

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 554

Introduced by Blood, 3; Day, 49; Pansing Brooks, 28.

Read first time January 19, 2021

Committee:

- 1 A BILL FOR AN ACT relating to public health; to adopt the Licensed
- 2 Professional Counselors Interstate Compact; and to provide a duty
- 3 for the Health and Human Services Committee of the Legislature.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Health and Human Services Committee of the
2 Legislature shall prepare an amendment to harmonize provisions of state
3 law consistent with the adoption of the Licensed Professional Counselors
4 Interstate Compact.

5 Sec. 2. The State of Nebraska adopts the Licensed Professional
6 Counselors Interstate Compact in the form substantially as follows:

7 Licensed Professional Counselors Interstate Compact

8 SECTION 1: PURPOSE

9 The purpose of this Compact is to facilitate interstate practice of
10 Licensed Professional Counselors with the goal of improving public access
11 to Professional Counseling services. The practice of Professional
12 Counseling occurs in the State where the client is located at the time of
13 the counseling services. The Compact preserves the regulatory authority
14 of States to protect public health and safety through the current system
15 of State licensure.

16 This Compact is designed to achieve the following objectives:

17 A. Increase public access to Professional Counseling services by
18 providing for the mutual recognition of other Member State licenses;

19 B. Enhance the States' ability to protect the public's health and
20 safety;

21 C. Encourage the cooperation of Member States in regulating
22 multistate practice for Licensed Professional Counselors;

23 D. Support spouses of relocating Active Duty Military personnel;

24 E. Enhance the exchange of licensure, investigative, and
25 disciplinary information among Member States;

26 F. Allow for the use of Telehealth technology to facilitate
27 increased access to Professional Counseling services;

28 G. Support the uniformity of Professional Counseling licensure
29 requirements throughout the States to promote public safety and public
30 health benefits;

31 H. Invest all Member States with the authority to hold a Licensed

1 Professional Counselor accountable for meeting all State practice laws in
2 the State in which the client is located at the time care is rendered
3 through the mutual recognition of Member State licenses;

4 I. Eliminate the necessity for licenses in multiple States; and

5 J. Provide opportunities for interstate practice by Licensed
6 Professional Counselors who meet uniform licensure requirements.

7 SECTION 2. DEFINITIONS

8 As used in this Compact, and except as otherwise provided, the
9 following definitions shall apply:

10 A. "Active Duty Military" means full-time duty status in the active
11 uniformed service of the United States, including members of the National
12 Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters
13 1209 and 1211.

14 B. "Adverse Action" means any administrative, civil, equitable or
15 criminal action permitted by a State's laws which is imposed by a
16 licensing board or other authority against a Licensed Professional
17 Counselor, including actions against an individual's license or Privilege
18 to Practice such as revocation, suspension, probation, monitoring of the
19 licensee, limitation on the licensee's practice, or any other Encumbrance
20 on licensure affecting a Licensed Professional Counselor's authorization
21 to practice, including issuance of a cease and desist action.

22 C. "Alternative Program" means a non-disciplinary monitoring or
23 practice remediation process approved by a Professional Counseling
24 Licensing Board to address Impaired Practitioners.

25 D. "Continuing Competence/Education" means a requirement, as a
26 condition of license renewal, to provide evidence of participation in,
27 and/or completion of, educational and professional activities relevant to
28 practice or area of work.

29 E. "Counseling Compact Commission" or "Commission" means the
30 national administrative body whose membership consists of all States that
31 have enacted the Compact.

1 F. "Current Significant Investigative Information" means:

2 1. Investigative Information that a Licensing Board, after a
3 preliminary inquiry that includes notification and an opportunity for the
4 Licensed Professional Counselor to respond, if required by State law, has
5 reason to believe is not groundless and, if proved true, would indicate
6 more than a minor infraction; or

7 2. Investigative Information that indicates that the Licensed
8 Professional Counselor represents an immediate threat to public health
9 and safety regardless of whether the Licensed Professional Counselor has
10 been notified and had an opportunity to respond.

11 G. "Data System" means a repository of information about Licensees,
12 including, but not limited to, continuing education, examination,
13 licensure, investigative, Privilege to Practice and Adverse Action
14 information.

15 H. "Encumbered License" means a license in which an Adverse Action
16 restricts the practice of licensed Professional Counseling by the
17 Licensee and said Adverse Action has been reported to the National
18 Practitioners Data Bank (NPDB).

19 I. "Encumbrance" means a revocation or suspension of, or any
20 limitation on, the full and unrestricted practice of Licensed
21 Professional Counseling by a Licensing Board.

22 J. "Executive Committee" means a group of directors elected or
23 appointed to act on behalf of, and within the powers granted to them by,
24 the Commission.

25 K. "Home State" means the Member State that is the Licensee's
26 primary State of residence.

27 L. "Impaired Practitioner" means an individual who has a
28 condition(s) that may impair their ability to practice as a Licensed
29 Professional Counselor without some type of intervention and may include,
30 but are not limited to, alcohol and drug dependence, mental health
31 impairment, and neurological or physical impairments.

1 M. "Investigative Information" means information, records, and
2 documents received or generated by a Professional Counseling Licensing
3 Board pursuant to an investigation.

4 N. "Jurisprudence Requirement" if required by a Member State, means
5 the assessment of an individual's knowledge of the laws and Rules
6 governing the practice of Professional Counseling in a State.

7 O. "Licensed Professional Counselor" means a counselor licensed by a
8 Member State, regardless of the title used by that State, to
9 independently assess, diagnose, and treat behavioral health conditions.

10 P. "Licensee" means an individual who currently holds an
11 authorization from the State to practice as a Licensed Professional
12 Counselor.

13 Q. "Licensing Board" means the agency of a State, or equivalent,
14 that is responsible for the licensing and regulation of Licensed
15 Professional Counselors.

16 R. "Member State" means a State that has enacted the Compact.

17 S. "Privilege to Practice" means a legal authorization, which is
18 equivalent to a license, permitting the practice of Professional
19 Counseling in a Remote State.

20 T. "Professional Counseling" means the assessment, diagnosis, and
21 treatment of behavioral health conditions by a Licensed Professional
22 Counselor.

23 U. "Remote State" means a Member State other than the Home State,
24 where a Licensee is exercising or seeking to exercise the Privilege to
25 Practice.

26 V. "Rule" means a regulation promulgated by the Commission that has
27 the force of law.

28 W. "Single State License" means a Licensed Professional Counselor
29 license issued by a Member State that authorizes practice only within the
30 issuing State and does not include a Privilege to Practice in any other
31 Member State.

1 X. "State" means any state, commonwealth, district, or territory of
2 the United States of America that regulates the practice of Professional
3 Counseling.

4 Y. "Telehealth" means the application of telecommunication
5 technology to deliver Professional Counseling services remotely to
6 assess, diagnose, and treat behavioral health conditions.

7 Z. "Unencumbered License" means a license that authorizes a Licensed
8 Professional Counselor to engage in the full and unrestricted practice of
9 Professional Counseling.

10 SECTION 3. STATE PARTICIPATION IN THE COMPACT

11 A. To Participate in the Compact, a State must currently:

12 1. License and regulate Licensed Professional Counselors;

13 2. Require Licensees to pass a nationally recognized exam approved
14 by the Commission;

15 3. Require Licensees to have a sixty semester-hour (or ninety
16 quarter-hour) master's degree in counseling or sixty semester-hours (or
17 ninety quarter-hours) of graduate course work including the following
18 topic areas:

19 a. Professional Counseling Orientation and Ethical Practice;

20 b. Social and Cultural Diversity;

21 c. Human Growth and Development;

22 d. Career Development;

23 e. Counseling and Helping Relationships;

24 f. Group Counseling and Group Work;

25 g. Diagnosis and Treatment; Assessment and Testing;

26 h. Research and Program Evaluation; and

27 i. Other areas as determined by the Commission.

28 4. Require Licensees to complete a supervised postgraduate
29 professional experience as defined by the Commission;

30 5. Have a mechanism in place for receiving and investigating
31 complaints about Licensees.

1 B. A Member State shall:

2 1. Participate fully in the Commission's Data System, including
3 using the Commission's unique identifier as defined in Rules;

4 2. Notify the Commission, in compliance with the terms of the
5 Compact and Rules, of any Adverse Action or the availability of
6 Investigative Information regarding a Licensee;

7 3. Implement or utilize procedures for considering the criminal
8 history records of applicants for an initial Privilege to Practice. These
9 procedures shall include the submission of fingerprints or other
10 biometric-based information by applicants for the purpose of obtaining an
11 applicant's criminal history record information from the Federal Bureau
12 of Investigation and the agency responsible for retaining that State's
13 criminal records;

14 a. A member state must fully implement a criminal background check
15 requirement, within a time frame established by rule, by receiving the
16 results of the Federal Bureau of Investigation record search and shall
17 use the results in making licensure decisions.

18 b. Communication between a Member State, the Commission and among
19 Member States regarding the verification of eligibility for licensure
20 through the Compact shall not include any information received from the
21 Federal Bureau of Investigation relating to a federal criminal records
22 check performed by a Member State under Public Law 92-544.

23 4. Comply with the Rules of the Commission;

24 5. Require an applicant to obtain or retain a license in the Home
25 State and meet the Home State's qualifications for licensure or renewal
26 of licensure, as well as all other applicable State laws;

27 6. Grant the Privilege to Practice to a Licensee holding a valid
28 Unencumbered License in another Member State in accordance with the terms
29 of the Compact and Rules; and

30 7. Provide for the attendance of the State's commissioner to the
31 Counseling Compact Commission meetings.

1 C. Member States may charge a fee for granting the Privilege to
2 Practice.

3 D. Individuals not residing in a Member State shall continue to be
4 able to apply for a Member State's Single State License as provided under
5 the laws of each Member State. However, the Single State License granted
6 to these individuals shall not be recognized as granting a Privilege to
7 Practice Professional Counseling in any other Member State.

8 E. Nothing in this Compact shall affect the requirements established
9 by a Member State for the issuance of a Single State License.

10 F. A license issued to a Licensed Professional Counselor by a Home
11 State to a resident in that State shall be recognized by each Member
12 State as authorizing a Licensed Professional Counselor to practice
13 Professional Counseling, under a Privilege to Practice, in each Member
14 State.

15 SECTION 4. PRIVILEGE TO PRACTICE

16 A. To exercise the Privilege to Practice under the terms and
17 provisions of the Compact, the Licensee shall:

18 1. Hold a license in the Home State;

19 2. Have a valid United States Social Security Number or National
20 Practitioner Identifier;

21 3. Be eligible for a Privilege to Practice in any Member State in
22 accordance with Section 4(D), (G) and (H);

23 4. Have not had any Encumbrance or restriction against any license
24 or Privilege to Practice within the previous two years;

25 5. Notify the Commission that the Licensee is seeking the Privilege
26 to Practice within a Remote State(s);

27 6. Pay any applicable fees, including any State fee, for the
28 Privilege to Practice;

29 7. Meet any Continuing Competence/Education requirements established
30 by the Home State;

31 8. Meet any Jurisprudence Requirements established by the Remote

1 State(s) in which the Licensee is seeking a Privilege to Practice; and

2 9. Report to the Commission any Adverse Action, Encumbrance, or
3 restriction on license taken by any non-Member State within thirty days
4 from the date the action is taken.

5 B. The Privilege to Practice is valid until the expiration date of
6 the Home State license. The Licensee must comply with the requirements of
7 Section 4(A) to maintain the Privilege to Practice in the Remote State.

8 C. A Licensee providing Professional Counseling in a Remote State
9 under the Privilege to Practice shall adhere to the laws and regulations
10 of the Remote State.

11 D. A Licensee providing Professional Counseling services in a Remote
12 State is subject to that State's regulatory authority. A Remote State
13 may, in accordance with due process and that State's laws, remove a
14 Licensee's Privilege to Practice in the Remote State for a specific
15 period of time, impose fines, and/or take any other necessary actions to
16 protect the health and safety of its citizens. The Licensee may be
17 ineligible for a Privilege to Practice in any Member State until the
18 specific time for removal has passed and all fines are paid.

19 E. If a Home State license is encumbered, the Licensee shall lose
20 the Privilege to Practice in any Remote State until the following occur:

21 1. The Home State license is no longer encumbered; and

22 2. Have not had any Encumbrance or restriction against any license
23 or Privilege to Practice within the previous two years.

24 F. Once an Encumbered License in the Home State is restored to good
25 standing, the Licensee must meet the requirements of Section 4(A) to
26 obtain a Privilege to Practice in any Remote State.

27 G. If a Licensee's Privilege to Practice in any Remote State is
28 removed, the individual may lose the Privilege to Practice in all other
29 Remote States until the following occur:

30 1. The specific period of time for which the Privilege to Practice
31 was removed has ended;

- 1 2. All fines have been paid; and
2 3. Have not had any Encumbrance or restriction against any license
3 or Privilege to Practice within the previous two years.

4 H. Once the requirements of Section 4(G) have been met, the Licensee
5 must meet the requirements in Section 4(A) to obtain a Privilege to
6 Practice in a Remote State.

7 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE
8 TO PRACTICE

9 A. A Licensed Professional Counselor may hold a Home State license,
10 which allows for a Privilege to Practice in other Member States, in only
11 one Member State at a time.

12 B. If a Licensed Professional Counselor changes primary State of
13 residence by moving between two Member States:

14 1. The Licensed Professional Counselor shall file an application for
15 obtaining a new Home State license based on a Privilege to Practice, pay
16 all applicable fees, and notify the current and new Home State in
17 accordance with applicable Rules adopted by the Commission.

18 2. Upon receipt of an application for obtaining a new Home State
19 license by virtue of a Privilege to Practice, the new Home State shall
20 verify that the Licensed Professional Counselor meets the pertinent
21 criteria outlined in Section 4 via the Data System, without need for
22 primary source verification except for:

23 a. a Federal Bureau of Investigation fingerprint based criminal
24 background check if not previously performed or updated pursuant to
25 applicable rules adopted by the Commission in accordance with Public Law
26 92-544;

27 b. other criminal background check as required by the new Home
28 State; and

29 c. completion of any requisite Jurisprudence Requirements of the new
30 Home State.

31 3. The former Home State shall convert the former Home State license

1 into a Privilege to Practice once the new Home State has activated the
2 new Home State license in accordance with applicable Rules adopted by the
3 Commission.

4 4. Notwithstanding any other provision of this Compact, if the
5 Licensed Professional Counselor cannot meet the criteria in Section 4,
6 the new Home State may apply its requirements for issuing a new Single
7 State License.

8 5. The Licensed Professional Counselor shall pay all applicable fees
9 to the new Home State in order to be issued a new Home State license.

10 C. If a Licensed Professional Counselor changes Primary State of
11 Residence by moving from a Member State to a non-Member State, or from a
12 non-Member State to a Member State, the State criteria shall apply for
13 issuance of a Single State License in the new State.

14 D. Nothing in this Compact shall interfere with a Licensee's ability
15 to hold a Single State License in multiple States, however for the
16 purposes of this Compact, a Licensee shall have only one Home State
17 license.

18 E. Nothing in this Compact shall affect the requirements established
19 by a Member State for the issuance of a Single State License.

20 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

21 Active Duty Military personnel, or their spouse, shall designate a
22 Home State where the individual has a current license in good standing.
23 The individual may retain the Home State designation during the period
24 the service member is on active duty. Subsequent to designating a Home
25 State, the individual shall only change their Home State through
26 application for licensure in the new State, or through the process
27 outlined in Section 5.

28 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

29 A. Member States shall recognize the right of a Licensed
30 Professional Counselor, licensed by a Home State in accordance with
31 Section 3 and under Rules promulgated by the Commission, to practice

1 Professional Counseling in any Member State via Telehealth under a
2 Privilege to Practice as provided in the Compact and Rules promulgated by
3 the Commission.

4 B. A Licensee providing Professional Counseling services in a Remote
5 State under the Privilege to Practice shall adhere to the laws and
6 regulations of the Remote State.

7 SECTION 8. ADVERSE ACTIONS

8 A. In addition to the other powers conferred by State law, a Remote
9 State shall have the authority, in accordance with existing State due
10 process law, to:

11 1. Take Adverse Action against a Licensed Professional Counselor's
12 Privilege to Practice within that Member State, and

13 2. Issue subpoenas for both hearings and investigations that require
14 the attendance and testimony of witnesses as well as the production of
15 evidence. Subpoenas issued by a Licensing Board in a Member State for the
16 attendance and testimony of witnesses or the production of evidence from
17 another Member State shall be enforced in the latter State by any court
18 of competent jurisdiction, according to the practice and procedure of
19 that court applicable to subpoenas issued in proceedings pending before
20 it. The issuing authority shall pay any witness fees, travel expenses,
21 mileage, and other fees required by the service statutes of the State in
22 which the witnesses or evidence are located.

23 3. Only the Home State shall have the power to take Adverse Action
24 against a Licensed Professional Counselor's license issued by the Home
25 State.

26 B. For purposes of taking Adverse Action, the Home State shall give
27 the same priority and effect to reported conduct received from a Member
28 State as it would if the conduct had occurred within the Home State. In
29 so doing, the Home State shall apply its own State laws to determine
30 appropriate action.

31 C. The Home State shall complete any pending investigations of a

1 Licensed Professional Counselor who changes primary State of residence
2 during the course of the investigations. The Home State shall also have
3 the authority to take appropriate action(s) and shall promptly report the
4 conclusions of the investigations to the administrator of the Data
5 System. The administrator of the coordinated licensure information system
6 shall promptly notify the new Home State of any Adverse Actions.

7 D. A Member State, if otherwise permitted by State law, may recover
8 from the affected Licensed Professional Counselor the costs of
9 investigations and dispositions of cases resulting from any Adverse
10 Action taken against that Licensed Professional Counselor.

11 E. A Member State may take Adverse Action based on the factual
12 findings of the Remote State, provided that the Member State follows its
13 own procedures for taking the Adverse Action.

14 F. Joint Investigations:

15 1. In addition to the authority granted to a Member State by its
16 respective Professional Counseling practice act or other applicable State
17 law, any Member State may participate with other Member States in joint
18 investigations of Licensees.

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

22 G. If Adverse Action is taken by the Home State against the license
23 of a Licensed Professional Counselor, the Licensed Professional
24 Counselor's Privilege to Practice in all other Member States shall be
25 deactivated until all Encumbrances have been removed from the State
26 license. All Home State disciplinary orders that impose Adverse Action
27 against the license of a Licensed Professional Counselor shall include a
28 Statement that the Licensed Professional Counselor's Privilege to
29 Practice is deactivated in all Member States during the pendency of the
30 order.

31 H. If a Member State takes Adverse Action, it shall promptly notify

1 the administrator of the Data System. The administrator of the Data
2 System shall promptly notify the Home State of any Adverse Actions by
3 Remote States.

4 I. Nothing in this Compact shall override a Member State's decision
5 that participation in an Alternative Program may be used in lieu of
6 Adverse Action.

7 SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

8 A. The Compact Member States hereby create and establish a joint
9 public agency known as the Counseling Compact Commission:

10 1. The Commission is an instrumentality of the Compact States.

11 2. Venue is proper and judicial proceedings by or against the
12 Commission shall be brought solely and exclusively in a court of
13 competent jurisdiction where the principal office of the Commission is
14 located. The Commission may waive venue and jurisdictional defenses to
15 the extent it adopts or consents to participate in alternative dispute
16 resolution proceedings.

17 3. Nothing in this Compact shall be construed to be a waiver of
18 sovereign immunity.

19 B. Membership, Voting, and Meetings

20 1. Each Member State shall have and be limited to one delegate
21 selected by that Member State's Licensing Board.

22 2. The delegate shall be either:

23 a. A current member of the Licensing Board at the time of
24 appointment, who is a Licensed Professional Counselor or public member;
25 or

26 b. An administrator of the Licensing Board.

27 3. Any delegate may be removed or suspended from office as provided
28 by the law of the State from which the delegate is appointed.

29 4. The Member State Licensing Board shall fill any vacancy occurring
30 on the Commission within sixty days.

31 5. Each delegate shall be entitled to one vote with regard to the

1 promulgation of Rules and creation of bylaws and shall otherwise have an
2 opportunity to participate in the business and affairs of the Commission.

3 6. A delegate shall vote in person or by such other means as
4 provided in the bylaws. The bylaws may provide for delegates'
5 participation in meetings by telephone or other means of communication.

6 7. The Commission shall meet at least once during each calendar
7 year. Additional meetings shall be held as set forth in the bylaws.

8 8. The Commission shall by Rule establish a term of office for
9 delegates and may by Rule establish term limits.

10 C. The Commission shall have the following powers and duties:

11 1. Establish the fiscal year of the Commission;

12 2. Establish bylaws;

13 3. Maintain its financial records in accordance with the bylaws;

14 4. Meet and take such actions as are consistent with the provisions
15 of this Compact and the bylaws;

16 5. Promulgate Rules which shall be binding to the extent and in the
17 manner provided for in the Compact;

18 6. Bring and prosecute legal proceedings or actions in the name of
19 the Commission, provided that the standing of any State Licensing Board
20 to sue or be sued under applicable law shall not be affected;

21 7. Purchase and maintain insurance and bonds;

22 8. Borrow, accept, or contract for services of personnel, including,
23 but not limited to, employees of a Member State;

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

29 10. Accept any and all appropriate donations and grants of money,
30 equipment, supplies, materials, and services, and to receive, utilize,
31 and dispose of the same; provided that at all times the Commission shall

1 avoid any appearance of impropriety and/or conflict of interest;

2 11. Lease, purchase, accept appropriate gifts or donations of, or
3 otherwise to own, hold, improve or use, any property, real, personal or
4 mixed; provided that at all times the Commission shall avoid any
5 appearance of impropriety;

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

8 13. Establish a budget and make expenditures;

9 14. Borrow money;

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

14 16. Provide and receive information from, and cooperate with, law
15 enforcement agencies;

16 17. Establish and elect an Executive Committee; and

17 18. Perform such other functions as may be necessary or appropriate
18 to achieve the purposes of this Compact consistent with the State
19 regulation of Professional Counseling licensure and practice.

20 D. The Executive Committee

21 1. The Executive Committee shall have the power to act on behalf of
22 the Commission according to the terms of this Compact.

23 2. The Executive Committee shall be composed of up to eleven
24 members:

25 a. Seven voting members who are elected by the Commission from the
26 current membership of the Commission; and

27 b. Up to four ex-officio, nonvoting members from four recognized
28 national professional counselor organizations.

29 c. The ex-officio members will be selected by their respective
30 organizations.

31 3. The Commission may remove any member of the Executive Committee

1 as provided in bylaws.

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

3 5. The Executive Committee shall have the following duties and
4 responsibilities:

5 a. Recommend to the entire Commission changes to the Rules or
6 bylaws, changes to this Compact legislation, fees paid by Compact Member
7 States such as annual dues, and any Commission Compact fee charged to
8 Licensees for the Privilege to Practice;

9 b. Ensure Compact administration services are appropriately
10 provided, contractual or otherwise;

11 c. Prepare and recommend the budget;

12 d. Maintain financial records on behalf of the Commission;

13 e. Monitor Compact compliance of Member States and provide
14 compliance reports to the Commission;

15 f. Establish additional committees as necessary; and

16 g. Other duties as provided in Rules or bylaws.

17 E. Meetings of the Commission

18 1. All meetings shall be open to the public, and public notice of
19 meetings shall be given in the same manner as required under the
20 Rulemaking provisions in Section 9.

21 2. The Commission or the Executive Committee or other committees of
22 the Commission may convene in a closed, non-public meeting if the
23 Commission or Executive Committee or other committees of the Commission
24 must discuss:

25 a. Non-compliance of a Member State with its obligations under the
26 Compact;

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

30 c. Current, threatened, or reasonably anticipated litigation;

31 d. Negotiation of contracts for the purchase, lease, or sale of

1 goods, services, or real estate;

2 e. Accusing any person of a crime or formally censuring any person;

3 f. Disclosure of trade secrets or commercial or financial
4 information that is privileged or confidential;

5 g. Disclosure of information of a personal nature where disclosure
6 would constitute a clearly unwarranted invasion of personal privacy;

7 h. Disclosure of investigative records compiled for law enforcement
8 purposes;

9 i. Disclosure of information related to any investigative reports
10 prepared by or on behalf of or for use of the Commission or other
11 committee charged with responsibility of investigation or determination
12 of compliance issues pursuant to the Compact; or

13 j. Matters specifically exempted from disclosure by federal or
14 Member State statute.

15 3. If a meeting, or portion of a meeting, is closed pursuant to this
16 provision, the Commission's legal counsel or designee shall certify that
17 the meeting may be closed and shall reference each relevant exempting
18 provision.

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

27 F. Financing of the Commission

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

31 2. The Commission may accept any and all appropriate revenue

1 sources, donations, and grants of money, equipment, supplies, materials,
2 and services.

3 3. The Commission may levy on and collect an annual assessment from
4 each Member State or impose fees on other parties to cover the cost of
5 the operations and activities of the Commission and its staff, which must
6 be in a total amount sufficient to cover its annual budget as approved
7 each year for which revenue is not provided by other sources. The
8 aggregate annual assessment amount shall be allocated based upon a
9 formula to be determined by the Commission, which shall promulgate a Rule
10 binding upon all Member States.

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

15 5. The Commission shall keep accurate accounts of all receipts and
16 disbursements. The receipts and disbursements of the Commission shall be
17 subject to the audit and accounting procedures established under its
18 bylaws. However, all receipts and disbursements of funds handled by the
19 Commission shall be audited yearly by a certified or licensed public
20 accountant, and the report of the audit shall be included in and become
21 part of the annual report of the Commission.

22 G. Qualified Immunity, Defense, and Indemnification

23 1. The members, officers, executive director, employees and
24 representatives of the Commission shall be immune from suit and
25 liability, either personally or in their official capacity, for any claim
26 for damage to or loss of property or personal injury or other civil
27 liability caused by or arising out of any actual or alleged act, error or
28 omission that occurred, or that the person against whom the claim is made
29 had a reasonable basis for believing occurred within the scope of
30 Commission employment, duties or responsibilities; provided that nothing
31 in this paragraph shall be construed to protect any such person from suit

1 and/or liability for any damage, loss, injury, or liability caused by the
2 intentional or willful or wanton misconduct of that person.

3 2. The Commission shall defend any member, officer, executive
4 director, employee or representative of the Commission in any civil
5 action seeking to impose liability arising out of any actual or alleged
6 act, error, or omission that occurred within the scope of Commission
7 employment, duties, or responsibilities, or that the person against whom
8 the claim is made had a reasonable basis for believing occurred within
9 the scope of Commission employment, duties, or responsibilities; provided
10 that nothing herein shall be construed to prohibit that person from
11 retaining his or her own counsel; and provided further, that the actual
12 or alleged act, error, or omission did not result from that person's
13 intentional or willful or wanton misconduct.

14 3. The Commission shall indemnify and hold harmless any member,
15 officer, executive director, employee, or representative of the
16 Commission for the amount of any settlement or judgment obtained against
17 that person arising out of any actual or alleged act, error, or omission
18 that occurred within the scope of Commission employment, duties, or
19 responsibilities, or that such person had a reasonable basis for
20 believing occurred within the scope of Commission employment, duties, or
21 responsibilities, provided that the actual or alleged act, error, or
22 omission did not result from the intentional or willful or wanton
23 misconduct of that person.

24 SECTION 10. DATA SYSTEM

25 A. The Commission shall provide for the development, maintenance,
26 operation, and utilization of a coordinated data base and reporting
27 system containing licensure, Adverse Action, and Investigative
28 Information on all licensed individuals in Member States.

29 B. Notwithstanding any other provision of State law to the contrary,
30 a Member State shall submit a uniform data set to the Data System on all
31 individuals to whom this Compact is applicable as required by the Rules

1 of the Commission, including:

2 1. Identifying information;

3 2. Licensure data;

4 3. Adverse Actions against a license or Privilege to Practice;

5 4. Non-confidential information related to Alternative Program
6 participation;

7 5. Any denial of application for licensure, and the reason(s) for
8 such denial;

9 6. Current Significant Investigative Information; and

10 7. Other information that may facilitate the administration of this
11 Compact, as determined by the Rules of the Commission.

12 C. Investigative Information pertaining to a Licensee in any Member
13 State will only be available to other Member States.

14 D. The Commission shall promptly notify all Member States of any
15 Adverse Action taken against a Licensee or an individual applying for a
16 license. Adverse Action information pertaining to a Licensee in any
17 Member State will be available to any other Member State.

18 E. Member States contributing information to the Data System may
19 designate information that may not be shared with the public without the
20 express permission of the contributing State.

21 F. Any information submitted to the Data System that is subsequently
22 required to be expunged by the laws of the Member State contributing the
23 information shall be removed from the Data System.

24 SECTION 11. RULEMAKING

25 A. The Commission shall promulgate reasonable Rules in order to
26 effectively and efficiently achieve the purpose of the Compact.
27 Notwithstanding the foregoing, in the event the Commission exercises its
28 Rulemaking authority in a manner that is beyond the scope of the purposes
29 of the Compact, or the powers granted hereunder, then such an action by
30 the Commission shall be invalid and have no force or effect.

31 B. The Commission shall exercise its Rulemaking powers pursuant to

1 the criteria set forth in this Section and the Rules adopted thereunder.
2 Rules and amendments shall become binding as of the date specified in
3 each Rule or amendment.

4 C. If a majority of the legislatures of the Member States rejects a
5 Rule, by enactment of a statute or resolution in the same manner used to
6 adopt the Compact within four years of the date of adoption of the Rule,
7 then such Rule shall have no further force and effect in any Member
8 State.

9 D. Rules or amendments to the Rules shall be adopted at a regular or
10 special meeting of the Commission.

11 E. Prior to promulgation and adoption of a final Rule or Rules by
12 the Commission, and at least thirty days in advance of the meeting at
13 which the Rule will be considered and voted upon, the Commission shall
14 file a Notice of Proposed Rulemaking:

15 1. On the web site of the Commission or other publicly accessible
16 platform; and

17 2. On the web site of each Member State Professional Counseling
18 Licensing Board or other publicly accessible platform or the publication
19 in which each State would otherwise publish proposed Rules.

20 F. The Notice of Proposed Rulemaking shall include:

21 1. The proposed time, date, and location of the meeting in which the
22 Rule will be considered and voted upon;

23 2. The text of the proposed Rule or amendment and the reason for the
24 proposed Rule;

25 3. A request for comments on the proposed Rule from any interested
26 person; and

27 4. The manner in which interested persons may submit notice to the
28 Commission of their intention to attend the public hearing and any
29 written comments.

30 G. Prior to adoption of a proposed Rule, the Commission shall allow
31 persons to submit written data, facts, opinions, and arguments, which

1 shall be made available to the public.

2 H. The Commission shall grant an opportunity for a public hearing
3 before it adopts a Rule or amendment if a hearing is requested by:

4 1. At least twenty-five persons;

5 2. A State or federal governmental subdivision or agency; or

6 3. An association having at least twenty-five members.

7 I. If a hearing is held on the proposed Rule or amendment, the
8 Commission shall publish the place, time, and date of the scheduled
9 public hearing. If the hearing is held via electronic means, the
10 Commission shall publish the mechanism for access to the electronic
11 hearing.

12 1. All persons wishing to be heard at the hearing shall notify the
13 executive director of the Commission or other designated member in
14 writing of their desire to appear and testify at the hearing not less
15 than five business days before the scheduled date of the hearing.

16 2. Hearings shall be conducted in a manner providing each person who
17 wishes to comment a fair and reasonable opportunity to comment orally or
18 in writing.

19 3. All hearings will be recorded. A copy of the recording will be
20 made available on request.

21 4. Nothing in this section shall be construed as requiring a
22 separate hearing on each Rule. Rules may be grouped for the convenience
23 of the Commission at hearings required by this section.

24 J. Following the scheduled hearing date, or by the close of business
25 on the scheduled hearing date if the hearing was not held, the Commission
26 shall consider all written and oral comments received.

27 K. If no written notice of intent to attend the public hearing by
28 interested parties is received, the Commission may proceed with
29 promulgation of the proposed Rule without a public hearing.

30 L. The Commission shall, by majority vote of all members, take final
31 action on the proposed Rule and shall determine the effective date of the

1 Rule, if any, based on the Rulemaking record and the full text of the
2 Rule.

3 M. Upon determination that an emergency exists, the Commission may
4 consider and adopt an emergency Rule without prior notice, opportunity
5 for comment, or hearing, provided that the usual Rulemaking procedures
6 provided in the Compact and in this section shall be retroactively
7 applied to the Rule as soon as reasonably possible, in no event later
8 than ninety days after the effective date of the Rule. For the purposes
9 of this provision, an emergency Rule is one that must be adopted
10 immediately in order to:

- 11 1. Meet an imminent threat to public health, safety, or welfare;
- 12 2. Prevent a loss of Commission or Member State funds;
- 13 3. Meet a deadline for the promulgation of an administrative Rule
14 that is established by federal law or Rule; or
- 15 4. Protect public health and safety.

16 N. The Commission or an authorized committee of the Commission may
17 direct revisions to a previously adopted Rule or amendment for purposes
18 of correcting typographical errors, errors in format, errors in
19 consistency, or grammatical errors. Public notice of any revisions shall
20 be posted on the web site of the Commission. The revision shall be
21 subject to challenge by any person for a period of thirty days after
22 posting. The revision may be challenged only on grounds that the revision
23 results in a material change to a Rule. A challenge shall be made in
24 writing and delivered to the chair of the Commission prior to the end of
25 the notice period. If no challenge is made, the revision will take effect
26 without further action. If the revision is challenged, the revision may
27 not take effect without the approval of the Commission.

28 SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

29 A. Oversight

30 1. The executive, legislative, and judicial branches of State
31 government in each Member State shall enforce this Compact and take all

1 actions necessary and appropriate to effectuate the Compact's purposes
2 and intent. The provisions of this Compact and the Rules promulgated
3 hereunder shall have standing as statutory law.

4 2. All courts shall take judicial notice of the Compact and the
5 Rules in any judicial or administrative proceeding in a Member State
6 pertaining to the subject matter of this Compact which may affect the
7 powers, responsibilities, or actions of the Commission.

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

13 B. Default, Technical Assistance, and Termination

14 1. If the Commission determines that a Member State has defaulted in
15 the performance of its obligations or responsibilities under this Compact
16 or the promulgated Rules, the Commission shall:

17 a. Provide written notice to the defaulting State and other Member
18 States of the nature of the default, the proposed means of curing the
19 default and/or any other action to be taken by the Commission; and

20 b. Provide remedial training and specific technical assistance
21 regarding the default.

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

28 D. Termination of membership in the Compact shall be imposed only
29 after all other means of securing compliance have been exhausted. Notice
30 of intent to suspend or terminate shall be given by the Commission to the
31 governor, the majority and minority leaders of the defaulting State's

1 legislature, and each of the Member States.

2 E. A State that has been terminated is responsible for all
3 assessments, obligations, and liabilities incurred through the effective
4 date of termination, including obligations that extend beyond the
5 effective date of termination.

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

10 G. The defaulting State may appeal the action of the Commission by
11 petitioning the U.S. District Court for the District of Columbia or the
12 federal district where the Commission has its principal offices. The
13 prevailing member shall be awarded all costs of such litigation,
14 including reasonable attorney's fees.

15 H. Dispute Resolution

16 1. Upon request by a Member State, the Commission shall attempt to
17 resolve disputes related to the Compact that arise among Member States
18 and between member and non-Member States.

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

21 I. Enforcement

22 1. The Commission, in the reasonable exercise of its discretion,
23 shall enforce the provisions and Rules of this Compact.

24 2. By majority vote, the Commission may initiate legal action in the
25 United States District Court for the District of Columbia or the federal
26 district where the Commission has its principal offices against a Member
27 State in default to enforce compliance with the provisions of the Compact
28 and its promulgated Rules and bylaws. The relief sought may include both
29 injunctive relief and damages. In the event judicial enforcement is
30 necessary, the prevailing member shall be awarded all costs of such
31 litigation, including reasonable attorney's fees.

1 3. The remedies herein shall not be the exclusive remedies of the
2 Commission. The Commission may pursue any other remedies available under
3 federal or State law.

4 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT
5 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

6 A. The Compact shall come into effect on the date on which the
7 Compact statute is enacted into law in the tenth Member State. The
8 provisions, which become effective at that time, shall be limited to the
9 powers granted to the Commission relating to assembly and the
10 promulgation of Rules. Thereafter, the Commission shall meet and exercise
11 Rulemaking powers necessary to the implementation and administration of
12 the Compact.

13 B. Any State that joins the Compact subsequent to the Commission's
14 initial adoption of the Rules shall be subject to the Rules as they exist
15 on the date on which the Compact becomes law in that State. Any Rule that
16 has been previously adopted by the Commission shall have the full force
17 and effect of law on the day the Compact becomes law in that State.

18 C. Any Member State may withdraw from this Compact by enacting a
19 statute repealing the same.

20 1. A Member State's withdrawal shall not take effect until six
21 months after enactment of the repealing statute.

22 2. Withdrawal shall not affect the continuing requirement of the
23 withdrawing State's Professional Counseling Licensing Board to comply
24 with the investigative and Adverse Action reporting requirements of the
25 Compact prior to the effective date of withdrawal.

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

30 E. This Compact may be amended by the Member States. No amendment to
31 this Compact shall become effective and binding upon any Member State

1 until it is enacted into the laws of all Member States.

2 SECTION 14. CONSTRUCTION AND SEVERABILITY

3 This Compact shall be liberally construed so as to effectuate the
4 purposes thereof. The provisions of this Compact shall be severable and
5 if any phrase, clause, sentence or provision of this Compact is declared
6 to be contrary to the constitution of any Member State or of the United
7 States or the applicability thereof to any government, agency, person or
8 circumstance is held invalid, the validity of the remainder of this
9 Compact and the applicability thereof to any government, agency, person
10 or circumstance shall not be affected thereby. If this Compact shall be
11 held contrary to the constitution of any Member State, the Compact shall
12 remain in full force and effect as to the remaining Member States and in
13 full force and effect as to the Member State affected as to all severable
14 matters.

15 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

16 A. A Licensee providing Professional Counseling services in a Remote
17 State under the Privilege to Practice shall adhere to the laws and
18 regulations, including scope of practice, of the Remote State.

19 B. Nothing herein prevents the enforcement of any other law of a
20 Member State that is not inconsistent with the Compact.

21 C. Any laws in a Member State in conflict with the Compact are
22 superseded to the extent of the conflict.

23 D. Any lawful actions of the Commission, including all Rules and
24 bylaws properly promulgated by the Commission, are binding upon the
25 Member States.

26 E. All permissible agreements between the Commission and the Member
27 States are binding in accordance with their terms.

28 F. In the event any provision of the Compact exceeds the
29 constitutional limits imposed on the legislature of any Member State, the
30 provision shall be ineffective to the extent of the conflict with the
31 constitutional provision in question in that Member State.