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SENATE BILL 98

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Antonio Maestas

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE COUNSELING
COMPACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] COUNSELING COMPACT ENTERED
INTO.--The Counseling Compact is entered into law and entered
into with all other jurisdictions legally joining therein in a
form substantially as follows:

"Counseling Compact

SECTION 1 -- PURPOSE

The purpose of this compact is to facilitate the
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

1 counseling services. The compact preserves the regulatory
2 authority of states to protect public health and safety through
3 the current system of state licensure.

4 This compact is designed to achieve the following
5 objectives:

6 A. increase public access to professional
7 counseling services by providing for the mutual recognition of
8 other member state licenses;

9 B. enhance the states' ability to protect the
10 public's health and safety;

11 C. encourage the cooperation of member states in
12 regulating multistate practice for licensed professional
13 counselors;

14 D. support spouses of relocating active duty
15 military personnel;

16 E. enhance the exchange of licensure, investigative
17 and disciplinary information among member states;

18 F. allow for the use of telehealth technology to
19 facilitate increased access to professional counseling
20 services;

21 G. support the uniformity of professional
22 counseling licensure requirements throughout the states to
23 promote public safety and public health benefits;

24 H. invest all member states with the authority to
25 hold a licensed professional counselor accountable for meeting

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1 all state practice laws in the state in which the client is
2 located at the time care is rendered through the mutual
3 recognition of member state licenses;

4 I. eliminate the necessity for licenses in multiple
5 states; and

6 J. provide opportunities for interstate practice by
7 licensed professional counselors who meet uniform licensure
8 requirements.

9 SECTION 2 -- DEFINITIONS

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

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

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

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1 C. "alternative program" means a non-disciplinary
2 monitoring or practice remediation process approved by a
3 licensing board to address impaired practitioners;

4 D. "continuing competence or education" means a
5 requirement, as a condition of license renewal, to provide
6 evidence of participation in, or completion of, educational and
7 professional activities relevant to practice or area of work;

8 E. "counseling compact commission" or "commission"
9 means the national administrative body whose membership
10 consists of all states that have enacted the compact;

11 F. "current significant investigative information"
12 means:

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

19 (2) investigative information that indicates
20 that the licensed professional counselor represents an
21 immediate threat to public health and safety regardless of
22 whether the licensed professional counselor has been notified
23 and had an opportunity to respond;

24 G. "data system" means a repository of information
25 about licensees, including continuing education, examination,

1 licensure, investigative, privilege to practice and adverse
2 action information;

3 H. "encumbered license" means a license in which an
4 adverse action restricts the practice of licensed professional
5 counseling by the licensee and the adverse action has been
6 reported to the national practitioner data bank;

7 I. "encumbrance" means a revocation or suspension
8 of, or any limitation on, the full and unrestricted practice of
9 licensed professional counseling by a licensing board;

10 J. "executive committee" means a group of directors
11 elected or appointed to act on behalf of, and within the powers
12 granted to them by, the commission;

13 K. "home state" means the member state that is the
14 licensee's primary state of residence;

15 L. "impaired practitioner" means an individual who
16 has a condition that may impair the person's ability to
17 practice as a licensed professional counselor without some type
18 of intervention and may include alcohol or drug dependence,
19 mental health impairment or neurological or physical
20 impairments;

21 M. "investigative information" means information,
22 records or documents received or generated by a licensing board
23 pursuant to an investigation;

24 N. "jurisprudence requirement", if required by a
25 member state, means the assessment of an individual's knowledge

1 of the laws and rules governing the practice of professional
2 counseling in a state;

3 O. "licensed professional counselor" means a
4 counselor licensed by a member state, regardless of the title
5 used by that state, to independently assess, diagnose and treat
6 behavioral health conditions;

7 P. "licensee" means an individual who currently
8 holds an authorization from the state to practice as a licensed
9 professional counselor;

10 Q. "licensing board" means the agency of a state,
11 or equivalent, that is responsible for the licensing and
12 regulation of licensed professional counselors;

13 R. "member state" means a state that has enacted
14 the compact;

15 S. "privilege to practice" means a legal
16 authorization, which is equivalent to a license, permitting the
17 practice of professional counseling in a remote state;

18 T. "professional counseling" means the assessment,
19 diagnosis and treatment of behavioral health conditions by a
20 licensed professional counselor;

21 U. "remote state" means a member state other than
22 the home state, where a licensee is exercising or seeking to
23 exercise the privilege to practice;

24 V. "rule" means a regulation promulgated by the
25 commission that has the force of law;

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1 W. "single state license" means a licensed
2 professional counselor license issued by a member state that
3 authorizes practice only within the issuing state and does not
4 include a privilege to practice in any other member state;

5 X. "state" means any state, commonwealth, district,
6 or territory of the United States that regulates the practice
7 of professional counseling;

8 Y. "telehealth" means the application of
9 telecommunication technology to deliver professional counseling
10 services remotely to assess, diagnose and treat behavioral
11 health conditions; and

12 Z. "unencumbered license" means a license that
13 authorizes a licensed professional counselor to engage in the
14 full and unrestricted practice of professional counseling.

15 SECTION 3 -- STATE PARTICIPATION IN THE COMPACT

16 A. To participate in the compact, a state must
17 currently:

18 (1) license and regulate licensed professional
19 counselors;

20 (2) require licensees to pass a nationally
21 recognized exam approved by the commission; and

22 (3) require licensees to have a sixty
23 semester-hour or ninety quarter-hour master's degree in
24 counseling or sixty semester-hours or ninety quarter-hours of
25 graduate course work, including the following topic areas:

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- 1 (a) professional counseling orientation
2 and ethical practice;
3 (b) social and cultural diversity;
4 (c) human growth and development;
5 (d) career development;
6 (e) counseling and helping
7 relationships;
8 (f) group counseling and group work;
9 (g) diagnosis and treatment; assessment
10 and testing;
11 (h) research and program evaluation; and
12 (i) other areas as determined by the
13 commission;
- 14 (4) require licensees to complete a supervised
15 postgraduate professional experience as defined by the
16 commission; and
- 17 (5) have a mechanism in place for receiving
18 and investigating complaints about licensees.
- 19 B. A member state shall:
- 20 (1) participate fully in the commission's data
21 system, including using the commission's unique identifier as
22 defined in rules;
- 23 (2) notify the commission, in compliance with
24 the terms of the compact and rules, of any adverse action or
25 the availability of investigative information regarding a

1 licensee;

2 (3) implement or utilize procedures for
3 considering the criminal history records of applicants for an
4 initial privilege to practice, including the submission of
5 fingerprints or other biometric-based information by applicants
6 for the purpose of obtaining an applicant's criminal history
7 record information from the federal bureau of investigation and
8 the agency responsible for retaining that state's criminal
9 records, including:

10 (a) a criminal background check
11 requirement, within a time frame established by rule, by
12 receiving the results of the federal bureau of investigation
13 record search and shall use the results in making licensure
14 decisions; and

15 (b) a requirement that communication
16 between a member state, the commission and among member states
17 regarding the verification of eligibility for licensure through
18 the compact shall not include any information received from the
19 federal bureau of investigation relating to a federal criminal
20 records check performed by a member state under Public Law
21 92-544;

22 (4) comply with the rules of the commission;

23 (5) require an applicant to obtain or retain a
24 license in the home state and meet the home state's
25 qualifications for licensure or renewal of licensure, as well

1 as all other applicable state laws;

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

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

8 C. Member states may charge a fee for granting the
9 privilege to practice.

10 D. Individuals not residing in a member state shall
11 continue to be able to apply for a member state's single state
12 license as provided under the laws of each member state.
13 However, the single state license granted to these individuals
14 shall not be recognized as granting a privilege to practice
15 professional counseling in any other member state.

16 E. Nothing in this compact shall affect the
17 requirements established by a member state for the issuance of
18 a single state license.

19 F. A license issued to a licensed professional
20 counselor by a home state to a resident in that state shall be
21 recognized by each member state as authorizing a licensed
22 professional counselor to practice professional counseling,
23 under a privilege to practice, in each member state.

24 SECTION 4 -- PRIVILEGE TO PRACTICE

25 A. To exercise the privilege to practice under the

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1 terms and provisions of the compact, the licensee shall:

2 (1) hold a license in the home state;

3 (2) have a valid United States social security
4 number or national practitioner identifier;

5 (3) be eligible for a privilege to practice in
6 any member state in accordance with Subsections D, G and H of
7 this section;

8 (4) have not had any encumbrance or
9 restriction against any license or privilege to practice within
10 the previous two years;

11 (5) notify the commission that the licensee is
12 seeking the privilege to practice within a remote state;

13 (6) pay any applicable fees, including any
14 state fee, for the privilege to practice;

15 (7) meet any continuing competence or
16 education requirements established by the home state;

17 (8) meet any jurisprudence requirements
18 established by the remote state in which the licensee is
19 seeking a privilege to practice; and

20 (9) report to the commission any adverse
21 action, encumbrance or restriction on license taken by any
22 nonmember state within thirty days from the date the action is
23 taken.

24 B. The privilege to practice is valid until the
25 expiration date of the home state license. The licensee must

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1 comply with the requirements of Subsection A of this section to
2 maintain the privilege to practice in the remote state.

3 C. A licensee providing professional counseling in
4 a remote state under the privilege to practice shall adhere to
5 the laws and regulations of the remote state.

6 D. A licensee providing professional counseling
7 services in a remote state is subject to that state's
8 regulatory authority. A remote state may, in accordance with
9 due process and that state's laws, remove a licensee's
10 privilege to practice in the remote state for a specific period
11 of time, impose fines or take any other necessary actions to
12 protect the health and safety of its citizens. The licensee
13 may be ineligible for a privilege to practice in any member
14 state until the specific time for removal has passed and all
15 fines are paid.

16 E. If a home state license is encumbered, the
17 licensee shall lose the privilege to practice in any remote
18 state until the following occur:

19 (1) the home state license is no longer
20 encumbered; and

21 (2) the licensee has not had any encumbrance
22 or restriction against any license or privilege to practice
23 within the previous two years.

24 F. Once an encumbered license in the home state is
25 restored to good standing, the licensee shall meet the

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1 requirements of Subsection A of this section in order to obtain
2 a privilege to practice in any remote state.

3 G. If a licensee's privilege to practice in any
4 remote state is removed, the individual may lose the privilege
5 to practice in all other remote states until the following
6 occur:

7 (1) the specific period of time for which the
8 privilege to practice was removed has ended;

9 (2) all fines have been paid; and

10 (3) the licensee has not had any encumbrance
11 or restriction against any license or privilege to practice
12 within the previous two years.

13 H. Once the requirements of Subsection G of this
14 section have been met, the licensee shall meet the requirements
15 in Subsection A of this section in order to obtain a privilege
16 to practice in a remote state.

17 SECTION 5 -- OBTAINING A NEW HOME STATE LICENSE BASED ON A
18 PRIVILEGE TO PRACTICE

19 A. A licensed professional counselor may hold a
20 home state license, which allows for a privilege to practice in
21 other member states, in only one member state at a time.

22 B. If a licensed professional counselor's primary
23 state of residence changes due to moving between two member
24 states:

25 (1) the licensed professional counselor shall

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1 file an application for obtaining a new home state license
2 based on a privilege to practice; pay all applicable fees; and
3 notify the current and new home state in accordance with
4 applicable rules adopted by the commission;

5 (2) upon receipt of an application for
6 obtaining a new home state license by virtue of a privilege to
7 practice, the new home state shall verify that the licensed
8 professional counselor meets the pertinent criteria outlined in
9 Section 4 of this compact via the data system, without need for
10 primary source verification except for:

11 (a) a federal bureau of investigation
12 fingerprint-based criminal background check if not previously
13 performed or updated pursuant to applicable rules adopted by
14 the commission in accordance with Public Law 92-544;

15 (b) other criminal background checks as
16 required by the new home state; and

17 (c) completion of any requisite
18 jurisprudence requirements of the new home state;

19 (3) the former home state shall convert the
20 former home state license into a privilege to practice once the
21 new home state has activated the new home state license in
22 accordance with applicable rules adopted by the commission;

23 (4) notwithstanding any other provision of
24 this compact, if the licensed professional counselor cannot
25 meet the criteria established in Section 4 of this compact, the

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1 new home state may apply its requirements for issuing a new
2 single state license; and

3 (5) the licensed professional counselor shall
4 pay all applicable fees to the new home state in order to be
5 issued a new home state license.

6 C. If a licensed professional counselor changes
7 primary state of residence by moving from a member state to a
8 nonmember state, or from a nonmember state to a member state,
9 the state criteria shall apply for issuance of a single state
10 license in the new state.

11 D. Nothing in this compact shall interfere with a
12 licensee's ability to hold a single state license in multiple
13 states, however for the purposes of this compact, a licensee
14 shall have only one home state license.

15 E. Nothing in this compact shall affect the
16 requirements established by a member state for the issuance of
17 a single state license.

18 SECTION 6 -- ACTIVE DUTY MILITARY MEMBERS OR THEIR SPOUSES

19 An active duty military member, or the member's spouse,
20 shall designate a home state where the member or member's
21 spouse has a current license in good standing. The member or
22 member's spouse may retain the home state designation during
23 the period the member is on active duty. Subsequent to
24 designating a home state, the member or member's spouse shall
25 only change the member's or member's spouse's home state

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1 through application for licensure in the new state, or through
2 the process outlined in Section 5 of this compact.

3 SECTION 7 -- COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

4 A. Member states shall recognize the right of a
5 licensed professional counselor, licensed by a home state in
6 accordance with Section 3 of this compact and under rules
7 promulgated by the commission, to practice professional
8 counseling in any member state via telehealth under a privilege
9 to practice as provided in the compact and rules promulgated by
10 the commission.

11 B. A licensee providing professional counseling
12 services in a remote state under the privilege to practice
13 shall adhere to the laws and regulations of the remote state.

14 SECTION 8 -- ADVERSE ACTIONS

15 A. In addition to the other powers conferred by
16 state law:

17 (1) a remote state shall have the authority,
18 in accordance with existing state due process law, to take
19 adverse action against a licensed professional counselor's
20 privilege to practice within that member state;

21 (2) a remote state shall have the authority,
22 in accordance with existing state due process law, to issue
23 subpoenas for both hearings and investigations that require the
24 attendance and testimony of witnesses as well as the production
25 of evidence. Subpoenas issued by a licensing board in a member

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1 state for the attendance and testimony of witnesses or the
2 production of evidence from another member state shall be
3 enforced in the latter state by any court of competent
4 jurisdiction, according to the practice and procedure of that
5 court applicable to subpoenas issued in proceedings pending
6 before it. The issuing authority shall pay any witness fees,
7 travel expenses, mileage and other fees required by the service
8 statutes of the state in which the witnesses or evidence is
9 located; and

10 (3) the home state shall have the sole power
11 to take adverse action against a licensed professional
12 counselor's license issued by the home state.

13 B. For purposes of taking adverse action, the home
14 state shall give the same priority and effect to reported
15 conduct received from a member state as it would if the conduct
16 had occurred within the home state. In so doing, the home
17 state shall apply its own state laws to determine appropriate
18 action.

19 C. The home state shall complete any pending
20 investigations of a licensed professional counselor who changes
21 the primary state of residence during the course of the
22 investigations. The home state shall also have the authority
23 to take appropriate action and shall promptly report the
24 conclusions of the investigations to the administrator of the
25 data system. The administrator of the coordinated licensure

1 information system shall promptly notify the new home state of
2 any adverse actions.

3 D. A member state, if otherwise permitted by state
4 law, may recover from the affected licensed professional
5 counselor the costs of investigations and dispositions of cases
6 resulting from any adverse action taken against that licensed
7 professional counselor.

8 E. A member state may take adverse action based on
9 the factual findings of the remote state; provided that the
10 member state follows its own procedures for taking the adverse
11 action.

12 F. Joint investigations shall be conducted as
13 follows:

14 (1) in addition to the authority granted to a
15 member state by its respective professional counseling practice
16 act or other applicable state law, any member state may
17 participate with other member states in joint investigations of
18 licensees; and

19 (2) member states shall share any
20 investigative, litigation or compliance materials in
21 furtherance of any joint or individual investigation initiated
22 under the compact.

23 G. If adverse action is taken by the home state
24 against the license of a licensed professional counselor, the
25 licensed professional counselor's privilege to practice in all

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

8 H. If a member state takes adverse action, it shall
9 promptly notify the administrator of the data system. The
10 administrator of the data system shall promptly notify the home
11 state of any adverse actions by remote states.

12 I. Nothing in this compact shall override a member
13 state's decision that participation in an alternative program
14 may be used in lieu of adverse action.

15 SECTION 9 -- ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

16 A. The compact member states shall create and
17 establish a joint public agency known as the "counseling
18 compact commission" as follows:

19 (1) the counseling compact commission shall be
20 an instrumentality of the compact states;

21 (2) venue is proper and judicial proceedings
22 by or against the commission shall be brought solely and
23 exclusively in a court of competent jurisdiction where the
24 principal office of the commission is located. The counseling
25 compact commission may waive venue and jurisdictional defenses

1 to the extent it adopts or consents to participate in
2 alternative dispute resolution proceedings; and

3 (3) nothing in this compact shall be construed
4 to be a waiver of sovereign immunity.

5 B. Membership, voting and meetings shall be
6 conducted as follows:

7 (1) each member state shall have one delegate
8 selected by that member state's licensing board;

9 (2) a delegate shall:

10 (a) be a current member of the licensing
11 board at the time of appointment, who is a licensed
12 professional counselor or public member; or

13 (b) an administrator of the licensing
14 board;

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

18 (4) a vacancy occurring on the commission
19 shall be filled by the member state licensing board within
20 sixty days;

21 (5) a delegate shall be entitled to one vote
22 with regard to the promulgation of rules and creation of bylaws
23 and have an opportunity to participate in the business and
24 affairs of the commission;

25 (6) a delegate shall vote in person or by

1 other means as provided in the bylaws, including participation
2 in meetings by telephone or other means of communication;

3 (7) the commission shall meet at least once
4 during each calendar year, with additional meetings to be held
5 as set forth in the bylaws; and

6 (8) the commission shall by rule establish a
7 term of office for delegates and may by rule establish term
8 limits.

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

11 (1) establish the fiscal year of the
12 commission;

13 (2) establish bylaws;

14 (3) maintain its financial records in
15 accordance with the bylaws;

16 (4) meet and take such actions as are
17 consistent with the provisions of this compact and the bylaws;

18 (5) promulgate rules, which shall be binding
19 to the extent and in the manner provided for in the compact;

20 (6) bring and prosecute legal proceedings or
21 actions in the name of the commission; provided that the
22 standing of any licensing board to sue or be sued under
23 applicable law shall not be affected;

24 (7) purchase and maintain insurance and bonds;

25 (8) borrow, accept or contract for services of

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1 personnel, including employees of a member state;

2 (9) hire employees; elect or appoint officers;
3 fix compensation; define duties; grant such individuals
4 appropriate authority to carry out the purposes of the compact;
5 and establish the commission's personnel policies and programs
6 relating to conflicts of interest, qualifications of personnel
7 and other related personnel matters;

8 (10) accept any and all appropriate donations
9 and grants of money, equipment, supplies, materials and
10 services and receive, utilize and dispose of the same; provided
11 that at all times the commission shall avoid any appearance of
12 impropriety or conflict of interest;

13 (11) lease, purchase, accept appropriate gifts
14 or donations of, or otherwise own, hold, improve or use, any
15 property, real, personal or mixed; provided that at all times
16 the commission shall avoid any appearance of impropriety;

17 (12) sell, convey, mortgage, pledge, lease,
18 exchange, abandon or otherwise dispose of any property, real,
19 personal or mixed;

20 (13) establish a budget and make expenditures;

21 (14) borrow money;

22 (15) appoint committees, including standing
23 committees composed of members, state regulators, state
24 legislators or their representatives, consumer representatives
25 and other interested persons as designated in this compact and

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1 the bylaws;

2 (16) provide and receive information from, and
3 cooperate with, law enforcement agencies;

4 (17) establish and elect an executive
5 committee; and

6 (18) perform such other functions as necessary
7 or appropriate to achieve the purposes of this compact
8 consistent with the state regulation of professional counseling
9 licensure and practice.

10 D. The executive committee shall:

11 (1) have the power to act on behalf of the
12 commission according to the terms of this compact;

13 (2) be composed of up to eleven members,
14 including:

15 (a) an even number of voting members who
16 are elected by the commission from the current membership of
17 the commission;

18 (b) up to four ex-officio, nonvoting
19 members from four recognized national professional counselor
20 organizations; and

21 (c) ex-officio members shall be selected
22 by their respective organizations;

23 (3) the commission may remove a member of the
24 executive committee as provided in the bylaws;

25 (4) meet at least annually; and

1 (5) have the following duties and
2 responsibilities:

3 (a) recommend changes to the commission
4 regarding the rules or bylaws, changes to this compact
5 legislation, fees paid by compact member states such as annual
6 dues and any commission compact fee charged to licensees for
7 the privilege to practice;

8 (b) ensure compact administration
9 services are appropriately provided, contractual or otherwise;

10 (c) prepare and recommend the budget;

11 (d) maintain financial records on behalf
12 of the commission;

13 (e) monitor compact compliance of member
14 states and provide compliance reports to the commission;

15 (f) establish additional committees as
16 necessary; and

17 (g) perform additional duties as
18 provided in rules or bylaws.

19 E. Meetings of the commission, the executive
20 committee or other committees:

21 (1) shall be open to the public, and public
22 notice of meetings shall be given in the same manner as
23 required under the rulemaking provisions in Section 11 of this
24 compact; and

25 (2) may convene in a closed, nonpublic meeting

1 if any of the following matters will be discussed:

2 (a) the noncompliance of a member state
3 with its obligations under the compact;

4 (b) the employment, compensation,
5 discipline or other matters, practices or procedures related to
6 specific employees or other matters related to the commission's
7 internal personnel practices and procedures;

8 (c) current, threatened or reasonably
9 anticipated litigation;

10 (d) negotiation of contracts for the
11 purchase, lease or sale of goods, services or real estate;

12 (e) accusations of a crime or formal
13 censure of a person;

14 (f) disclosure of trade secrets or
15 commercial or financial information that is privileged or
16 confidential;

17 (g) disclosure of information of a
18 personal nature where disclosure would constitute a clearly
19 unwarranted invasion of personal privacy;

20 (h) disclosure of investigative records
21 compiled for law enforcement purposes;

22 (i) disclosure of information related to
23 any investigative reports prepared by or on behalf of or for
24 use of the commission or other committee charged with
25 responsibility of investigation or determination of compliance

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1 issues pursuant to the compact; or

2 (j) matters specifically exempted from
3 disclosure by federal or member state statute;

4 (3) if fully or partially closed pursuant to
5 Paragraph (2) of this subsection, the commission's legal
6 counsel or designee shall reference each relevant exempting
7 provision and certify that the meeting may be closed; and

8 (4) shall be memorialized with minutes that
9 fully and clearly describe all matters discussed in a meeting
10 and provide a full and accurate summary of action taken and
11 reasons for taking action, including a description of the views
12 expressed; and identify all documents considered in connection
13 with an action taken; provided that all minutes and documents
14 of a closed meeting shall remain under seal, subject to release
15 by a majority vote of the commission or order of a court of
16 competent jurisdiction.

17 F. Financing of the commission shall be carried out
18 as follows:

19 (1) the commission shall pay, or provide for
20 the payment of, the reasonable expenses of its establishment,
21 organization and ongoing activities;

22 (2) the commission may accept any and all
23 appropriate revenue sources, donations and grants of money,
24 equipment, supplies, materials and services;

25 (3) the commission may levy on and collect an

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1 annual assessment from each member state or impose fees on
2 other parties to cover the cost of the operations and
3 activities of the commission and its staff, in an amount
4 sufficient to cover its annual budget as approved each year for
5 which revenue is not provided by other sources. The aggregate
6 annual assessment amount shall be allocated based upon a
7 formula to be determined by the commission by rule, which shall
8 be binding upon all member states;

9 (4) the commission shall not incur obligations
10 prior to securing the funds adequate to meet the obligations or
11 pledge the credit of any of the member states, absent the
12 authority of the member state; and

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

22 G. Qualified immunity, defense and indemnification
23 shall apply as follows:

24 (1) the members, officers, executive director,
25 employees and representatives of the commission shall be immune

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1 from suit and liability, either personally or in their official
2 capacity, for any claim for damage to or loss of property or
3 personal injury or other civil liability caused by or arising
4 out of any actual or alleged act, error or omission that
5 occurred, or that the person against whom the claim is made had
6 a reasonable basis for believing occurred within the scope of
7 commission employment, duties or responsibilities; provided
8 that nothing in this paragraph shall be construed to protect
9 any such person from suit or liability for any damage, loss,
10 injury or liability caused by the intentional or willful or
11 wanton misconduct of that person;

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

25 (3) the commission shall indemnify and hold

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

11 SECTION 10 -- DATA SYSTEM

12 A. The commission shall provide for the
13 development, maintenance, operation and utilization of a
14 coordinated database and reporting system containing licensure,
15 adverse action and investigative information on all licensees
16 in member states.

17 B. Unless prohibited by state law, a member state
18 shall submit a uniform data set to the data system on all
19 individuals to whom this compact is applicable as required by
20 the rules of the commission, including:

- 21 (1) identifying information;
22 (2) licensure data;
23 (3) adverse actions against a license or
24 privilege to practice;
25 (4) non-confidential information related to

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1 alternative program participation;

2 (5) any denial of application for licensure
3 and the reasons for such denial;

4 (6) current significant investigative
5 information; or

6 (7) other information that may facilitate the
7 administration of this compact, as determined by the rules of
8 the commission.

9 C. Investigative information pertaining to a
10 licensee in a member state is only available to other member
11 states.

12 D. The commission shall promptly notify all member
13 states of an adverse action taken against a licensee or an
14 individual applying for a license. Adverse action information
15 pertaining to a licensee in a member state is available to any
16 other member state.

17 E. Member states contributing information to the
18 data system may designate information that may not be shared
19 with the public without the express permission of the
20 contributing state.

21 F. Any information submitted to the data system
22 that is subsequently required to be expunged by the laws of the
23 member state contributing the information shall be removed from
24 the data system.

25 SECTION 11 -- RULEMAKING

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1 A. The commission shall promulgate reasonable rules
2 in order to effectively and efficiently achieve the purpose of
3 the compact. If the commission exercises its rulemaking
4 authority in a manner that is beyond the scope of the purposes
5 of the compact or the powers granted pursuant to the compact,
6 then such an action by the commission shall be invalid and have
7 no force or effect.

8 B. The commission shall exercise its rulemaking
9 powers pursuant to the criteria set forth in this section and
10 the rules adopted pursuant to the compact. Rules and
11 amendments shall become binding as of the date specified in
12 each rule or amendment.

13 C. If a majority of the legislatures of the member
14 states rejects a rule, by enactment of a statute or resolution
15 in the same manner used to adopt the compact within four years
16 of the date of adoption of the rule, then such rule shall have
17 no further force and effect in any member state.

18 D. Rules or amendments to the rules shall be
19 adopted at a regular or special meeting of the commission.

20 E. Prior to promulgation and adoption of a final
21 rule by the commission, and at least thirty days in advance of
22 the meeting at which the rule will be considered and voted
23 upon, the commission shall file a notice of proposed
24 rulemaking:

25 (1) on the website of the commission or other

1 publicly accessible platform; and

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

6 F. The notice of proposed rulemaking shall include:

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

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

12 (3) a request for comments on the proposed
13 rule from 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 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 twenty-five persons;

25 (2) a state or federal governmental

1 subdivision or agency; or

2 (3) an association having at least twenty-five
3 members.

4 I. If a hearing is held on the proposed rule or
5 amendment, the commission shall publish the place, time and
6 date of the scheduled public hearing. If the hearing is held
7 via electronic means, the commission shall publish the
8 mechanism for access to the electronic hearing to ensure the
9 following:

10 (1) all persons wishing to be heard at the
11 hearing shall notify the executive director of the commission
12 or other designated member in writing of their desire to appear
13 and testify at the hearing not less than five business days
14 before the scheduled date of the hearing;

15 (2) hearings shall be conducted in a manner
16 providing each person who wishes to comment a fair and
17 reasonable opportunity to comment orally or in writing;

18 (3) all hearings will be recorded, and a copy
19 of the recording will be made available on request; and

20 (4) nothing in this section shall be construed
21 as requiring a separate hearing on each rule, and rules may be
22 grouped for the convenience of the commission at hearings
23 required by this section.

24 J. Following the scheduled hearing date, or by the
25 close of business on the scheduled hearing date if the hearing

1 was not held, the commission shall consider all written and
2 oral comments received.

3 K. If no written notice of intent to attend the
4 public hearing by interested parties is received, the
5 commission may proceed with promulgation of the proposed rule
6 without a public hearing.

7 L. The commission shall, by majority vote of all
8 members, take final action on the proposed rule and shall
9 determine the effective date of the rule, if any, based on the
10 rulemaking record and the full text of the rule.

11 M. Upon determination that an emergency exists, the
12 commission may consider and adopt an emergency rule without
13 prior notice, opportunity for comment or hearing; provided that
14 the usual rulemaking procedures provided in the compact and in
15 this section shall be retroactively applied to the rule as soon
16 as reasonably possible and later than ninety days after the
17 effective date of the rule. For the purposes of this
18 provision, an emergency rule is one that must be adopted
19 immediately in order to:

20 (1) meet an imminent threat to public health,
21 safety or welfare;

22 (2) prevent a loss of commission or member
23 state funds;

24 (3) meet a deadline for the promulgation of an
25 administrative rule that is established by federal law or rule;

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1 or

2 (4) protect public health and safety.

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

17 SECTION 12 -- COMPACT OVERSIGHT, DISPUTE RESOLUTION AND
18 ENFORCEMENT

19 A. Compact oversight shall be carried out as
20 follows:

21 (1) the executive, legislative and judicial
22 branches of state government in each member state shall enforce
23 this compact and take all necessary and appropriate actions
24 necessary to effectuate the compact's purposes and intent. The
25 provisions of this compact and the rules promulgated hereunder

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1 shall have standing as statutory law;

2 (2) all courts shall take judicial notice of
3 the compact and the rules in any judicial or administrative
4 proceeding that may affect the powers, responsibilities or
5 actions of the commission in a member state pertaining to the
6 subject matter of this compact; and

7 (3) the commission shall be entitled to
8 receive service of process in such proceedings and shall have
9 standing to intervene in such a proceeding for all purposes.
10 Failure to provide service of process to the commission shall
11 render a judgment or order void as to the commission, this
12 compact or promulgated rules.

13 B. Default, technical assistance and member state
14 termination shall be managed as follows:

15 (1) if the commission determines that a member
16 state has defaulted in the performance of its obligations or
17 responsibilities under this compact or the promulgated rules,
18 the commission shall provide:

19 (a) written notice to the defaulting
20 member state and other member states of the nature of the
21 default, the proposed means of curing the default or any other
22 action to be taken by the commission; and

23 (b) remedial training and specific
24 technical assistance regarding the default.

25 C. If a member state is in default of the compact

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

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

14 E. A state that has been terminated from the
15 compact is responsible for all assessments, obligations and
16 liabilities incurred through the effective date of termination,
17 including obligations that extend beyond the effective date of
18 termination.

19 F. The commission shall not bear any costs related
20 to a state that is found to be in default or that has been
21 terminated from the compact, unless agreed upon in writing
22 between the commission and the defaulting state.

23 G. The defaulting state may appeal the action of
24 the commission by petitioning the United States district court
25 for the District of Columbia or the federal district where the

1 commission has its principal offices. The prevailing party
2 shall be awarded all costs of such litigation, including
3 reasonable attorney fees.

4 H. Dispute resolution shall be conducted as
5 follows:

6 (1) upon request by a member state, the
7 commission shall attempt to resolve disputes related to the
8 compact that arise among member states and between member and
9 nonmember states; and

10 (2) the commission shall promulgate a rule
11 providing for both mediation and binding dispute resolution for
12 disputes as appropriate.

13 I. Enforcement shall be carried out as follows:

14 (1) the commission, in the reasonable exercise
15 of its discretion, shall enforce the provisions and rules of
16 this compact;

17 (2) by majority vote, the commission may
18 initiate legal action in the United States district court for
19 the District of Columbia or the federal district where the
20 commission has its principal offices against a member state in
21 default to enforce compliance with the provisions of the
22 compact and its promulgated rules and bylaws. The relief
23 sought may include both injunctive relief and damages. In the
24 event judicial enforcement is necessary, the prevailing party
25 shall be awarded all costs of such litigation, including

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1 reasonable attorney fees; and

2 (3) the remedies in this subsection shall not
3 be the exclusive remedies of the commission, and the commission
4 may pursue any other remedies available under federal or state
5 law.

6 SECTION 13 -- DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT
7 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL AND AMENDMENT

8 A. The compact shall come into effect on the date
9 on which the compact statute is enacted into law by the tenth
10 member state. The provisions, which become effective at that
11 time, shall be limited to the powers granted to the commission
12 relating to assembly and the promulgation of rules.

13 Thereafter, the commission shall meet and exercise rulemaking
14 powers necessary for the implementation and administration of
15 the compact.

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

22 C. To withdraw from this compact, a member state
23 shall enact a statute repealing this statute, and withdrawal:

24 (1) shall take effect six months after the
25 enactment of the repealing statute; and

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1 (2) shall not affect the continuing
2 requirement of the withdrawing state's licensing board to
3 comply with the investigative and adverse action reporting
4 requirements of the compact prior to the effective date of
5 withdrawal.

6 D. Nothing contained in this compact shall be
7 construed to invalidate or prevent any professional counseling
8 licensure agreement or other cooperative arrangement between a
9 member state and a nonmember state that does not conflict with
10 the provisions of this compact.

11 E. This compact may be amended by the member
12 states. The amendment shall become effective and binding upon
13 a member state when it is enacted into the laws of all member
14 states.

15 SECTION 14 -- CONSTRUCTION AND SEVERABILITY

16 This compact shall be liberally construed to effectuate
17 its purposes. The provisions of this compact shall be
18 severable, and if any part of this compact is declared to be
19 contrary to the constitution of any member state or of the
20 United States or its applicability to any government, agency,
21 person or circumstance is held invalid, the validity of the
22 remainder of this compact and its applicability to any
23 government, agency, person or circumstance shall not be
24 affected. If this compact is held contrary to the constitution
25 of any member state, the compact shall remain in full force and

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1 effect as to the remaining member states and in full force and
2 effect as to the member state affected as to all severable
3 matters.

4 SECTION 15 -- BINDING EFFECT OF COMPACT AND OTHER LAWS

5 A. A licensee providing professional counseling
6 services in a remote state under the privilege to practice
7 shall adhere to the laws and regulations, including scope of
8 practice, of the remote state.

9 B. Nothing in this compact prevents the enforcement
10 of any other law of a member state that is consistent with the
11 compact.

12 C. Any laws in a member state in conflict with the
13 compact are superseded to the extent of the conflict.

14 D. Any lawful actions of the commission, including
15 all rules and bylaws properly promulgated by the commission,
16 are binding upon the member states.

17 E. All permissible agreements between the
18 commission and the member states are binding in accordance with
19 their terms.

20 F. In the event any provision of the compact
21 exceeds the constitutional limits imposed on the legislature of
22 any member state, the provision shall be ineffective to the
23 extent of the conflict with the constitutional provision in
24 question in that member state."