

1 SB99
2 216152-1
3 By Senator Jones
4 RFD: Governmental Affairs
5 First Read: 13-JAN-22

8 SYNOPSIS: This bill would establish the interstate
9 Counseling Compact.

10 This bill would allow the practice of
11 professional counseling using telehealth
12 technologies by licensed professional counselors
13 among compact states.

14 This bill would authorize state professional
15 counseling regulatory authorities in compact
16 states, which would include the Alabama Board of
17 Examiners in Counseling, to legally recognize, in a
18 manner consistent with terms of the compact,
19 professional counselors licensed within those
20 states.

21 This bill would provide eligibility
22 requirements for licensed professional counselors
23 to practice pursuant to the compact.

24 This bill would provide accommodations for
25 licensed professional counselors who are active
26 duty personnel and their spouses.

1 This bill would provide for a coordinated
2 licensure database for reporting licensure,
3 investigative information, and disciplinary
4 actions.

5 This bill would establish the Counseling
6 Compact Commission, and would provide for
7 membership, powers, and duties.

8 This bill would also provide for rulemaking
9 functions of the commission, oversight of the
10 compact, enforcement of the compact, default
11 procedures, dispute resolution, withdrawal of
12 compact states, and amendment of the compact.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the licensed practice of professional
19 counseling; to provide and adopt the Counseling Compact to
20 allow licensed professional counselors to practice among
21 compact states in a limited manner; to provide eligibility
22 requirements for licensed professional counselors to practice
23 pursuant to the compact; to provide for a coordinated
24 licensure information system, joint investigations, and
25 disciplinary actions; to establish the Counseling Compact
26 Commission, and to provide for membership, powers, and duties,
27 and provide for rulemaking functions of the commission; and to

1 provide for oversight of the compact, enforcement of the
2 compact, default procedures, dispute resolution, withdrawal of
3 compact states, and amendment of the compact.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. PURPOSE

6 (a) The purpose of this compact is to facilitate
7 interstate practice of licensed professional counselors with
8 the goal of improving public access to professional counseling
9 services. The practice of professional counseling occurs in
10 the state where the client is located at the time of the
11 counseling services. The compact preserves the regulatory
12 authority of states to protect public health and safety
13 through the current system of state licensure.

14 (b) This compact is designed to achieve the
15 following objectives:

16 (1) Increase public access to professional
17 counseling services by providing for the mutual recognition of
18 other member state licenses.

19 (2) Enhance the states' ability to protect the
20 public's health and safety.

21 (3) Encourage the cooperation of member states in
22 regulating multistate practice for licensed professional
23 counselors.

24 (4) Support spouses of relocating active duty
25 military personnel.

1 (5) Enhance the exchange of licensure,
2 investigative, and disciplinary information among member
3 states.

4 (6) Allow the use of telehealth technology to
5 facilitate increased access to professional counseling
6 services.

7 (7) Support the uniformity of professional
8 counseling licensure requirements throughout the states to
9 promote public safety and public health benefits.

10 (8) Invest all member states with the authority to
11 hold a licensed professional counselor accountable for meeting
12 all state practice laws in the state in which the client is
13 located at the time care is rendered through the mutual
14 recognition of member state licenses.

15 (9) Eliminate the necessity for licenses in multiple
16 states.

17 (10) Provide opportunities for interstate practice
18 by licensed professional counselors who meet uniform licensure
19 requirements.

20 Section 2. DEFINITIONS

21 As used in this section, the following terms have
22 the following meanings:

23 (1) ACTIVE DUTY. Full-time duty status in the active
24 uniformed service of the United States, including members of
25 the National Guard and Reserve on active duty orders pursuant
26 to 10 U.S.C. Chapters 1209 and 1211.

1 (2) ADVERSE ACTION. Any administrative, civil,
2 equitable, or criminal action permitted by a state's laws
3 which is imposed by a licensing board or other authority
4 against a licensed professional counselor, including actions
5 against an individual's license or privilege to practice, such
6 as revocation, suspension, probation, monitoring of the
7 licensee, limitation on the licensee's practice, or any other
8 encumbrance on licensure affecting a licensed professional
9 counselor's authorization to practice, including issuance of a
10 cease and desist action.

11 (3) ALTERNATIVE PROGRAM. A non-disciplinary
12 monitoring or practice remediation process approved by a
13 professional counseling licensing board to address impaired
14 practitioners.

15 (4) CONTINUING COMPETENCE/EDUCATION. A requirement,
16 as a condition of license renewal, to provide evidence of
17 participation in, and/or completion of, educational and
18 professional activities relevant to practice or area of work.

19 (5) COUNSELING COMPACT COMMISSION OR COMMISSION. The
20 national administrative body whose membership consists of all
21 states that have enacted the compact.

22 (6) CURRENT SIGNIFICANT INVESTIGATIVE INFORMATION:

23 a. Investigative information that a licensing board,
24 after a preliminary inquiry that includes notification and an
25 opportunity for the licensed professional counselor to
26 respond, if required by state law, has reason to believe is

1 not groundless and, if proved true, would indicate a minor
2 infraction; or

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

8 (7) DATA SYSTEM. A respository of information about
9 licensees, including, but not limited to, continuing
10 education, examination, licensure, investigative, privilege to
11 practice, and adverse action information.

12 (8) ENCUMBERED LICENSE. A license in which an
13 adverse action restricts the practice of licensed professional
14 counseling by the licensee and the adverse action has been
15 reported to the National Practitioners Data Bank (NPDB).

16 (9) ENCUMBRANCE. A revocation or suspension of, or
17 any limitation on, the full and unrestricted practice of
18 licensed professional counseling by a licensing board.

19 (10) EXECUTIVE COMMITTEE. A group of directors
20 elected or appointed to act on behalf of, and within the
21 powers granted to them by, the commission.

22 (11) HOME STATE. The member state that is the
23 licensee's primary state of residence.

24 (12) IMPAIRED PRACTITIONER. An individual who has a
25 condition or conditions that may impair his or her ability to
26 practice as a licensed professional counselor without some
27 type of intervention and may include, but are not limited to,

1 alcohol and drug dependence, mental health impairment, and
2 neurological or physical impairments.

3 (13) INVESTIGATIVE INFORMATION. Information,
4 records, and documents received or generated by a professional
5 counseling licensing board pursuant to an investigation.

6 (14) JURISPRUDENCE REQUIREMENT. If required by a
7 member state, the assessment of an individual's knowledge of
8 the laws and rules governing the practice of professional
9 counseling in a state.

10 (15) LICENSED PROFESSIONAL COUNSELOR. A counselor
11 licensed by a member state, regardless of the title used by
12 that state, to independently assess, diagnose, and treat
13 behavioral health conditions.

14 (16) LICENSEE. An individual who currently holds an
15 authorization from the state to practice as a licensed
16 professional counselor.

17 (17) LICENSING BOARD. The agency of a state, or
18 equivalent, that is responsible for the licensing and
19 regulation of licensed professional counselors.

20 (18) MEMBER STATE. A state that has enacted the
21 compact.

22 (19) PRIVILEGE TO PRACTICE. A legal authorization,
23 which is equivalent to a license, permitting the practice of
24 professional counseling in a remote state.

25 (20) PROFESSIONAL COUNSELING. The assessment,
26 diagnosis, and treatment of behavioral health conditions by a
27 licensed professional counselor.

1 (21) REMOTE STATE. A member state other than the
2 home state, where a licensee is exercising or seeking to
3 exercise the privilege to practice.

4 (22) RULE. A regulation adopted by the commission
5 that has the force of law.

6 (23) SINGLE STATE LICENSE. A licensed professional
7 counselor license issued by a member state that authorizes
8 practice only within the issuing state and does not include a
9 privilege to practice in any other member state.

10 (24) STATE. Any state, commonwealth, district, or
11 territory of the United States that regulates the practice of
12 professional counseling.

13 (25) TELEHEALTH. The application of
14 telecommunication technology to deliver professional
15 counseling services remotely to assess, diagnose, and treat
16 behavioral health conditions.

17 (26) UNENCUMBERED LICENSE. A license that authorizes
18 a licensed professional counselor to engage in the full and
19 unrestricted practice of professional counseling.

20 Section 3. STATE PARTICIPATION IN THE COMPACT

21 (a) To participate in the compact, a state must
22 currently:

23 (1) License and regulate licensed professional
24 counselors;

25 (2) Require licensees to pass a nationally
26 recognized exam approved by the commission;

1 (3) Require licensees to have a 60 semester-hour (or
2 90 quarter-hour) master's degree in counseling or 60
3 semester-hours (or 90 quarter-hours) of graduate course work,
4 including the following topic areas:

5 a. Professional counseling orientation and ethical
6 practice.

7 b. Social and cultural diversity.

8 c. Human growth and development.

9 d. Career development.

10 e. Counseling and helping relationships.

11 f. Group counseling and group work.

12 g. Diagnosis and treatment; assessment and testing.

13 h. Research and program evaluation.

14 i. Other areas as determined by the commission.

15 (4) Require licensees to complete a supervised
16 postgraduate professional experience as defined by the
17 commission; and

18 (5) Have a mechanism in place for receiving and
19 investigating complaints about licensees.

20 (b) A Member State shall:

21 (1) Participate fully in the commission's data
22 system, including using the commission's unique identifier as
23 defined in rules;

24 (2) Notify the commission, in compliance with the
25 terms of the compact and rules, of any adverse action or the
26 availability of investigative information regarding a
27 licensee;

1 (3) Implement or utilize procedures for considering
2 the criminal history records of applicants for an initial
3 privilege to practice. These procedures shall include the
4 submission of fingerprints or other biometric-based
5 information by applicants for the purpose of obtaining an
6 applicant's criminal history record information from the FBI
7 and the agency responsible for retaining that state's criminal
8 records;

9 a. A member state must fully implement a criminal
10 background check requirement, within a time frame established
11 by rule, by receiving the results of the FBI record search and
12 shall use the results in making licensure decisions.

13 b. Communication between a member state, the
14 commission and among member states regarding the verification
15 of eligibility for licensure through the compact shall not
16 include any information received from the FBI relating to a
17 federal criminal records check performed by a member state
18 under Public Law 92-544.

19 (4) Comply with the rules of the commission;

20 (5) Require an applicant to obtain or retain a
21 license in the home state and meet the home state's
22 qualifications for licensure or renewal of licensure, as well
23 as all other applicable state laws;

24 (6) Grant the privilege to practice to a licensee
25 holding a valid unencumbered license in another member state
26 in accordance with the terms of the compact and rules; and

1 (7) Provide for the attendance of the state's
2 commissioner to the counseling compact commission meetings.

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

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

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

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

19 Section 4. PRIVILEGE TO PRACTICE

20 (a) To exercise the privilege to practice under the
21 terms and provisions of the compact, the licensee shall:

22 (1) Hold a license in the home state;

23 (2) Have a valid United States Social Security
24 number or national practitioner identifier;

25 (3) Be eligible for a privilege to practice in any
26 member state in accordance with subsections (d), (g), and (h);

1 (4) Have not had any encumbrance or restriction
2 against any license or privilege to practice within the
3 previous two years;

4 (5) Notify the commission that the licensee is
5 seeking the privilege to practice within a remote state or
6 states;

7 (6) Pay any applicable fees, including any state
8 fee, for the privilege to practice;

9 (7) Meet any continuing competence/education
10 requirements established by the home state;

11 (8) Meet any jurisprudence requirements established
12 by the remote state or states in which the licensee is seeking
13 a privilege to practice; and

14 (9) Report to the commission any adverse action,
15 encumbrance, or restriction on the license taken by any
16 non-member state within 30 days from the date the action is
17 taken.

18 (b) The privilege to practice is valid until the
19 expiration date of the home state license. The licensee must
20 comply with the requirements of subsection (a) to maintain the
21 privilege to practice in the remote state.

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

25 (d) A licensee providing professional counseling
26 services in a remote state is subject to that state's
27 regulatory authority. A remote state, in accordance with due

1 process and that state's laws, may remove a licensee's
2 privilege to practice in the remote state for a specific
3 period of time, impose fines, and/or take any other necessary
4 actions to protect the health and safety of its residents. The
5 licensee may be ineligible for a privilege to practice in any
6 member state until the specific time for removal has passed
7 and all fines are paid.

8 (e) If a home state license is encumbered, the
9 licensee shall lose the privilege to practice in any remote
10 state until the following occur:

11 (1) The home state license is no longer encumbered;
12 and

13 (2) The licensee has not had any encumbrance or
14 restriction against any license or privilege to practice
15 within the previous two years.

16 (f) Once an encumbered license in the home state is
17 restored to good standing, the licensee must meet the
18 requirements of subsection (a) to obtain a privilege to
19 practice in any remote state.

20 (g) If a licensee's privilege to practice in any
21 remote state is removed, the individual may lose the privilege
22 to practice in all other remote states until the following
23 occur:

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

26 (2) All fines have been paid; and

1 (3) The licensee has not had any encumbrance or
2 restriction against any license or privilege to practice
3 within the previous two years.

4 (h) Once the requirements of subsection (g) have
5 been met, the licensee must meet the requirements in
6 subsection (a) to obtain a privilege to practice in a remote
7 state.

8 Section 5. OBTAINING A NEW HOME STATE LICENSE BASED
9 ON A PRIVILEGE TO PRACTICE

10 (a) A licensed professional counselor may hold a
11 home state license, which allows for a privilege to practice
12 in other member states, in only one member state at a time.

13 (b) If a licensed professional counselor changes
14 primary state of residence by moving between two member
15 states:

16 (1) The licensed professional counselor shall file
17 an application for obtaining a new home state license based on
18 a privilege to practice, pay all applicable fees, and notify
19 the current and new home state in accordance with applicable
20 rules adopted by the commission.

21 (2) Upon receipt of an application for obtaining a
22 new home state license by virtue of a privilege to practice,
23 the new home state shall verify that the licensed professional
24 counselor meets the pertinent criteria outlined in Section 4
25 via the data system, without need for primary source
26 verification except for:

1 a. An FBI fingerprint based criminal background
2 check if not previously performed or updated pursuant to
3 applicable rules adopted by the commission in accordance with
4 Public Law 92-544;

5 b. Other criminal background check as required by
6 the new home state; and

7 c. Completion of any requisite jurisprudence
8 requirements of the new home state.

9 (3) The former home state shall convert the former
10 home state license into a privilege to practice once the new
11 home state has activated the new home state license in
12 accordance with applicable rules adopted by the commission.

13 (4) Notwithstanding any other provision of this
14 compact, if the licensed professional counselor cannot meet
15 the criteria in Section 4, the new home state may apply its
16 requirements for issuing a new single state license.

17 (5) The licensed professional counselor shall pay
18 all applicable fees to the new home state in order to be
19 issued a new home state license.

20 (c) If a licensed professional counselor changes
21 primary state of residence by moving from a member state to a
22 non-member state, or from a non-member state to a member
23 state, the state criteria shall apply for issuance of a single
24 state license in the new state.

25 (d) Nothing in this compact shall interfere with a
26 licensee's ability to hold a single state license in multiple

1 states, however for the purposes of this compact, a licensee
2 shall have only one home state license.

3 (e) Nothing in this compact shall affect the
4 requirements established by a member state for the issuance of
5 a single state license.

6 Section 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR
7 SPOUSES

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

16 Section 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

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

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

26 Section 8. ADVERSE ACTIONS

1 (a) In addition to the other powers conferred by
2 state law, a remote state shall have the authority, in
3 accordance with existing state due process law, to:

4 (1) Take adverse action against a licensed
5 professional counselor's privilege to practice within that
6 member state;

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

19 (3) Only the home state shall have the power to take
20 adverse action against a licensed professional counselor's
21 license issued by the home state.

22 (b) For purposes of taking adverse action, the home
23 state shall give the same priority and effect to reported
24 conduct received from a member state as it would if the
25 conduct had occurred within the home state. In so doing, the
26 home state shall apply its own state laws to determine
27 appropriate action.

1 (c) The home state shall complete any pending
2 investigations of a licensed professional counselor who
3 changes primary state of residence during the course of the
4 investigations. The home state shall also have the authority
5 to take appropriate action(s) and shall promptly report the
6 conclusions of the investigations to the administrator of the
7 data system. The administrator of the coordinated licensure
8 information system shall promptly notify the new home state of
9 any adverse actions.

10 (d) A member state, if otherwise permitted by state
11 law, may recover from the affected licensed professional
12 counselor the costs of investigations and dispositions of
13 cases resulting from any adverse action taken against that
14 licensed professional counselor.

15 (e) A member state may take adverse action based on
16 the factual findings of the remote state, provided that the
17 member state follows its own procedures for taking the adverse
18 action.

19 (f) Joint Investigations:

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

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

1 (g) If adverse action is taken by the home state
2 against the license of a licensed professional counselor, the
3 licensed professional counselor's privilege to practice in all
4 other member states shall be deactivated until all
5 encumbrances have been removed from the state license. All
6 home state disciplinary orders that impose adverse action
7 against the license of a licensed professional counselor shall
8 include a statement that the licensed professional counselor's
9 privilege to practice is deactivated in all member states
10 during the pendency of the order.

11 (h) If a member state takes adverse action, it shall
12 promptly notify the administrator of the data system. The
13 administrator of the data system shall promptly notify the
14 home state of any adverse actions by remote states.

15 (i) Nothing in this compact shall override a member
16 state's decision that participation in an alternative program
17 may be used in lieu of adverse action.

18 Section 9. ESTABLISHMENT OF COUNSELING COMPACT
19 COMMISSION

20 (a) The compact member states hereby create and
21 establish a joint public agency known as the Counseling
22 Compact Commission:

23 (1) The commission is an instrumentality of the
24 compact states.

25 (2) Venue is proper and judicial proceedings by or
26 against the commission shall be brought solely and exclusively
27 in a court of competent jurisdiction where the principal

1 office of the commission is located. The commission may waive
2 venue and jurisdictional defenses to the extent it adopts or
3 consents to participate in alternative dispute resolution
4 proceedings.

5 (3) Nothing in this compact shall be construed to be
6 a waiver of sovereign immunity.

7 (b) Membership, Voting, and Meetings.

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

10 (2) The delegate shall be either:

11 a. A current member of the licensing board at the
12 time of appointment, who is a licensed professional counselor
13 or public member; or

14 b. An administrator of the licensing board.

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

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

20 (5) Each delegate shall be entitled to one vote with
21 regard to the adoption of rules and creation of bylaws and
22 shall otherwise have an opportunity to participate in the
23 business and affairs of the commission.

24 (6) A delegate shall vote in person or by such other
25 means as provided in the bylaws. The bylaws may provide for
26 delegates' participation in meetings by telephone or other
27 means of communication.

1 (7) The commission shall meet at least once during
2 each calendar year. Additional meetings shall be held as set
3 forth in the bylaws.

4 (8) The commission shall by rule establish a term of
5 office for delegates and may by rule establish term limits.

6 (c) The commission shall have the following powers
7 and duties:

8 (1) Establish the fiscal year of the commission;

9 (2) Establish bylaws;

10 (3) Maintain its financial records in accordance
11 with the bylaws;

12 (4) Meet and take such actions as are consistent
13 with the provisions of this compact and the bylaws;

14 (5) Adopt rules which shall be binding to the extent
15 and in the manner provided for in the compact;

16 (6) Bring and prosecute legal proceedings or actions
17 in the name of the commission, provided that the standing of
18 any state licensing board to sue or be sued under applicable
19 law shall not be affected;

20 (7) Purchase and maintain insurance and bonds;

21 (8) Borrow, accept, or contract for services of
22 personnel, including, but not limited to, employees of a
23 member state;

24 (9) Hire employees, elect or appoint officers, fix
25 compensation, define duties, grant such individuals
26 appropriate authority to carry out the purposes of the
27 compact, and establish the commission's personnel policies and

1 programs relating to conflicts of interest, qualifications of
2 personnel, and other related personnel matters;

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

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

12 (12) Sell, convey, mortgage, pledge, lease,
13 exchange, abandon, or otherwise dispose of any property real,
14 personal, or mixed;

15 (13) Establish a budget and make expenditures;

16 (14) Borrow money;

17 (15) Appoint committees, including standing
18 committees composed of members, state regulators, state
19 legislators or their representatives, and consumer
20 representatives, and such other interested persons as may be
21 designated in this compact and the bylaws;

22 (16) Provide and receive information from, and
23 cooperate with, law enforcement agencies;

24 (17) Establish and elect an executive committee; and

25 (18) Perform such other functions as may be
26 necessary or appropriate to achieve the purposes of this

1 compact consistent with the state regulation of professional
2 counseling licensure and practice.

3 (d) The Executive Committee.

4 (1) The executive committee shall have the power to
5 act on behalf of the commission according to the terms of this
6 compact.

7 (2) The executive committee shall be composed of up
8 to 11 members:

9 a. Seven voting members who are elected by the
10 commission from the current membership of the commission; and

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

13 c. The ex-officio members will be selected by their
14 respective organizations.

15 (3) The commission may remove any member of the
16 executive committee as provided in bylaws.

17 (4) The executive committee shall meet at least
18 annually.

19 (5) The executive committee shall have the following
20 duties and responsibilities:

21 a. Recommend to the entire commission changes to the
22 rules or bylaws, changes to this compact legislation, fees
23 paid by compact member states such as annual dues, and any
24 commission compact fees charged to licensees for the privilege
25 to practice;

26 b. Ensure compact administration services are
27 appropriately provided, contractual or otherwise;

- 1 c. Prepare and recommend the budget;
- 2 d. Maintain financial records on behalf of the
3 commission;
- 4 e. Monitor compact compliance of member states and
5 provide compliance reports to the commission;
- 6 f. Establish additional committees as necessary; and
- 7 g. Other duties as provided in rules or bylaws.
- 8 (e) Meetings of the commission.
- 9 (1) All meetings shall be open to the public, and
10 public notice of meetings shall be given in the same manner as
11 required under the rulemaking provisions in Section 11.
- 12 (2) The commission or the executive committee or
13 other committees of the commission may convene in a closed,
14 non-public meeting if the commission or executive committee or
15 other committees of the commission must discuss:
- 16 a. Non-compliance of a member state with its
17 obligations under the compact;
- 18 b. The employment, compensation, discipline or other
19 matters, practices, or procedures related to specific
20 employees, or other matters related to the commission's
21 internal personnel practices and procedures;
- 22 c. Current, threatened, or reasonably anticipated
23 litigation;
- 24 d. Negotiation of contracts for the purchase, lease,
25 or sale of goods, services, or real estate;
- 26 e. Accusing any person of a crime or formally
27 censuring any person;

1 f. Disclosure of trade secrets or commercial or
2 financial information that is privileged or confidential;

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

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

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

13 j. Matters specifically exempted from disclosure by
14 federal or member state statute.

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

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

1 (f) Financing of the Commission.

2 (1) The commission shall pay, or provide for the
3 payment of, the reasonable expense of its establishment,
4 organization, and ongoing activities.

5 (2) The commission may accept any and all
6 appropriate revenue sources, donations, and grants of money,
7 equipment, supplies, materials, and services.

8 (3) The commission may levy on and collect an annual
9 assessment from each member state or impose fees on other
10 parties to cover the cost of the operations and activities of
11 the commission and its staff, which must be in a total amount
12 sufficient to cover its annual budget as approved each year
13 for which revenue is not provided by other sources. The
14 aggregate annual assessment amount shall be allocated based
15 upon a formula to be determined by the commission, which shall
16 adopt a rule binding upon all member states.

17 (4) The commission shall not incur obligations of
18 any kind prior to securing the funds adequate to meet the
19 same; nor shall the commission pledge the credit of any of the
20 member states, except by and with the authority of the member
21 state.

22 (5) The commission shall keep accurate accounts of
23 all receipts and disbursements. The receipts and disbursements
24 of the commission shall be subject to the audit and accounting
25 procedures established under its bylaws. However, all receipts
26 and disbursements of funds handled by the commission shall be
27 audited yearly by a certified or licensed public accountant,

1 and the report of the audit shall be included in and become
2 part of the annual report of the commission.

3 (g) Qualified Immunity, Defense, and
4 Indemnification.

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

19 (2) The commission shall defend any member, officer,
20 executive director, employee, or representative of the
21 commission in any civil action seeking to impose liability
22 arising out of any actual or alleged act, error, or omission
23 that occurred within the scope of commission employment,
24 duties, or responsibilities, or that the person against whom
25 the claim is made had a reasonable basis for believing
26 occurred within the scope of commission employment, duties, or
27 responsibilities; provided that nothing herein shall be

1 construed to prohibit that person from retaining his or her
2 own counsel; and provided further, that the actual or alleged
3 act, error, or omission did not result from that person's
4 intentional or willful or wanton misconduct.

5 (3) The commission shall indemnify and hold harmless
6 any member, officer, executive director, employee, or
7 representative of the commission for the amount of any
8 settlement or judgment obtained against that person arising
9 out of any actual or alleged act, error, or omission that
10 occurred within the scope of commission employment, duties, or
11 responsibilities, or that the person had a reasonable basis
12 for believing occurred within the scope of commission
13 employment, duties, or responsibilities, provided that the
14 actual or alleged act, error, or omission did not result from
15 the intentional or willful or wanton misconduct of that
16 person.

17 Section 10. DATA SYSTEM

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

23 (b) Notwithstanding any other provision of state law
24 to the contrary, a member state shall submit a uniform data
25 set to the data system on all individuals to whom this compact
26 is applicable as required by the rules of the commission,
27 including:

- 1 (1) Identifying information;
- 2 (2) Licensure data;
- 3 (3) Adverse actions against a license or privilege
- 4 to practice;
- 5 (4) Non-confidential information related to
- 6 alternative program participation;
- 7 (5) Any denial of application for licensure, and the
- 8 reason or reasons for the denial;
- 9 (6) Current Significant investigative information;
- 10 and
- 11 (7) Other information that may facilitate the
- 12 administration of this compact, as determined by the rules of
- 13 the commission.

14 (c) Investigative information pertaining to a

15 licensee in any member state will only be available to other

16 member states.

17 (d) The commission shall promptly notify all member

18 states of any adverse action taken against a licensee or an

19 individual applying for a license. Adverse action information

20 pertaining to a licensee in any member state will be available

21 to any other member state.

22 (e) Member states contributing information to the

23 data system may designate information that may not be shared

24 with the public without the express permission of the

25 contributing state.

26 (f) Any information submitted to the data system

27 that is subsequently required to be expunged by the laws of

1 the member state contributing the information shall be removed
2 from the data system.

3 Section 11. RULEMAKING

4 (a) The commission shall adopt reasonable rules in
5 order to effectively and efficiently achieve the purpose of
6 the compact. Notwithstanding the foregoing, in the event the
7 commission exercises its rulemaking authority in a manner that
8 is beyond the scope of the purposes of the compact, or the
9 powers granted hereunder, then such an action by the
10 commission shall be invalid and have no force or effect.

11 (b) The commission shall exercise its rulemaking
12 powers pursuant to the criteria set forth in this section and
13 the rules adopted thereunder. Rules and amendments shall
14 become binding as of the date specified in each rule or
15 amendment.

16 (c) If a majority of the Legislatures of the member
17 states rejects a rule, by enactment of a statute or resolution
18 in the same manner used to adopt the compact within four years
19 of the date of adoption of the rule, then the rule shall have
20 no further force and effect in any member state.

21 (d) Rules or amendments to the rules shall be
22 adopted at a regular or special meeting of the commission.

23 (e) Prior to promulgation and adoption of a final
24 rule or rules by the commission, and at least 30 days in
25 advance of the meeting at which the rule will be considered
26 and voted upon, the commission shall file a notice of proposed
27 rulemaking:

1 (1) On the website of the commission or other
2 publicly accessible platform; and

3 (2) On the website of each member state professional
4 counseling licensing board or other publicly accessible
5 platform or the publication in which each state would
6 otherwise publish proposed rules.

7 (f) The notice of proposed rulemaking shall include:

8 (1) The proposed time, date, and location of the
9 meeting in which the rule will be considered and voted upon;

10 (2) The text of the proposed rule or amendment and
11 the reason for the proposed rule;

12 (3) A request for comments on the proposed rule from
13 any interested person; and

14 (4) The manner in which interested persons may
15 submit notice to the commission of their intention to attend
16 the public hearing and submit any written comments.

17 (g) Prior to adoption of a proposed rule, the
18 commission shall allow persons to submit written data, facts,
19 opinions, and arguments, which shall be made available to the
20 public.

21 (h) The commission shall grant an opportunity for a
22 public hearing before it adopts a rule or amendment if a
23 hearing is requested by:

24 (1) At least 25 persons;

25 (2) A state or federal governmental subdivision or
26 agency; or

27 (3) An association having at least 25 members.

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

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

11 (2) Hearings shall be conducted in a manner
12 providing each person who wishes to comment a fair and
13 reasonable opportunity to comment orally or in writing.

14 (3) All hearings will be recorded. A copy of the
15 recording will be made available on request.

16 (4) Nothing in this section shall be construed as
17 requiring a separate hearing on each rule. Rules may be
18 grouped for the convenience of the commission at hearings
19 required by this section.

20 (j) Following the scheduled hearing date, or by the
21 close of business on the scheduled hearing date if the hearing
22 was not held, the commission shall consider all written and
23 oral comments received.

24 (k) If no written notice of intent to attend the
25 public hearing by interested parties is received, the
26 commission may proceed with adoption of the proposed rule
27 without a public hearing.

1 (1) The commission shall, by majority vote of all
2 members, take final action on the proposed rule and shall
3 determine the effective date of the rule, if any, based on the
4 rulemaking record and the full text of the rule.

5 (m) Upon determination that an emergency exists, the
6 commission may consider and adopt an emergency rule without
7 prior notice, opportunity for comment, or hearing, provided
8 that the usual rulemaking procedures provided in the compact
9 and in this section shall be retroactively applied to the rule
10 as soon as reasonably possible, in no event later than 90 days
11 after the effective date of the rule. For the purposes of this
12 provision, an emergency rule is one that must be adopted
13 immediately in order to:

14 (1) Meet an imminent threat to public health,
15 safety, or welfare;

16 (2) Prevent a loss of commission or member state
17 funds;

18 (3) Meet a deadline for the adoption of an
19 administrative rule that is established by federal law or
20 rule; or

21 (4) Protect public health and safety.

22 (n) The commission or an authorized committee of the
23 commission may direct revisions to a previously adopted rule
24 or amendment for purposes of correcting typographical errors,
25 errors in format, errors in consistency, or grammatical
26 errors. Public notice of any revision shall be posted on the
27 website of the commission. The revision shall be subject to

1 challenge by any person for a period of 30 days after posting.
2 The revision may be challenged only on grounds that the
3 revision results in a material change to a rule. A challenge
4 shall be made in writing and delivered to the chair of the
5 commission prior to the end of the notice period. If no
6 challenge is made, the revision will take effect without
7 further action. If the revision is challenged, the revision
8 may not take effect without the approval of the commission.

9 Section 12. OVERSIGHT, DISPUTE RESOLUTION, AND
10 ENFORCEMENT

11 (a) Oversight.

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

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

23 (3) The commission shall be entitled to receive
24 service of process in any proceeding and shall have standing
25 to intervene in such a proceeding for all purposes. Failure to
26 provide service of process to the commission shall render a

1 judgment or order void as to the commission, this compact, or
2 adopted rules.

3 (b) Default, Technical Assistance, and Termination.

4 If the commission determines that a member state has
5 defaulted in the performance of its obligations or
6 responsibilities under this compact or the adopted rules, the
7 commission shall:

8 a. Provide written notice to the defaulting state
9 and other member states of the nature of the default, the
10 proposed means of curing the default, or any other action to
11 be taken by the commission; and

12 b. Provide remedial training and specific technical
13 assistance regarding the default.

14 (c) If a state in default fails to cure the default,
15 the defaulting state may be terminated from the compact upon
16 an affirmative vote of a majority of the member states, and
17 all rights, privileges, and benefits conferred by this compact
18 may be terminated on the effective date of termination. A cure
19 of the default does not relieve the offending state of
20 obligations or liabilities incurred during the period of
21 default.

22 (d) Termination of membership in the compact shall
23 be imposed only after all other means of securing compliance
24 have been exhausted. Notice of intent to suspend or terminate
25 shall be given by the commission to the Governor, the majority
26 and minority leaders of the defaulting state's Legislature,
27 and each of the member states.

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

6 (f) The commission shall not bear any costs related
7 to a state that is found to be in default or that has been
8 terminated from the compact, unless agreed upon in writing
9 between the commission and the defaulting state.

10 (g) The defaulting state may appeal the action of
11 the commission by petitioning the U.S. District Court for the
12 District of Columbia or the federal district where the
13 commission has its principal offices. The prevailing member
14 shall be awarded all costs of such litigation, including
15 reasonable attorney fees.

16 (h) Dispute Resolution.

17 (1) Upon request by a member state, the commission
18 shall attempt to resolve disputes related to the compact that
19 arise among member states and between member and non-member
20 states.

21 (2) The commission shall adopt a rule providing for
22 both mediation and binding dispute resolution for disputes as
23 appropriate.

24 (i) Enforcement.

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

1 (2) By majority vote, the commission may initiate
2 legal action in the U.S. District Court for the District of
3 Columbia or the federal district where the commission has its
4 principal offices against a member state in default to enforce
5 compliance with the provisions of the compact and its adopted
6 rules and bylaws. The relief sought may include both
7 injunctive relief and damages. In the event judicial
8 enforcement is necessary, the prevailing member shall be
9 awarded all costs of litigation, including reasonable attorney
10 fees.

11 (3) The remedies herein shall not be the exclusive
12 remedies of the commission. The commission may pursue any
13 other remedies available under federal or state law.

14 Section 13. DATE OF IMPLEMENTATION OF THE COUNSELING
15 COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND
16 AMENDMENT

17 (a) The compact shall come into effect on the date
18 on which the compact statute is enacted into law in the tenth
19 member state. The provisions which become effective at that
20 time shall be limited to the powers granted to the commission
21 relating to assembly and the adoption of rules. Thereafter,
22 the commission shall meet and exercise rulemaking powers
23 necessary to the implementation and administration of the
24 compact.

25 (b) Any state that joins the compact subsequent to
26 the commission's initial adoption of the rules shall be
27 subject to the rules as they exist on the date on which the

1 compact becomes law in that state. Any rule that has been
2 previously adopted by the commission shall have the full force
3 and effect of law on the day the compact becomes law in that
4 state.

5 (c) Any member state may withdraw from this compact
6 by enacting a statute repealing the same.

7 (1) A member state's withdrawal shall not take
8 effect until six months after enactment of the repealing
9 statute.

10 (2) Withdrawal shall not affect the continuing
11 requirement of the withdrawing state's professional counseling
12 licensing board to comply with the investigative and adverse
13 action reporting requirements of this act prior to the
14 effective date of withdrawal.

15 (d) Nothing contained in this compact shall be
16 construed to invalidate or prevent any professional counseling
17 licensure agreement or other cooperative arrangement between a
18 member state and a non-member state that does not conflict
19 with this compact.

20 (e) This compact may be amended by the member
21 states. No amendment to this compact shall become effective
22 and binding upon any member state until it is enacted into the
23 laws of all member states.

24 Section 14. CONSTRUCTION AND SEVERABILITY

25 This compact shall be liberally construed so as to
26 effectuate the purposes thereof. The provisions of this
27 compact shall be severable, and if any phrase, clause,

1 sentence, or provision of this compact is declared to be
2 contrary to the constitution of any member state or of the
3 United States or the applicability thereof to any government,
4 agency, person, or circumstance is held invalid, the validity
5 of the remainder of this compact and the applicability thereof
6 to any government, agency, person, or circumstance shall not
7 be affected thereby. If this compact shall be held contrary to
8 the constitution of any member state, the compact shall remain
9 in full force and effect as to the remaining member states and
10 in full force and effect as to the member state affected as to
11 all severable matters.

12 Section 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

13 (a) A licensee providing professional counseling
14 services in a remote state under the privilege to practice
15 shall adhere to the laws and regulations, including scope of
16 practice, of the remote state.

17 (b) Nothing herein prevents the enforcement of any
18 other law of a member state that is not inconsistent with the
19 compact.

20 (c) Any laws in a member state in conflict with the
21 compact are superseded to the extent of the conflict.

22 (d) Any lawful actions of the commission, including
23 all rules and bylaws properly adopted by the commission, are
24 binding upon the member states.

25 (e) All permissible agreements between the
26 commission and the member states are binding in accordance
27 with their terms.

1 (f) In the event any provision of the compact
2 exceeds the constitutional limits imposed on the Legislature
3 of any member state, the provision shall be ineffective to the
4 extent of the conflict with the constitutional provision in
5 question in that member state.

6 Section 16. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.