to be contrary to the constitution of any member state, the compact
9 must remain in full force and effect as to the remaining member states and in full force and effect as to the
10 member state affected as to all severable matters.

11 ARTICLE 15

12 CONSISTENT EFFECT AND CONFLICT WITH OTHER LAWS

13 (1) Nothing herein may prevent or inhibit the enforcement of any other law of a member state that
14 is not inconsistent with the compact.

15 (2) Any laws, statutes, regulations, or other legal requirements in a member state in conflict with
16 the compact are superseded to the extent of the conflict.

17 (3) All permissible agreements between the commission and the member states are binding in
18 accordance with their terms.

19
20 NEW SECTION. **Section 2. Criminal background check for multistate licensure.** (1) Each
21 applicant for multistate licensure to practice cosmetology shall submit a full set of the applicant's fingerprints to
22 the board for the purpose of obtaining a state and federal criminal history background check.

23 (2) Each license applicant is responsible for paying all fees charged in relation to obtaining the
24 state and federal criminal history background check.

25 (3) The board may require a licensee renewing a license to submit a full set of the licensee's
26 fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

27 (4) The department of justice may share the fingerprint data obtained under subsection (1) or (3)
28 with the federal bureau of investigation.

1

2 NEW SECTION. **Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as a

3 new part of Title 37, chapter 31, and the provisions of Title 37, chapter 31, apply to [section 1].

4 (2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 31, part 3, and the

5 provisions of Title 37, chapter 31, part 3, apply to [section 2].

6 - END -