SPONSOR: Sen. Buckson & Rep. Harris
Sens. Hoffner, Huxtable, Lockman, Pettyjohn, Richardson, Wilson; Reps. Berry, Carson, Yearick

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 217

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE COSMETOLOGY LICENSURE COMPACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Cosmetology Licensure Compact

§ 5140. Short title.

This Act is known as the "Cosmetology Licensure Compact".

§ 5141. Title and 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. safe, effective, and reliable services are provided to the public. This Compact is designed to achieve all of the following objectives, and the member states ratify the same intentions by subscribing to this Compact:

(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.

(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.

§ 5142. Definitions.

As used in this Compact:

(1) "Active military member" means any person with full-time duty status in the armed forces of the United States, including members of the National Guard and Reserve.

(2)"Adverse action" means any administrative, civil, equitable, or criminal action permitted by a member state's laws which is imposed by a state licensing authority or other regulatory body against a cosmetologist. "Adverse action" includes 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.

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

(4) "Authorization to practice" means a legal authorization associated with a multistate license permitting the practice of cosmetology in that remote state, which is subject to the enforcement jurisdiction of the state licensing authority in that remote state.

(5) "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.

(6) "Charter member state" means a member state who has enacted legislation to adopt this Compact before the effective date of this Compact as defined in § 5153 of this title.

(7) "Commission" means the government agency whose membership consists of all states that have enacted this Compact, which is known as the Cosmetology Licensure Compact Commission, as defined in § 5149 of this title, and which operates as an instrumentality of the member states.

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

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

(10) “Current significant investigative information” means any of the following:

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

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

(11) “Data system” means a repository of information about licensees, including license status, investigative information, and adverse actions.

(12) “Disqualifying event” means any event that disqualifies an individual from holding a multistate license under this Compact, which the Commission may by rule or order specify.

(13) “Encumbered license” means a license where an adverse action restricts the practice of cosmetology by a licensee, or where the adverse action has been reported to the Commission.

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

(15) “Executive Committee” means a group of delegates elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

(16) “Home state” means the member state that is a licensee’s primary state of residence, and where that licensee holds an active and unencumbered license to practice cosmetology.

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

(18) “Jurisprudence requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of cosmetology in a state.

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

(20) “Member state” means any state that has adopted this Compact.

(21) “Multistate license” means a license issued by and subject to the enforcement jurisdiction of the state licensing authority in a licensee’s home state, which authorizes the practice of cosmetology in member states and includes authorizations to practice cosmetology in all remote states under this Compact.

(22) “Remote state” means any member state other than the licensee’s home state.

(23) "Rule" means any rule or regulation promulgated by the Commission under this Compact which has the force of law.

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

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

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

§ 5143. Member state requirements.

(a) To be eligible to join this Compact, and to maintain eligibility as a member state, a state must do all of the following:

(1) License and regulate cosmetology.

(2) Have a mechanism or entity in place to receive and investigate complaints about licensees practicing in that state.

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

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

(5) Implement procedures for considering 1 or more of the following categories of information from applicants for licensure: criminal history, disciplinary history, or background check. The procedures may include the submission of information by applicants to obtain an applicant's background check as defined in this Charter.

(6) Participate in the data system, including by using unique identifiers.

(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 this Compact and the rules, 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 rules that the Commission may enact to administer this Compact.

(10) Accept licensees from other member states as established in § 5144 of this title.

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

(c) Individuals not residing in a member state 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 does not grant a multistate license to provide services in any other member state.

(d) Nothing in this Compact affects 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 must be recognized by each member state as authorizing a licensee to practice cosmetology in each member state.

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

§ 5144. Multistate license.

(a) 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.

(b) Upon the receipt of an application for a multistate license, according to the rules, a member state's state licensing authority shall determine if 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, the state licensing authority in receipt of the application shall grant, within a reasonable time, a multistate license to that applicant and inform all member states of the grant of the multistate license.

(d) 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 practice cosmetology in each member state, subject to the restrictions in this section.

(e) A multistate license granted under this Compact may be effective for a definite period, concurrent with the licensure renewal period in the home state.

(f) To maintain a multistate license under this Compact, a licensee must do all of the following:

(1) 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 cosmetology services.

(2) Pay all required fees related to the application and process, and any other fees which the Commission may by rule require.

(3) Comply with all other requirements regarding multistate licenses which 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 under 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.

§5145. Reissuance of a multistate license by a new home state.

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

(b)(1) If a licensee changes their home state by moving between 2 member states, the licensee shall immediately apply for the reissuance of their multistate license in their new home state. The licensee shall pay all applicable fees and notify the prior home state in accordance with the rules.

(2) Upon receipt of an application to reissue a multistate license, the new home state shall verify that the multistate license is active, unencumbered, and eligible for reissuance under the terms of this Compact and the rules. The multistate license issued by the former home state must 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 in the laws of the new home state, or the compliance with any jurisprudence requirements of the new home state.

(4) Notwithstanding any other provision of this Compact, if a licensee does not meet the requirements set forth in this Compact for the reissuance of a multistate license by the new home state, then the licensee is subject to the new home state's requirements for the issuance of a single-state license in that state.

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

(d) Nothing in this Compact interferes with a licensee's ability to hold a single-state license in multiple states; however, for the purposes of this Compact, a licensee may have only 1 home state and only 1 multistate license.

(e) Nothing in this Compact interferes with the requirements established by a member state for the issuance of a single-state license.

§ 5146. Authority of the Cosmetology Licensure Compact Commission and state licensing authorities.

(a) Nothing in this Compact, or any Commission rule or regulation, 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.

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

(c) Discipline is the sole responsibility of the state in which cosmetology services are provided. Accordingly, each state licensing authority is responsible for receiving complaints about individuals practicing cosmetology in that state, and for communicating all relevant investigative information about any adverse action to the other member states through the data system in addition to any other methods the Commission may by rule require.

§ 5147. Adverse actions.

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

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

(c) In addition to the powers conferred by state law, each remote state's state licensing authority has the power to do all of the following:

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

a. Only the licensee's home state has the power to take adverse action against the multistate license issued by the home state.

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

(2) Issue cease and desist orders or impose an encumbrance on a licensee's authorization to practice within that remote state.

(3) Complete any pending investigation of a licensee who changes their home state during the course of such an investigation. The state licensing authority may also report the results of an investigation to the Commission through the data system as described in § 5150 of this title.

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

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

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

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

(e) If a home state takes an adverse action against a licensee's multistate license, the licensee's authorization to practice in all other member states must 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 must 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 overrides 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 is 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 this Compact.

§ 5148. Active military members and their spouses.

An active military member, or their spouse, shall designate a home state where the individual has a current license to practice cosmetology in good standing. The individual may retain their home state designation during any period of service when that individual or their spouse is on active-duty assignment.

§ 5149. Establishment and operation of the Cosmetology Licensure Compact Commission.

(a) The Compact member states hereby create and establish a joint government agency, known as the Cosmetology Licensure Compact Commission, whose membership consists of all member states that have enacted this Compact. The Commission is an instrumentality of this Compact member states acting jointly and not an instrumentality of any one state. The Commission shall come into existence on or after the effective date of this Compact as set forth in § 5153 of this title.

(b) Membership, voting, and meetings.

(1) Each member state has and is limited to 1 delegate selected by that member state's state licensing authority.

(2) The delegate must be an administrator of the member state's state licensing authority or their 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 state licensing authority shall fill any vacancy of its delegate occurring on the Commission within 60 days of the vacancy.

(6) Each delegate is entitled to 1 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 Commission's bylaws. The Commission may meet by telecommunication, video conference, or other similar electronic means.

(c) The Commission has all of 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 actions that are consistent with the provisions of this Compact, the rules, and the Commission's 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 may not be affected.

(7) Maintain and certify records and information provided to a member state as the Commission's authenticated business records 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 this 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 rules, charge a fee to a licensee for the grant of a multistate license and thereafter, as may be established by rule, charge the licensee a multistate license renewal fee for each renewal period. Nothing in this section may 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 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 in such property.

(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, consumer representatives, and other interested persons as may be designated in this Compact and the Commission's bylaws.

(20) Provide and receive information from, and cooperate with, law enforcement agencies.

(21) Elect a Chair, Vice Chair, Secretary and Treasurer and other officers of the Commission as provided in the Commission's bylaw.

(22) Establish and elect an Executive Committee, including a chair and a vice chair.

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

(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 this Compact.

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

(d) The Executive Committee.

(1) The Executive Committee has 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 include all of the following:

a. Overseeing the day-to-day activities of the administration of this Compact including compliance with the provisions of this 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 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.

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

(2) The Executive Committee is composed of up to 7 voting members.

a. The Chair and Vice Chair of the Commission and any other members of the Commission who serve on the Executive Committee are voting members of the Executive Committee.

b. Other than the Chair, Vice Chair, Secretary and Treasurer, the Commission shall elect 3 voting members from the current membership of the Commission.

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 must 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 section.

(3) The Commission may remove any Executive Committee member 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, must be open to the public, except that the Executive Committee may meet in a closed, nonpublic session of a public meeting when dealing with any of the matters covered under paragraph (f)(4) of this section.

b. The Executive Committee shall give 5 business days advance notice of its public meetings, posted on its website and as determined to provide notice to persons with an interest in the public matters the Executive Committee intends to address at those meetings.

(5) The Executive Committee may hold an emergency meeting when acting for the Commission to do any of the following:

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

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

c. Protect public health and safety.

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

(f) Meetings of the Commission.

(1) All Commission meetings that are not closed under paragraph (f)(4) of this section must be open to the public. Notice of public meetings must be posted on the Commission's website at least 30 days prior to the public meeting.

(2) Notwithstanding paragraph (f)(1) of this section, the Commission may convene an emergency public meeting by providing at least 24 hours prior notice on the Commission's website, and any other means as provided in the Commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under § 5151(*l*) of this title. The Commission's legal counsel shall certify that 1 of the reasons justifying an emergency public meeting has been met.

(3) The notice of a Commission meeting must provide the time, date, and location of the meeting. If the meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the notice must include the mechanism for access to the meeting.

(4) The Commission may convene in a closed, nonpublic meeting for the Commission to discuss any of the following:

a. Non-compliance of a member state with its obligations under this Compact.

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

c. Current or threatened discipline of a licensee by the Commission or by a state licensing authority.

d. Current, threatened, or reasonably anticipated litigation.

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

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

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

h. Information of a personal nature if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.

i. Investigative records compiled for law-enforcement purposes.

j. Information related to any investigative reports prepared by, on behalf of, or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues under this Compact.

k. Legal advice.

l. Matters specifically exempted from disclosure to the public by federal or member state law.

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

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

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

(g) Financing of the Commission.

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

(2) The Commission may accept any appropriate sources of revenue, donations, and grants of money, equipment, supplies, materials, and services.

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

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

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

(h) Qualified immunity, defense, and indemnification.

(1) The members, officers, executive director, employees and representatives of the Commission are immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. Nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the Commission does not in any way compromise or limit the immunity granted under this paragraph (h)(1).

(2) The Commission shall defend any member, officer, executive director, employee, and representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or as determined by the Commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct. Nothing in this section may be construed to prohibit that person from retaining their own counsel at their own expense.

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

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

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

(6) Nothing in this Compact may be construed to be a waiver of sovereign immunity by the member states or by the Commission.

§ 5150. Data system.

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

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

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

(1) Identifying information.

(2) Licensure data.

(3) Adverse actions against a license and information related to the adverse actions.

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

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

(6) The existence of investigative information.

(7) The existence of current significant investigative information.

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

(d) When certified by the Commission or an agent of the Commission, the records and information provided to a member state under this Compact or through the data system constitute the authenticated business records of the Commission and are 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 is only 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 license applicant. Adverse action information pertaining to a licensee or license applicant in any member state is 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 member state.

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

§ 5151. Rulemaking.

(a) The Commission shall promulgate reasonable rules to effectively and efficiently implement and administer the purposes and provisions of this Compact. A rule is invalid and has 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 this Compact, or the powers granted under this Compact, or based on another applicable standard of review.

(b) The rules have the force of law in each member state. But if a court of competent jurisdiction holds that 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, the rules are 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 section and the rules adopted under this section. Rules become binding as of the date specified by the Commission for 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 this Compact within 4 years of the date of adoption of the rule then the rule has no further force and effect in any member state or to any state applying to participate in this Compact.

(e) Rules must 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 as follows:

(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.

(3) In other ways as the Commission may by rule specify.

(h) The notice of proposed rulemaking must include all of the following:

(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 public 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 for the proposed rule.

(4) A request for comments on the proposed rule from any interested person.

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

(i) All public hearings must be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed rule must be available to the public.

(j) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at public hearings required by this section.

(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 if 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 and the 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*) of this section, the effective date of the rule may not be sooner than 45 days after the Commission issuing the notice that it adopted or amended the rule.

(*l*) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule with 5 days' notice, with opportunity to comment, if the usual rulemaking procedures provided in this Compact and in this section are retroactively applied to the rule as soon as reasonably possible, but not later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately to do any of the following:

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

(2) Prevent a loss of Commission or member state funds.

(3) Meet a deadline for the promulgation of a rule that is established by federal law or rule.

(4) Protect public health and safety.

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

(n) A member state's rulemaking requirements do not apply under this Compact.

§ 5152. Oversight, dispute resolution, and enforcement.

(a) Oversight.

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

(2) Venue is proper and judicial proceedings by or against the Commission must be brought exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing in this subsection affects or limits the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any similar matter.

(3) The Commission is entitled to receive service of process in any proceeding regarding the enforcement or interpretation of this Compact and has standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process renders a judgment or order void as to the Commission, this Compact, or promulgated rules.

(b) Default, technical assistance, and termination.

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

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

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

(4) Termination of membership in this Compact may be imposed only after all other means of securing compliance have been exhausted. The Commission shall give notice of intent to suspend or terminate to the defaulting state's 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 authorities.

(5) 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.

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

(7) The Commission does not bear any costs related to a state that is found to be in default or that has been terminated from this Compact, unless agreed upon in writing between the Commission and the defaulting state.

(8) The defaulting state may appeal the Commission's action 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's fees.

(c) Dispute resolution.

(1) On request by a member state, the Commission shall attempt to resolve disputes related to this Compact that arise among member states and between member and nonmember states.

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

(d) Enforcement.

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

(2) By majority vote as provided by 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 this Compact and its promulgated rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees. The remedies under this paragraph (d)(2) are not the Commission's exclusive remedies. 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 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 this Compact and its promulgated rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees.

(4) An individual or entity other than a member state may not enforce this Compact against the Commission.

§ 5153. Effective date, withdrawal, and amendment.

(a) This Compact comes 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 this Compact, the Commission shall convene and review the enactment of each of the charter member states to determine if the statute enacted by each charter member state is materially different from the model Compact statute.

a. A charter member state whose enactment is found to be materially different from the model Compact statute is entitled to the default process set forth in § 5152 of this title.

b. If any member state is later found to be in default, or is terminated or withdraws from this Compact, the Commission remains in existence and this Compact remains in effect even if the number of member states is less than 7.

(2) Member states enacting this Compact subsequent to the charter member states are subject to the process set forth in § 5149(c)(24) of this title to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in this Compact.

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

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

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

(2) Withdrawal does not affect the continuing requirement of the withdrawing state's state licensing authority to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

(3) On the enactment of a statute withdrawing from this Compact, a state shall immediately provide notice of the withdrawal to all licensees within that state. Notwithstanding any subsequent statutory enactment to the contrary, the withdrawing state shall continue to recognize all licenses granted under this Compact for a minimum of 180 days after the date of the notice of withdrawal.

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

(d) This Compact may be amended by the member states. An amendment to this Compact does not become effective and binding upon any member state until it is enacted into the laws of all member states.

§ 5154. Construction and severability.

(a) This Compact and the Commission's rulemaking authority must be liberally construed so as to effectuate the purposes, and the implementation and administration of this Compact. Provisions of this Compact expressly authorizing or requiring the promulgation of rules may not be construed to limit the Commission's rulemaking authority solely for those purposes.

(b) The provisions of this Compact are severable. If any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any member state, a state seeking participation in this Compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person or circumstance may not be affected.

(c) Notwithstanding subsection (b) of this section, the Commission may deny a state's participation in this Compact or, in accordance with the requirements of § 5152 of this title, terminate a member state's participation in this Compact, if it determines that a constitutional requirement of a member state is a material departure from this Compact. Otherwise, if this Compact is held to be contrary to the constitution of any member state, this Compact remains in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

§ 5155. Consistent effect and conflict with other state laws.

(a) Nothing in this Compact prevents or inhibits the enforcement of any other law of a member state that is not inconsistent with this Compact.

(b) Any laws, statutes, regulations, or other legal requirements in a member state in conflict with this Compact are superseded to the extent of the conflict.

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

SYNOPSIS

This Act adopts the Cosmetology Licensure Compact ("Compact"). The Compact is active because enough states have enacted legislation to adopt the Compact. The purpose of the Compact is to reduce the burdens on state governments and to facilitate and regulate the interstate practice of cosmetology by creating a framework for a multistate licensing program. The multistate licensing program provides increased value and mobility to licensed cosmetologists, including military members and their spouses, and ensures safe, competent, and reliable cosmetology services are provided to the public.

The Compact allows individuals residing in a state that joins the Compact (a "member state") to apply, through the state, for a multistate license. A multistate license allows a qualifying licensee to practice cosmetology in all member states. Applicants for a multistate license must hold an unrestricted license to practice cosmetology in the applicant's home state and must meet educational, national licensing examination, and background check requirements to qualify for a multistate license. Licensees must meet continuing competency requirements to qualify for renewal of a multistate license. Member states share information related to disciplinary actions against licensees, investigations of licensees, and anything that would disqualify a licensee from holding a multistate license so that each member state is aware if a licensee's authority to practice is restricted or if the licensee is disqualified from practicing cosmetology.

Author: Senator Buckson