

HOUSE BILL NO. 777

INTRODUCED BY E. BUTTREY, C. KNUDSEN, C. SPRUNGER

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE INTERSTATE COUNSELING COMPACT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING DEFINITIONS."

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

NEW SECTION. **Section 1. Enactment -- interstate counseling compact.** The interstate compact on counseling is enacted and entered into law with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1

PURPOSE

The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

- (1) increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;
- (2) enhance the states' ability to protect the public's health and safety;
- (3) encourage the cooperation of member states in regulating multistate practice for licensed professional counselors;
- (4) support spouses of relocating active duty military personnel;
- (5) enhance the exchange of licensure, investigative, and disciplinary information among member states;
- (6) allow for the use of telehealth technology to facilitate increased access to professional counseling services;

1 (7) support the uniformity of professional counseling licensure requirements throughout the states
2 to promote public safety and public health benefits;

3 (8) invest all member states with the authority to hold a licensed professional counselor
4 accountable for meeting all state practice laws in the state in which the client is located at the time care is
5 rendered through the mutual recognition of member state licenses;

6 (9) eliminate the necessity for licenses in multiple states; and

7 (10) provide opportunities for interstate practice by licensed professional counselors who meet
8 uniform licensure requirements.

9 SECTION 2

10 DEFINITIONS

11 As used in this compact, and except as otherwise provided, the following definitions apply:

12 (1) "Active duty military" means full-time duty status in the active uniformed service of the United
13 States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 1209
14 and 1211.

15 (2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a
16 state's laws that is imposed by a licensing board or other authority against a licensed professional counselor,
17 including actions against an individual's license or privilege to practice, such as revocation, suspension,
18 probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on
19 licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease
20 and desist action.

21 (3) "Alternative program" means a nondisciplinary monitoring or practice remediation process
22 approved by a professional counseling licensing board to address impaired practitioners.

23 (4) "Continuing competence/education" means a requirement, as a condition of license renewal, to
24 provide evidence of participation in, and/or completion of, educational and professional activities relevant to
25 practice or area of work.

26 (5) "Counseling compact commission" or "commission" means the national administrative body
27 whose membership consists of all states that have enacted the compact.

28 (6) "Current significant investigative information" means:

1 (a) investigative information that a licensing board, after a preliminary inquiry that includes
2 notification and an opportunity for the licensed professional counselor to respond, if required by state law, has
3 reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

4 (b) investigative information that indicates that the licensed professional counselor represents an
5 immediate threat to public health and safety regardless of whether the licensed professional counselor has
6 been notified and had an opportunity to respond.

7 (7) "Data system" means a repository of information about licensees, including but not limited to
8 continuing education, examination, licensure, investigative, privilege to practice, and adverse action
9 information.

10 (8) "Encumbered license" means a license in which an adverse action restricts the practice of
11 licensed professional counseling by the licensee and said adverse action has been reported to the national
12 practitioners data bank (NPDB).

13 (9) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and
14 unrestricted practice of licensed professional counseling by a licensing board.

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

17 (11) "Home state" means the member state that is the licensee's primary state of residence.

18 (12) "Impaired practitioner" means an individual who has a condition(s) that may impair their ability
19 to practice as a licensed professional counselor without some type of intervention and may include but are not
20 limited to alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

21 (13) "Investigative information" means information, records, and documents received or generated
22 by a professional counseling licensing board pursuant to an investigation.

23 (14) "Jurisprudence requirement", if required by a member state, means the assessment of an
24 individual's knowledge of the laws and rules governing the practice of professional counseling in a state.

25 (15) "Licensed professional counselor" means a counselor licensed by a member state, regardless
26 of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

27 (16) "Licensee" means an individual who currently holds an authorization from the state to practice
28 as a licensed professional counselor.

- 1 (ii) social and cultural diversity;
- 2 (iii) human growth and development;
- 3 (iv) career development;
- 4 (v) counseling and helping relationships;
- 5 (vi) group counseling and group work;
- 6 (vii) diagnosis and treatment; assessment and testing;
- 7 (viii) research and program evaluation; and
- 8 (ix) other areas as determined by the commission;
- 9 (d) require licensees to complete a supervised postgraduate professional experience as defined by
- 10 the commission;
- 11 (e) have a mechanism in place for receiving and investigating complaints about licensees.
- 12 (2) A member state shall:
- 13 (a) participate fully in the commission's data system, including using the commission's unique
- 14 identifier as defined in rules;
- 15 (b) notify the commission, in compliance with the terms of the compact and rules, of any adverse
- 16 action or the availability of investigative information regarding a licensee;
- 17 (c) implement or utilize procedures for considering the criminal history records of applicants for an
- 18 initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-
- 19 based information by applicants for the purpose of obtaining an applicant's criminal history record information
- 20 from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
- 21 (i) A member state shall fully implement a criminal background check requirement, within a time
- 22 frame established by rule, by receiving the results of the federal bureau of investigation record search and shall
- 23 use the results in making licensure decisions.
- 24 (ii) Communication between a member state, the commission, and among member states
- 25 regarding the verification of eligibility for licensure through the compact may not include any information
- 26 received from the federal bureau of investigation relating to a federal criminal records check performed by a
- 27 member state under Public Law 92-544.
- 28 (d) comply with the rules of the commission;

1 (e) require an applicant to obtain or retain a license in the home state and meet the home state's
2 qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

3 (f) grant the privilege to practice to a licensee holding a valid unencumbered license in another
4 member state in accordance with the terms of the compact and rules; and

5 (g) provide for the attendance of the state's commissioner to the counseling compact commission
6 meetings.

7 (3) Member states may charge a fee for granting the privilege to practice.

8 (4) Individuals not residing in a member state shall continue to be able to apply for a member
9 state's single state license as provided under the laws of each member state. However, the single state license
10 granted to these individuals may not be recognized as granting a privilege to practice professional counseling in
11 any other member state.

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

14 (6) A license issued to a licensed professional counselor by a home state to a resident in that state
15 must be recognized by each member state as authorizing a licensed professional counselor to practice
16 professional counseling, under a privilege to practice, in each member state.

17 SECTION 4

18 PRIVILEGE TO PRACTICE

19 (1) To exercise the privilege to practice under the terms and provisions of the compact, the
20 licensee:

21 (a) shall hold a license in the home state;

22 (b) shall have a valid United States social security number or national practitioner identifier;

23 (c) must be eligible for a privilege to practice in any member state in accordance with Section 4(4),
24 (7), and (8);

25 (d) may not have had any encumbrance or restriction against any license or privilege to practice
26 within the previous two (2) years;

27 (e) shall notify the commission that the licensee is seeking the privilege to practice within a remote
28 state(s);

1 (f) shall pay any applicable fees, including any state fee, for the privilege to practice;

2 (g) shall meet any continuing competence/education requirements established by the home state;

3 (h) shall meet any jurisprudence requirements established by the remote state(s) in which the

4 licensee is seeking a privilege to practice; and

5 (i) shall report to the commission any adverse action, encumbrance, or restriction on a license

6 taken by any nonmember state within 30 days from the date the action is taken.

7 (2) The privilege to practice is valid until the expiration date of the home state license. The licensee

8 must comply with the requirements of Section 4(1) to maintain the privilege to practice in the remote state.

9 (3) A licensee providing professional counseling in a remote state under the privilege to practice

10 shall adhere to the laws and regulations of the remote state.

11 (4) A licensee providing professional counseling services in a remote state is subject to that state's

12 regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a

13 licensee's privilege to practice in the remote state for a specific period of time, impose fines, and/or take any

14 other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a

15 privilege to practice in any member state until the specific time for removal has passed and all fines are paid.

16 (5) If a home state license is encumbered, the licensee shall lose the privilege to practice in any

17 remote state until the following occur:

18 (a) the home state license is no longer encumbered; and

19 (b) the licensee has not had any encumbrance or restriction against any license or privilege to

20 practice within the previous two (2) years.

21 (6) Once an encumbered license in the home state is restored to good standing, the licensee must

22 meet the requirements of Section 4(A) to obtain a privilege to practice in any remote state.

23 (7) If a licensee's privilege to practice in any remote state is removed, the individual may lose the

24 privilege to practice in all other remote states until the following occur:

25 (a) the specific period of time for which the privilege to practice was removed has ended;

26 (b) all fines have been paid; and

27 (c) the licensee has not had any encumbrance or restriction against any license or privilege to

28 practice within the previous two (2) years.

1 (3) If a licensed professional counselor changes primary state of residence by moving from a
2 member state to a nonmember state, or from a nonmember state to a member state, the state criteria must
3 apply for issuance of a single state license in the new state.

4 (4) Nothing in this compact may interfere with a licensee's ability to hold a single state license in
5 multiple states, however for the purposes of this compact, a licensee must have only one home state license.

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

8 SECTION 6

9 ACTIVE DUTY MILITARY PERSONNEL

10 OR THEIR SPOUSES

11 Active duty military personnel, or their spouse, shall designate a home state where the individual has a
12 current license in good standing. The individual may retain the home state designation during the period the
13 service member is on active duty. Subsequent to designating a home state, the individual shall only change
14 their home state through application for licensure in the new state, or through the process outlined in Section 5.

15 SECTION 7

16 COMPACT PRIVILEGE

17 TO PRACTICE TELEHEALTH

18 (1) Member states shall recognize the right of a licensed professional counselor, licensed by a
19 home state in accordance with Section 3 and under rules promulgated by the commission, to practice
20 professional counseling in any member state via telehealth under a privilege to practice as provided in the
21 compact and rules promulgated by the commission.

22 (2) A licensee providing professional counseling services in a remote state under the privilege to
23 practice shall adhere to the laws and regulations of the remote state.

24 SECTION 8

25 ADVERSE ACTIONS

26 (1) In addition to the other powers conferred by state law, a remote state shall have the authority,
27 in accordance with existing state due process law, to take adverse action against a licensed professional
28 counselor's privilege to practice within that member state and issue subpoenas for both hearings and

1 investigations that require the attendance and testimony of witnesses as well as the production of evidence.
2 Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the
3 production of evidence from another member state must be enforced in the latter state by any court of
4 competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in
5 proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and
6 other fees required by the service statutes of the state in which the witnesses or evidence are located. Only the
7 home state shall have the power to take adverse action against a licensed professional counselor's license
8 issued by the home state.

9 (2) For purposes of taking adverse action, the home state shall give the same priority and effect to
10 reported conduct received from a member state as it would if the conduct had occurred within the home state.
11 In so doing, the home state shall apply its own state laws to determine appropriate action.

12 (3) The home state shall complete any pending investigations of a licensed professional counselor
13 who changes primary state of residence during the course of the investigations. The home state shall also have
14 the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the
15 administrator of the data system. The administrator of the coordinated licensure information system shall
16 promptly notify the new home state of any adverse actions.

17 (4) A member state, if otherwise permitted by state law, may recover from the affected licensed
18 professional counselor the costs of investigations and dispositions of cases resulting from any adverse action
19 taken against that licensed professional counselor.

20 (5) A member state may take adverse action based on the factual findings of the remote state,
21 provided that the member state follows its own procedures for taking the adverse action.

22 (6) Joint Investigations:

23 (a) In addition to the authority granted to a member state by its respective professional counseling
24 practice act or other applicable state law, any member state may participate with other member states in joint
25 investigations of licensees.

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

28 (7) If adverse action is taken by the home state against the license of a licensed professional

1 counselor, the licensed professional counselor's privilege to practice in all other member states must be
2 deactivated until all encumbrances have been removed from the state license. All home state disciplinary
3 orders that impose adverse action against the license of a licensed professional counselor must include a
4 statement that the licensed professional counselor's privilege to practice is deactivated in all member states
5 during the pendency of the order.

6 (8) If a member state takes adverse action, it shall promptly notify the administrator of the data
7 system. The administrator of the data system shall promptly notify the home state of any adverse actions by
8 remote states.

9 (9) Nothing in this compact may override a member state's decision that participation in an
10 alternative program may be used in lieu of adverse action.

11 SECTION 9

12 ESTABLISHMENT OF COUNSELING

13 COMPACT COMMISSION

14 (1) The compact member states hereby create and establish a joint public agency known as the
15 counseling compact commission:

16 (a) The commission is an instrumentality of the compact states.

17 (b) Venue is proper and judicial proceedings by or against the commission must be brought solely
18 and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The
19 commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in
20 alternative dispute resolution proceedings.

21 (c) Nothing in this compact may be construed to be a waiver of sovereign immunity.

22 (2) Membership, Voting, and Meetings

23 (a) Each member state shall have and be limited to one (1) delegate selected by that member
24 state's licensing board.

25 (b) The delegate must be either:

26 (i) a current member of the licensing board at the time of appointment, who is a licensed
27 professional;

28 (ii) a counselor or public member; or

1 (iii) an administrator of the licensing board.

2 (c) Any delegate may be removed or suspended from office as provided by the law of the state
3 from which the delegate is appointed.

4 (d) The member state licensing board shall fill any vacancy occurring on the commission within 60
5 days.

6 (e) Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and
7 creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the
8 commission.

9 (f) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws
10 may provide for delegates' participation in meetings by telephone or other means of communication.

11 (g) The commission shall meet at least once during each calendar year. Additional meetings must
12 be held as set forth in the bylaws.

13 (h) The commission shall by rule establish a term of office for delegates and may by rule establish
14 term limits.

15 (3) The commission must have the following powers and duties:

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

17 (b) establish bylaws;

18 (c) maintain its financial records in accordance with the bylaws;

19 (d) meet and take such actions as are consistent with the provisions of this compact and the
20 bylaws;

21 (e) promulgate rules that must be binding to the extent and in the manner provided for in the
22 compact;

23 (f) bring and prosecute legal proceedings or actions in the name of the commission, provided that
24 the standing of any state licensing board to sue or be sued under applicable law may not be affected;

25 (g) purchase and maintain insurance and bonds;

26 (h) borrow, accept, or contract for services of personnel, including but not limited to employees of a
27 member state;

28 (i) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals

1 appropriate authority to carry out the purposes of the compact, and establish the commission's personnel
2 policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel
3 matters;

4 (j) accept any and all appropriate donations and grants of money, equipment, supplies, materials,
5 and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall
6 avoid any appearance of impropriety and/or conflict of interest;

7 (k) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or
8 use any property, real, personal, or mixed, provided that at all times the commission shall avoid any
9 appearance of impropriety;

10 (l) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
11 property real, personal, or mixed;

12 (m) establish a budget and make expenditures;

13 (n) borrow money;

14 (o) appoint committees, including standing committees composed of members, state regulators,
15 state legislators or their representatives, and consumer representatives, and such other interested persons as
16 may be designated in this compact and the bylaws;

17 (p) provide and receive information from, and cooperate with, law enforcement agencies;

18 (q) establish and elect an executive committee; and

19 (r) perform such other functions as may be necessary or appropriate to achieve the purposes of
20 this compact consistent with the state regulation of professional counseling licensure and practice.

21 (4) The Executive Committee

22 (a) The executive committee shall have the power to act on behalf of the commission according to
23 the terms of this compact.

24 (b) The executive committee shall be composed of up to eleven (11) members:

25 (i) seven voting members who are elected by the commission from the current membership of the
26 commission; and

27 (ii) up to four (4) ex-officio, nonvoting members from four (4) recognized national professional
28 counselor organizations. The ex-officio members will be selected by their respective organizations.

- 1 (c) The commission may remove any member of the executive committee as provided in bylaws.
- 2 (d) The executive committee shall meet at least annually.
- 3 (e) The executive committee must have the following duties and responsibilities:
- 4 (i) recommend to the entire commission changes to the rules or bylaws, changes to this compact
- 5 legislation, fees paid by compact member states such as annual dues, and any commission compact fee
- 6 charged to licensees for the privilege to practice;
- 7 (ii) ensure compact administration services are appropriately provided, contractual or otherwise;
- 8 (iii) prepare and recommend the budget;
- 9 (iv) maintain financial records on behalf of the commission;
- 10 (v) monitor compact compliance of member states and provide compliance reports to the
- 11 commission;
- 12 (vi) establish additional committees as necessary; and
- 13 (vii) other duties as provided in rules or bylaws.
- 14 (5) Meetings of the Commission
- 15 (a) All meetings must be open to the public, and public notice of meetings must be given in the
- 16 same manner as required under the rulemaking provisions in Section 11.
- 17 (b) The commission or the executive committee or other committees of the commission may
- 18 convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the
- 19 commission shall discuss:
- 20 (i) noncompliance of a member state with its obligations under the compact;
- 21 (ii) the employment, compensation, discipline, or other matters, practices or procedures related to
- 22 specific employees or other matters related to the commission's internal personnel practices and procedures;
- 23 (iii) current, threatened, or reasonably anticipated litigation;
- 24 (iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- 25 (v) accusing any person of a crime or formally censuring any person;
- 26 (vi) disclosure of trade secrets or commercial or financial information that is privileged or
- 27 confidential;
- 28 (vii) disclosure of information of a personal nature where disclosure would constitute a clearly

1 unwarranted invasion of personal privacy;

2 (viii) disclosure of investigative records compiled for law enforcement purposes;

3 (ix) disclosure of information related to any investigative reports prepared by or on behalf of or for
4 use of the commission or other committee charged with responsibility of investigation or determination of
5 compliance issues pursuant to the compact; or

6 (x) matters specifically exempted from disclosure by federal or member state statute.

7 (c) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's
8 legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant
9 exempting provision.

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

15 (6) Financing of the Commission

16 (a) The commission shall pay, or provide for the payment of, the reasonable expenses of its
17 establishment, organization, and ongoing activities.

18 (b) The commission may accept any and all appropriate revenue sources, donations, and grants of
19 money, equipment, supplies, materials, and services.

20 (c) The commission may levy on and collect an annual assessment from each member state or
21 impose fees on other parties to cover the cost of the operations and activities of the commission and its staff,
22 which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue
23 is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a
24 formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

25 (d) The commission may not incur obligations of any kind prior to securing the funds adequate to
26 meet the same; nor may the commission pledge the credit of any of the member states, except by and with the
27 authority of the member state.

28 (e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts

1 and disbursements of the commission must be subject to the audit and accounting procedures established
2 under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited
3 yearly by a certified or licensed public accountant, and the report of the audit must be included in and become
4 part of the annual report of the commission.

5 (7) Qualified Immunity, Defense, and Indemnification

6 (a) The members, officers, executive director, employees, and representatives of the commission
7 must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to
8 or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act,
9 error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for
10 believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing
11 in this paragraph may be construed to protect any such person from suit and/or liability for any damage, loss,
12 injury, or liability caused by the intentional or willful or wanton misconduct of that person.

13 (b) The commission shall defend any member, officer, executive director, employee, or
14 representative of the commission in any civil action seeking to impose liability arising out of any actual or
15 alleged act, error, or omission that occurred within the scope of commission employment, duties, or
16 responsibilities, or that the person against whom the claim is made had a reasonable basis for believing
17 occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein
18 may be construed to prohibit that person from retaining his or her own counsel; and provided further, that the
19 actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton
20 misconduct.

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

27 SECTION 10

28 DATA SYSTEM

1 (1) The commission shall provide for the development, maintenance, operation, and utilization of a
2 coordinated database and reporting system containing licensure, adverse action, and investigative information
3 on all licensed individuals in member states.

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

7 (a) identifying information;

8 (b) licensure data;

9 (c) adverse actions against a license or privilege to practice;

10 (d) nonconfidential information related to alternative program participation;

11 (e) any denial of application for licensure, and the reason(s) for such denial;

12 (f) current significant investigative information; and

13 (g) other information that may facilitate the administration of this compact, as determined by the
14 rules of the commission.

15 (3) Investigative information pertaining to a licensee in any member state will only be available to
16 other member states.

17 (4) The commission shall promptly notify all member states of any adverse action taken against a
18 licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any
19 member state will be available to any other member state.

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

22 (6) Any information submitted to the data system that is subsequently required to be expunged by
23 the laws of the member state contributing the information must be removed from the data system.

24 SECTION 11

25 RULEMAKING

26 (1) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve
27 the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its
28 rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers

1 granted hereunder, then such an action by the commission must be invalid and have no force or effect.

2 (2) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this
3 section and the rules adopted thereunder. Rules and amendments must become binding as of the date
4 specified in each rule or amendment.

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

8 (4) Rules or amendments to the rules must be adopted at a regular or special meeting of the
9 commission.

10 (5) Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty
11 (30) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall
12 file a notice of proposed rulemaking:

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

14 (b) on the website of each member state professional counseling licensing board or other publicly
15 accessible platform or the publication in which each state would otherwise publish proposed rules.

16 (6) The notice of proposed rulemaking must include:

17 (a) the proposed time, date, and location of the meeting in which the rule will be considered and
18 voted upon;

19 (b) the text of the proposed rule or amendment and the reason for the proposed rule;

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

21 (d) the manner in which interested persons may submit notice to the commission of their intention
22 to attend the public hearing and any written comments.

23 (7) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data,
24 facts, opinions, and arguments, which must be made available to the public.

25 (8) The commission shall grant an opportunity for a public hearing before it adopts a rule or
26 amendment if a hearing is requested by:

27 (a) at least twenty-five (25) persons;

28 (b) a state or federal governmental subdivision or agency; or

1 (c) an association having at least twenty-five (25) members.

2 (9) If a hearing is held on the proposed rule or amendment, the commission shall publish the
3 place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the
4 commission shall publish the mechanism for access to the electronic hearing.

5 (a) All persons wishing to be heard at the hearing shall notify the executive director of the
6 commission or other designated member in writing of their desire to appear and testify at the hearing not less
7 than five (5) business days before the scheduled date of the hearing.

8 (b) Hearings must be conducted in a manner providing each person who wishes to comment a fair
9 and reasonable opportunity to comment orally or in writing.

10 (c) All hearings will be recorded. A copy of the recording will be made available on request.

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

13 (10) Following the scheduled hearing date, or by the close of business on the scheduled hearing
14 date if the hearing was not held, the commission shall consider all written and oral comments received.

15 (11) If no written notice of intent to attend the public hearing by interested parties is received, the
16 commission may proceed with promulgation of the proposed rule without a public hearing.

17 (12) The commission shall, by majority vote of all members, take final action on the proposed rule
18 and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the
19 rule.

20 (13) Upon determination that an emergency exists, the commission may consider and adopt an
21 emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking
22 procedures provided in the compact and in this section must be retroactively applied to the rule as soon as
23 reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes
24 of this provision, an emergency rule is one that must be adopted immediately in order to:

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

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

27 (c) meet a deadline for the promulgation of an administrative rule that is established by federal law
28 or rule; or

1 (d) protect public health and safety.

2 (14) The commission or an authorized committee of the commission may direct revisions to a
3 previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in
4 consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the
5 commission. The revision must be subject to challenge by any person for a period of thirty (30) days after
6 posting. The revision may be challenged only on grounds that the revision results in a material change to a rule.
7 A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice
8 period. If no challenge is made, the revision will take effect without further action. If the revision is challenged,
9 the revision may not take effect without the approval of the commission.

10 SECTION 12

11 OVERSIGHT, DISPUTE RESOLUTION,

12 AND ENFORCEMENT

13 (1) Oversight

14 (a) The executive, legislative, and judicial branches of state government in each member state
15 shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes
16 and intent. The provisions of this compact and the rules promulgated hereunder must have standing as
17 statutory law.

18 (b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative
19 proceeding in a member state pertaining to the subject matter of this compact, which may affect the powers,
20 responsibilities, or actions of the commission.

21 (c) The commission must be entitled to receive service of process in any such proceeding and
22 must have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to
23 the commission must render a judgment or order void as to the commission, this compact, or promulgated
24 rules.

25 (2) Default, Technical Assistance, and Termination

26 If the commission determines that a member state has defaulted in the performance of its obligations or
27 responsibilities under this compact or the promulgated rules, the commission shall:

28 (a) provide written notice to the defaulting state and other member states of the nature of the

1 default, the proposed means of curing the default, and/or any other action to be taken by the commission; and

2 (b) provide remedial training and specific technical assistance regarding the default.

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

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

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

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

17 (7) The defaulting state may appeal the action of the commission by petitioning the U.S. district
18 court for the District of Columbia or the federal district where the commission has its principal offices. The
19 prevailing member must be awarded all costs of such litigation, including reasonable attorney fees.

20 (8) Dispute Resolution

21 (a) Upon request by a member state, the commission shall attempt to resolve disputes related to
22 the compact that arise among member states and between member and nonmember states.

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

25 (9) Enforcement

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

28 (b) By majority vote, the commission may initiate legal action in the United States district court for

1 the District of Columbia or the federal district where the commission has its principal offices against a member
 2 state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws.
 3 The relief sought may include both injunctive relief and damages. In the event judicial enforcement is
 4 necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney
 5 fees.

6 (c) The remedies herein may not be the exclusive remedies of the commission. The commission
 7 may pursue any other remedies available under federal or state law.

8 SECTION 13

9 DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION

10 AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

11 (1) The compact must come into effect on the date on which the compact statute is enacted into
 12 law in the tenth member state. The provisions, which become effective at that time, must be limited to the
 13 powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the
 14 commission shall meet and exercise rulemaking powers necessary to the implementation and administration of
 15 the compact.

16 (2) Any state that joins the compact subsequent to the commission's initial adoption of the rules
 17 must be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule
 18 that has been previously adopted by the commission must have the full force and effect of law on the day the
 19 compact becomes law in that state.

20 (3) Any member state may withdraw from this compact by enacting a statute repealing the same.

21 (a) A member state's withdrawal may not take effect until six (6) months after enactment of the
 22 repealing statute.

23 (b) Withdrawal may not affect the continuing requirement of the withdrawing state's professional
 24 counseling licensing board to comply with the investigative and adverse action reporting requirements of this
 25 act prior to the effective date of withdrawal.

26 (4) Nothing contained in this compact may be construed to invalidate or prevent any professional
 27 counseling licensure agreement or other cooperative arrangement between a member state and a nonmember
 28 state that does not conflict with the provisions of this compact.

