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

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 218

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE INTERSTATE MASSAGE COMPACT.

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

Section 1. Amend Chapter 53, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Interstate Massage Compact

§ 5330. Short title.

This Act is known as the "Interstate Massage Compact Act".

§ 5331. Title and purpose.

(a) The purpose of this Compact is to reduce the burdens on state governments and to facilitate the interstate practice and regulation of massage therapy with the goal of improving public access to, and the safety of, massage therapy services. Through this Compact, the member states seek to establish a regulatory framework that provides for a new multistate licensing program. Through this additional licensing pathway, the member states seek to provide increased value and mobility to licensed massage therapists in the member states, while ensuring safe, competent, and reliable services are provided to the public.

(b) This Compact is designed to achieve all of the following objectives, and the member states ratify the same intentions by subscribing to this Compact:

(1) Increase public access to massage therapy services by providing for a multistate licensing pathway.

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

(3) Enhance the member states' ability to prevent human trafficking and licensure fraud.

(4) Encourage the cooperation of member states in regulating the multistate practice of massage therapy.

(5) Support relocating military members and their spouses.

(6) Facilitate and enhance the exchange of licensure, investigative, and disciplinary information between the member states.

(7) Create an Interstate Commission that exists to implement and administer this Compact.

(8) Allow a member state to hold a licensee accountable, even if that licensee holds a multistate license.

(9) Create a streamlined pathway for licensees to practice in member states, thus increasing the mobility of duly licensed massage therapists.

(10) Serve the needs of licensed massage therapists and the public receiving their services.

(c) Nothing in this Compact is intended to prevent a state from enforcing its own laws regarding the practice of massage therapy.

§ 5332. Definitions.

As used in this Compact:

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

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a member state's laws that is imposed by a licensing authority or other regulatory body against a licensee. "Adverse action" includes actions against an individual's authorization to practice, such as revocation, suspension, probation, surrender in lieu of discipline, monitoring of the licensee, limitation of the licensee's practice, or any other encumbrance on licensure affecting an individual's ability to practice massage therapy, including the issuance of a cease and desist order.

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

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

(5) "Background check" means the submission of an applicant's criminal history record information, as further defined in 28 C.F.R. § 20.3(d), as amended, from the Federal Bureau of Investigation and the agency responsible for retaining state criminal records in the applicant's home state.

(6) "Charter member states" means member states that have enacted legislation to adopt this Compact before the effective date of this Compact as defined in § 5342 of this title.

(7) "Commission" means the government agency whose membership consists of all states that have enacted this Compact, which is known as the Interstate Massage Compact Commission as defined in § 5338 of this title, and which operates as an instrumentality of the member states.

(8) “Continuing competence” means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational or professional activities that maintain, improve, or enhance massage therapy fitness to practice.

(9) “Current significant investigative information” means investigative information that a licensing authority, after an inquiry or investigation that complies with a member state’s due process requirements, has reason to believe is not groundless and, if proved true, would indicate a violation of that state’s laws regarding the practice of massage therapy.

(10) “Data system” means a repository of information about licensees who hold multistate licenses, including license status, investigative information, and adverse actions.

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

(12) “Encumbrance” means a revocation or suspension of, or any limitation or condition on, the full and unrestricted practice of massage therapy by a licensing authority.

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

(14) “Home state” means the member state that is a licensee’s primary state of residence and where the licensee holds an active single-state license.

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

(16) “Licensing authority” means a state’s regulatory body responsible for issuing massage therapy licenses or otherwise overseeing the practice of massage therapy in that state.

(17) “Licensee” means an individual who currently holds a license from a member state to fully practice massage therapy, and whose license is not a student, provisional, temporary, inactive, or other similar status license.

(18) “Massage therapy”, “massage therapy services”, and the “practice of massage therapy” mean the care and services provided by a licensee as set forth in the member state’s statutes and regulations in the state where the services are being provided.

(19) “Member state” means a state that has adopted this Compact.

(20) “Multistate license” means a license that consists of authorizations to practice massage therapy in all remote states under this Compact, which is subject to the enforcement jurisdiction of the licensing authority in a licensee’s home state.

(21) "National licensing examination" means a national examination developed by a national association of massage therapy regulatory boards, as defined by Commission rule, that is derived from a practice analysis and is consistent with generally accepted psychometric principles of fairness, validity, and reliability, and is administered under secure and confidential examination protocols.

(22) "Remote state" means any member state, other than the licensee's home state.

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

(24) "Single-state license" means a current, valid authorization issued by a member state's licensing authority that allows an individual to fully practice massage therapy; is not a restricted, student, provisional, temporary, or inactive practice authorization; and authorizes practice only within the issuing state.

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

§ 5333. Member state requirements.

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

(1) License and regulate the practice of massage therapy.

(2) Have a mechanism or entity in place to receive and investigate complaints from the public, regulatory or law enforcement agencies, or the Commission about licensees practicing in that state.

(3) Accept passage of a national licensing examination as a criterion for massage therapy licensure in that state.

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

(5) Implement procedures for requiring the background check of applicants for a multistate license and for the reporting of any disqualifying events, including all of the following:

a. Obtaining and submitting, for each licensee holding a multistate license and each applicant for a multistate license, fingerprint or other biometric-based information to the Federal Bureau of Investigation for background checks.

b. Receiving the results of the Federal Bureau of Investigation record search on background checks.

c. Considering the results of a background check in making licensure decisions.

(6) Have continuing competence requirements as a condition for license renewal.

(7) Participate in the data system, including using unique identifiers as described in § 5339 of this title.

(8) Notify the Commission and other member states, in compliance with the terms of this Compact and the rules, of any adverse action taken by the state against a licensee practicing under a multistate license in that state, or of the existence of investigative information or current significant investigative information regarding a licensee practicing in that state pursuant to a multistate license.

(9) Comply with the rules.

(10) Accept licensees with valid multistate licenses from other member states as established in § 5334 of this title.

(b) Individuals not residing in a member state continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to those individuals does not grant a multistate license for massage therapy in any other member state.

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

(d) A multistate license issued to a licensee must be recognized by each remote state as an authorization to practice massage therapy in each remote state.

§ 5334. Multistate license requirements.

(a) To qualify for a multistate license under this Compact, and to maintain eligibility for a multistate license, an applicant must do all of the following:

(1) Hold an active single-state license to practice massage therapy in the applicant's home state.

(2) Have completed at least 625 clock hours of massage therapy education or the substantial equivalent which the Commission may approve by rule.

(3) Have passed a national licensing examination or the substantial equivalent which the Commission may approve by rule.

(4) Submit to a background check.

(5) Have not been convicted, found guilty, or entered into an agreed disposition of a felony offense under applicable state or federal criminal law within 5 years prior to the date of their application, where the 5-year period does not include any time served for the offense, and provided that the applicant has completed all requirements arising as a result of any felony offense.

(6) Have not been convicted, found guilty, or entered into an agreed disposition of a misdemeanor offense related to the practice of massage therapy under applicable state or federal criminal law, within 2 years prior to the date

of their application, where the 2-year period does not include any time served for the offense, and provided that the applicant has completed all requirements arising as a result of any misdemeanor offense.

(7) Have not been convicted, found guilty, or entered into an agreed disposition of any offense, whether a misdemeanor or a felony, under state or federal law, at any time, relating to any of the following:

a. Kidnapping.

b. Human trafficking.

c. Human smuggling.

d. Sexual battery, sexual assault, or any related offenses.

e. Any other category of offense that the Commission may by rule designate.

(8) Have not previously held a massage therapy license that was revoked by, or surrendered in lieu of discipline to, an applicable licensing authority.

(9) Have no history of any adverse action on any occupational or professional license within 2 years prior to the date of their application.

(10) Pay all required fees.

(b) A multistate license granted under this Compact may be effective for a definite period concurrent with the renewal of the home state license.

(c) A licensee practicing in a member state is subject to all scope of practice laws governing massage therapy services in that member state.

(d) The practice of massage therapy under a multistate license granted under this Compact subjects the licensee to the jurisdiction of the licensing authority, the courts, and the laws of the member state in which the massage therapy services are provided.

§ 5335. Authority of the Interstate Massage Compact Commission and member state licensing authorities.

(a) Nothing in this Compact, or any rule, may be construed to limit, restrict, or in any way reduce the ability of a member state to enact and enforce laws, regulations, or other rules related to the practice of massage therapy in that member state, which are not inconsistent with the provisions of this Compact.

(b) Nothing in this Compact, or any rule, may be construed to limit, restrict, or in any way reduce the ability of a member state to take adverse action against a licensee's single-state license to practice massage therapy in that member state.

(c) Nothing in this Compact, or any rule, may be construed to limit, restrict, or in any way reduce the ability of a remote state to take adverse action against a licensee's authorization to practice in that remote state.

(d) Nothing in this Compact, or any rule, may be construed to limit, restrict, or in any way reduce the ability of a licensee's home state state to take adverse action against a licensee's multistate license based on information provided by a remote state.

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

§ 5336. Adverse actions.

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

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

(c) A home state retains authority to complete any pending investigation of a licensee practicing under a multistate license who changes their home state during the course of the investigation. The licensing authority may also report the results of an investigation to the Commission through the data system as described in § 5339 of this title.

(d) A member state may investigate actual or alleged violations of the scope of practice laws in any other member state for a licensee who holds a multistate license.

(e) A remote state has the authority to do all of the following:

(1) Take adverse action against a licensee's authorization to practice.

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

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

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

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

(f) If a home state takes adverse action against a licensee's multistate license or single-state license to practice in the home state, the licensee's authorization to practice in all other member states is deactivated until all encumbrances have been removed from the license. All home state disciplinary orders that impose an adverse action against a licensee must include a statement that the massage therapist's authorization to practice is deactivated in all member states during the pendency of the order.

(g) If a remote state takes adverse action against a licensee's authorization to practice, that adverse action applies to all authorizations to practice in all remote states. A licensee whose authorization to practice in a remote state is removed for a specified period is not eligible to apply for a new multistate license in any other state until the specific time for removal of the authorization to practice has passed and all encumbrance requirements are satisfied.

(h) Nothing in this Compact overrides a member state's authority to accept a licensee's participation in an alternative program in lieu of adverse action. A licensee's multistate license is suspended for the duration of the licensee's participation in any alternative program.

(i) Joint investigations.

(1) In addition to the authority granted to a member state by its respective scope of practice laws or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

(2) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this Compact.

§ 5337. Active military members and their spouses.

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

§ 5338. Establishment and operation of the Interstate Massage Compact Commission.

(a) The member states hereby create and establish a joint government agency, known as the Interstate Massage Compact Commission, whose membership consists of all member states that have enacted this Compact. The Commission is an instrumentality of the member states acting jointly and not an instrumentality of any one state. The Commission shall come into existence on or after the effective date of this Compact as set forth in § 5342 of this title.

(b) Membership, voting, and meetings.

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

(2) The delegate must be the primary administrative officer of the member state's licensing authority or their designee.

(3) The Commission shall by rule or bylaw establish a term of office for delegates and may by rule or bylaw establish term limits.

(4) The Commission may recommend removal or suspension of any delegate from office.

(5) A member state's licensing authority shall fill any vacancy of its delegate on the Commission within 60 days of the vacancy.

(6) Each delegate is entitled to 1 vote on all matters that are voted on by the Commission.

(7) The Commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the Commission's bylaws. The Commission may meet by telecommunication, video conference, or other similar electronic means.

(c) The Commission has all of the following powers:

(1) Establish the fiscal year of the Commission.

(2) Establish code of conduct and conflict of interest policies.

(3) Adopt rules and bylaws.

(4) Maintain its financial records in accordance with the Commission's bylaws.

(5) Meet and take actions that are consistent with the provisions of this Compact, the rules, and the Commission's bylaws.

(6) Initiate and conclude legal proceedings or actions in the name of the Commission, provided that the standing of any licensing authority to sue or be sued under applicable law is not affected.

(7) Maintain and certify records and information provided to a member state as the Commission's authenticated business records and designate an agent to do so on the Commission's behalf.

(8) Purchase and maintain insurance and bonds.

(9) Borrow, accept, or contract for services of personnel, including employees of a member state.

(10) Conduct an annual financial review.

(11) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(12) Assess and collect fees.

(13) Accept any appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest.

(14) Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest in such property.

(15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed.

(16) Establish a budget and make expenditures.

(17) Borrow money.

(18) Appoint committees, including standing committees, composed of members, state regulators, state legislators or their representatives, consumer representatives, and other interested persons as may be designated in this Compact and the Commission's bylaws.

(19) Accept and transmit complaints from the public, regulatory or law enforcement agencies, or the Commission, to relevant member states regarding potential misconduct of licensees.

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

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

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

(23) Determine whether a state's adopted language is materially different from the model Compact language such that the state would not qualify for participation in this Compact.

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

(d) The Executive Committee.

(1) The Executive Committee has the power to act on behalf of the Commission according to the terms of this Compact. The powers, duties, and responsibilities of the Executive Committee include all of the following:

a. Overseeing the day-to-day activities of the administration of this Compact including compliance with the provisions of this Compact, the Commission's rules and bylaws, and other duties as deemed necessary.

b. Recommending to the Commission changes to the rules or the Commission's bylaws, changes to this Compact legislation, fees charged to member states, fees charged to licensees, and other fees.

c. Ensuring Compact administration services are appropriately provided, including by contract.

d. Preparing and recommending the budget.

e. Maintaining financial records on behalf of the Commission.

f. Monitoring Compact compliance of member states and providing compliance reports to the Commission.

g. Establishing additional committees as necessary.

h. Exercising the powers and duties of the Commission during the interim between Commission meetings, except for adopting or amending rules, adopting or amending the Commission's bylaws, and exercising any other powers and duties expressly reserved to the Commission by rule or bylaw.

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

(2) The Executive Committee is composed of 7 voting members and up to 2 ex-officio members as follows:

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

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

c. As necessary, the Commission may elect ex-officio, nonvoting members as follows:

1. One ex-officio member who is a representative of the national association of state massage therapy regulatory boards

2. One ex-officio member as specified in the Commission's bylaws.

(3) The Commission may remove any Executive Committee member as provided in the Commission's bylaws.

(4) The Executive Committee shall meet at least annually.

a. Executive Committee meetings must be open to the public, but the Executive Committee may meet in a closed, nonpublic session of a public meeting when dealing with any of the matters covered under paragraph (f)(4) of this section.

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

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

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

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

c. Protect public health and safety.

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

(f) Meetings of the Commission.

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

(2) Notwithstanding paragraph (f)(1) of this section, the Commission may convene an emergency public meeting by providing at least 24 hours prior notice on the Commission's website, and any other means as provided in the Commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under § 5340(*l*) of this title. The Commission's legal counsel shall certify that 1 of the reasons justifying an emergency public meeting has been met.

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

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

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

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

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

d. Current, threatened, or reasonably anticipated litigation.

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

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

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

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

i. Investigative records compiled for law-enforcement purposes.

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

k. Legal advice.

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

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

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

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

(g) Financing of the Commission.

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

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

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

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

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

(h) Qualified immunity, defense, and indemnification.

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

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

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

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

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

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

§ 5339. Data system.

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

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

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

(1) Identifying information.

(2) Licensure data.

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

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

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

(6) The existence of investigative information.

(7) The existence of current significant investigative information.

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

(d) When certified by the Commission or an agent of the Commission, the records and information provided to a member state under this Compact or through the data system constitute the authenticated business records of the Commission and are entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a member state.

(e) The existence of current significant investigative information and the existence of investigative information pertaining to a licensee in any member state is only available to other member states.

(f) It is the responsibility of the member states to report any adverse action against a licensee who holds a multistate license and to monitor the database to determine whether adverse action has been taken against a licensee or license applicant. Adverse action information pertaining to a licensee or license applicant in any member state is available to any other member state.

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

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

§ 5340. Rulemaking.

(a) The Commission shall promulgate reasonable rules to effectively and efficiently implement and administer the purposes and provisions of this Compact. A rule is invalid and has no force or effect only if a court of competent jurisdiction holds that the rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of this Compact, or the powers granted under this Compact, or based on another applicable standard of review.

(b) The rules have the force of law in each member state. But if a court of competent jurisdiction holds that the rules conflict with the laws of the member state that establish the member state's scope of practice, the rules are ineffective in that member state to the extent of the conflict.

(c) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules become binding as of the date specified by the Commission for each rule.

(d) If a majority of the legislatures of the member states rejects a rule or portion of a rule, by enactment of a statute or resolution in the same manner used to adopt this Compact within 4 years of the date of adoption of the rule, then the rule has no further force and effect in any member state or to any state applying to participate in this Compact.

(e) Rules must be adopted at a regular or special meeting of the Commission.

(f) Prior to adoption of a proposed rule, the Commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

(g) Prior to adoption of a proposed rule by the Commission, and at least 30 days in advance of the meeting at which the Commission will hold a public hearing on the proposed rule, the Commission shall provide a notice of proposed rulemaking as follows:

(1) On the Commission's website or other publicly accessible platform.

(2) To persons who have requested notice of the Commission's notices of proposed rulemaking.

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

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

(1) The time, date, and location of the public hearing at which the Commission will hear public comments on the proposed rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed rule.

(2) If the public hearing is held via telecommunication, video conference, or other electronic means, the mechanism for access to the public hearing.

(3) The text of the proposed rule and the reason for the proposed rule.

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

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

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

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

(k) The Commission shall, by majority vote of all members, take final action on the proposed rule based on the rulemaking record.

(1) The Commission may adopt changes to the proposed rule if the changes do not enlarge the original purpose of the proposed rule.

(2) The Commission shall provide an explanation of the reasons for substantive changes made to the proposed rule and the reasons for substantive changes not made that were recommended by commenters.

(3) The Commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in subsection (*l*) of this section, the effective date of the rule may not be sooner than 30 days after the Commission issues the notice that it adopted or amended the rule.

(*l*) On determination that an emergency exists, the Commission may consider and adopt an emergency rule with 24 hours' notice, if the usual rulemaking procedures provided in this Compact and in this section are retroactively applied to the rule as soon as reasonably possible, but not later than 90 days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately to do any of the following:

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

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

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

(4) Protect public health and safety.

(m) The Commission, or an authorized committee of the Commission, may direct revisions to a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the Commission's website. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a

material change to a rule. A challenge must be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, the revision may not take effect without the Commission's approval.

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

§ 5341. Oversight, dispute resolution, and enforcement.

(a) Oversight.

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

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

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

(b) Default, technical assistance, and termination.

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

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

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

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

the majority and minority leaders of the defaulting state's legislature, the defaulting state's licensing authority and each member states' licensing authority.

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

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

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

(h) The defaulting state may appeal the Commission's action by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees.

(i) Dispute resolution.

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

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

(j) Enforcement.

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

(2) By majority vote as provided by rule, the Commission may initiate legal action against a member state in default in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of this Compact and the rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees. The remedies in this paragraph(j)(2) are not the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or the defaulting member state's law.

(3) A member state may initiate legal action against the Commission in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of this Compact and the rules. The relief sought may include both injunctive relief and damages. If

judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees.

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

§ 5342. Effective date, withdrawal, and amendment.

(a)(1) This Compact comes into effect on the date on which the Compact statute is enacted into law in the seventh member state.

(2) On or after the effective date of this Compact, the Commission shall convene and review each charter member state's enactment of this Compact to determine if the statute enacted by each charter member state is materially different from the model Compact statute.

a. A charter member state whose enactment is found to be materially different from the model Compact statute is entitled to the default process set forth in § 5341 of this title.

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

(3) Member states enacting this Compact subsequent to the charter member states are subject to the process set forth in § 5338(c)(23) of this title to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in this Compact.

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

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

(b)(1) Any member state may withdraw from this Compact by enacting a statute repealing that state's enactment of this Compact.

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

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

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

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

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

§ 5343. Construction and severability.

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

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

(c) Notwithstanding subsection (b) of this section, the Commission may deny a state's participation in this Compact or, in accordance with the requirements of § 5341(b) of this title, terminate a member state's participation in this Compact, if it determines that a constitutional requirement of a member state is a material departure from this Compact. Otherwise, if this Compact is held to be contrary to the constitution of any member state, this Compact remains in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

§ 5344. Consistent effect and conflict with other state laws.

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

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

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

Section 2. This Act takes effect on the date of the publication in the Register of Regulations of a notice by the Secretary of State that the Interstate Massage Compact has been adopted by at least 7 states.

SYNOPSIS

This Act adopts the Interstate Massage Compact ("Compact"). The purpose of the Compact is to reduce the burdens on state governments and to facilitate and regulate the interstate practice of massage therapy by creating a framework for a multistate licensing program. The multistate licensing program provides increased value and mobility to licensed massage therapists, including military members and their spouses, and ensures safe, competent, and reliable massage therapy services are provided to the public.

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

The Compact is effective on the seventh state enacting legislation to join the Compact. As of January 23, 2026, 5 states have enacted legislation adopting the Compact and legislation is pending in 5 states. This Act takes effect on the date of publication in the Register of Regulations of a notice by the Secretary of State that the Compact has been adopted by at least 7 states.

Author: Senator Buckson