SPONSOR: Sen. Gay & Sen. Brown & Rep. Dorsey Walker
Sens. Bonini, Ennis, Hansen, Hocker, Lawson, Lockman, Lopez, Mantzavinos, S. McBride, Paradee, Pettyjohn, Pinkney, Poore, Richardson, Sokola, Sturgeon, Townsend, Walsh, Wilson; Reps. Briggs King, Osienski, Michael Smith

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

# SENATE BILL NO. 257

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO A MULTISTATE PROFESSIONAL COUNSELOR LICENSURE COMPACT.

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

Section 1. Amend Title 24 of the Delaware Code by creating a new Chapter 30A and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 30A. Multistate Professional Counselor Licensure Compact.

§ 3001A. Purpose.

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services. The practice of Professional Counseling occurs in the state where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This Compact is designed to achieve the following objectives:

(1) Increase public access to Professional Counseling services by providing for the mutual recognition of other Member state licenses;

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

(3) Encourage the cooperation of Member states in regulating multistate practice for Licensed Professional Counselors;

(4) Support spouses of relocating Active Duty Military personnel;

(5) Enhance the exchange of licensure, investigative, and disciplinary information among Member states;

(6) Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

(7) Support the uniformity of Professional Counseling licensure requirements throughout the states to promote public safety and public health benefits;

(8) Invest all Member states with the authority to hold a Licensed Professional Counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of Member state licenses;

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

(10) Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

§ 3002A. Definitions.

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

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

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

(3) "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.

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

(5) "Counseling Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.

(6) "Current Significant Investigative Information" means:

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

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

(7) “Data System” means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

(8) “Encumbered License” means a license in which an Adverse Action restricts the practice of licensed Professional Counseling by the Licensee and said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

(9) “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Licensed Professional Counseling by a Licensing Board.

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

(11) “Home state” means the Member state that is the Licensee’s primary state of residence.

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

(13) “Investigative Information” means information, records, and documents received or generated by a Professional Counseling Licensing Board pursuant to an investigation.

(14) “Jurisprudence Requirement” if required by a Member state, means the assessment of an individual’s knowledge of the laws and Rules governing the practice of Professional Counseling in a state.

(15) “Licensed Professional Counselor” means a counselor licensed by a Member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

(16) “Licensee” means an individual who currently holds an authorization from the state to practice as a Licensed Professional Counselor.

(17) “Licensing Board” means the agency of a state, or equivalent, that is responsible for the licensing and regulation of Licensed Professional Counselors.

(18) “Member state” means a state that has enacted the Compact.

(19) “Privilege to Practice” means a legal authorization, which is equivalent to a license, permitting the practice of Professional Counseling in a Remote state.

(20) “Professional Counseling” means the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor.

(21) “Remote State” means a Member state other than the Home state, where a Licensee is exercising or seeking to exercise the Privilege to Practice.

(22) “Rule” means a regulation promulgated by the Commission that has the force of law.

(23) “Single state License” means a Licensed Professional Counselor license issued by a Member state that authorizes practice only within the issuing state and does not include a Privilege to Practice in any other Member state.

(24) “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

(25) “Telehealth” means the application of telecommunication technology to deliver Professional Counseling services remotely to assess, diagnose, and treat behavioral health conditions.

(26) “Unencumbered License” means a license that authorizes a Licensed Professional Counselor to engage in the full and unrestricted practice of Professional Counseling.

§ 3003A. State participation in the Compact.

(a) To participate in the Compact, a state must currently:

(1) License and regulate Licensed Professional Counselors;

(2) Require Licensees to pass a nationally recognized exam approved by the Commission;

(3) Require Licensees to have a 60 semester-hour (or 90 quarter-hour) master’s degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the following topic areas:

a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

(4) Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

(5) Have a mechanism in place for receiving and investigating complaints about Licensees.

(b) A Member state shall:

(1) Participate fully in the Commission’s Data System, including using the Commission’s unique identifier as defined in Rules;

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

(3)a. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

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

c. Communication between a Member state, the Commission and among Member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member state under Public Law 92-544.

(4) Comply with the Rules of the Commission;

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

(6) Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member state in accordance with the terms of the Compact and Rules; and

(7) Provide for the attendance of the state's commissioner to the Counseling Compact Commission meetings.

(c) Member states may charge a fee for granting the Privilege to Practice.

(d) Individuals not residing in a Member state shall 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 these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member state.

(e) Nothing in this Compact shall affect the requirements established by a Member state for the issuance of a Single State License.

(f) A license issued to a Licensed Professional Counselor by a Home state to a resident in that state shall be recognized by each Member state as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member state.

§ 3004A. Privilege to Practice.

(a) To exercise the Privilege to Practice under the terms and provisions of the Compact, the Licensee shall:

(1) Hold a license in the Home state;

(2) Have a valid United States Social Security Number or National Practitioner Identifier;

(3) Be eligible for a Privilege to Practice in any Member state in accordance with subsections (d), (g), and (h) of this section;

(4) Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous 2 years;

(5) Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote state;

(6) Pay any applicable fees, including any state fee, for the Privilege to Practice;

(7) Meet any Continuing Competence/Education requirements established by the Home state;

(8) Meet any Jurisprudence Requirements established by the Remote state in which the Licensee is seeking a Privilege to Practice; and

(9) Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member state within 30 days from the date the action is taken.

(b) The Privilege to Practice is valid until the expiration date of the Home state license. The Licensee must comply with the requirements of subsection (a) of this section to maintain the Privilege to Practice in the Remote state.

(c) A Licensee providing Professional Counseling in a Remote state under the Privilege to Practice shall adhere to the laws and regulations of the Remote state.

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

(e) If a Home state license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote state until the following occur:

(1) The Home state license is no longer encumbered; and

(2) Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous 2 years.

(f) Once an Encumbered License in the Home state is restored to good standing, the Licensee must meet the requirements of subsection (a) of this section to obtain a Privilege to Practice in any Remote state.

(g) If a Licensee's Privilege to Practice in any Remote state is removed, the individual may lose the Privilege to Practice in all other Remote states until the following occur:

(1) The specific period of time for which the Privilege to Practice was removed has ended;

(2) All fines have been paid; and

(3) Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous 2 years.

(h) Once the requirements of subsection (g) of this section have been met, the Licensee must meet the requirements in subsection (a) of this section to obtain a Privilege to Practice in a Remote state.

§ 3005A. Obtaining a new Home state license based on a Privilege to Practice.

(a) A Licensed Professional Counselor may hold a Home state license, which allows for a Privilege to Practice in other Member states, in only one Member state at a time.

(b) If a Licensed Professional Counselor changes Primary state of Residence by moving between 2 Member states:

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

(2) Upon receipt of an application for obtaining a new Home state license by virtue of a Privilege to Practice, the new Home state shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in § 3004A of this title via the Data System, without need for primary source verification except for:

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

b. Other criminal background check as required by the new Home state; and

c. Completion of any requisite Jurisprudence Requirements of the new Home state.

(3) The former Home state shall convert the former Home state license into a Privilege to Practice once the new Home state has activated the new Home state license in accordance with applicable Rules adopted by the Commission.

(4) Notwithstanding any other provision of this Compact, if the Licensed Professional Counselor cannot meet the criteria in § 3004A of this title, the new Home state may apply its requirements for issuing a new Single state License.

(5) The Licensed Professional Counselor shall pay all applicable fees to the new Home state in order to be issued a new Home state license.

(c) If a Licensed Professional Counselor changes Primary state of Residence by moving from a Member state to a non-Member state, or from a non-Member state to a Member state, the state criteria shall apply for issuance of a Single state License in the new state.

(d) Nothing in this Compact shall interfere with a Licensee's ability to hold a Single state License in multiple states, however for the purposes of this Compact, a Licensee shall have only one Home state license.

(e) Nothing in this Compact shall affect the requirements established by a Member state for the issuance of a Single state License.

§ 3006A. Active Duty Military personnel or their spouses.

Active Duty Military personnel, or their spouse, shall designate a Home state where the individual has a current license in good standing. The individual may retain the Home state designation during the period the service member is on active duty. Subsequent to designating a Home state, the individual shall only change their Home state through application for licensure in the new state, or through the process outlined in § 3005A of this title.

§ 3007A. Compact Privilege to Practice Telehealth.

(a) Member states shall recognize the right of a Licensed Professional Counselor, licensed by a Home state in accordance with § 3003A of this title and under Rules promulgated by the Commission, to practice Professional Counseling in any Member state via Telehealth under a Privilege to Practice as provided in the Compact and Rules promulgated by the Commission.

(b) A Licensee providing Professional Counseling services in a Remote state under the Privilege to Practice shall adhere to the laws and regulations of the Remote state.

§ 3008A. Adverse Actions.

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

(1) Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice within that Member state, and

(2) 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 Board in a Member state for the attendance and testimony of witnesses or the production of evidence from another Member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable

to subpoenas issued in proceedings pending before it. The issuing 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.

(3) Only the Home state shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home state.

(b) For purposes of taking Adverse Action, the Home state shall give the same priority and effect to reported conduct received from a Member state as it would if the conduct had occurred within the Home state. In so doing, the Home state shall apply its own state laws to determine appropriate action.

(c) The Home state shall complete any pending investigations of a Licensed Professional Counselor who changes primary state of residence during the course of the investigations. The Home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home state of any Adverse Actions.

(d) A Member state, if otherwise permitted by state law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

(e) A Member state may take Adverse Action based on the factual findings of the Remote state, provided that the Member state follows its own procedures for taking the Adverse Action.

(f)(1) Joint investigations. In addition to the authority granted to a Member state by its respective Professional Counseling practice act or other applicable state law, any 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 the Compact.

(g) If Adverse Action is taken by the Home state against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member states shall be deactivated until all Encumbrances have been removed from the state license. All Home state disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member states during the pendency of the order.

(h) If a Member state takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home state of any Adverse Actions by Remote states.

(i) Nothing in this Compact shall override a Member state's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

§ 3009A. Establishment of Counseling Compact Commission.

(a) The Compact Member states hereby create and establish a joint public agency known as the Counseling Compact Commission:

(1) The Commission is an instrumentality of the Compact states.

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

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

(b)(1) Membership, Voting, and Meetings. Each Member state shall have and be limited to 1 delegate selected by that Member state's Licensing Board.

(2) The delegate shall be either:

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

b. An administrator of the Licensing Board.

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

(4) The Member state Licensing Board shall fill any vacancy occurring on the Commission within 60 days.

(5) Each delegate shall be entitled to 1 vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

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

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

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

(c) The Commission shall have the following powers and duties:

(1) Establish the fiscal year of the Commission;

(2) Establish bylaws;

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

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

(5) Promulgate Rules which shall be binding to the extent and in the manner provided for in the Compact;

(6) Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state Licensing Board to sue or be sued under applicable law shall not be affected;

(7) Purchase and maintain insurance and bonds;

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

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

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

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

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

(13) Establish a budget and make expenditures;

(14) Borrow money;

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

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

(17) Establish and elect an Executive Committee; and

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

(d)(1) The Executive Committee. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

(2) The Executive Committee shall be composed of up to 11 members:

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

b. Up to 4 ex-officio, nonvoting members from 4 recognized national professional counselor organizations.

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

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

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

(5) The Executive Committee shall have the following duties and responsibilities:

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

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

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

(e)(1) Meetings of the Commission. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in § 3011A of this title.

(2) The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Non-compliance of a Member state with its obligations under the 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, threatened, or reasonably anticipated litigation;

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

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

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

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

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

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

j. Matters specifically exempted from disclosure by federal or Member state statute.

(3) If a meeting, or portion of a meeting, is closed pursuant to paragraph (e)(2) of this section, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(4) 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 therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(f)(1) Financing of the Commission. 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 and all appropriate revenue sources, 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 or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member states.

(4) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member states, except by and with the authority of the Member state.

(5) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or

licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(g)(1) Qualified Immunity, Defense, and Indemnification. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or 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; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The Commission shall defend any member, officer, executive director, employee or 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 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; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

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

§ 3010A. Data system.

(a) The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member states.

(b) 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 of the Commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Adverse Actions against a license or Privilege to Practice;

(4) Non-confidential information related to Alternative Program participation;

(5) Any denial of application for licensure, and the reason for such denial;

(6) Current Significant Investigative Information; and

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

(c) Investigative Information pertaining to a Licensee in any Member state will only be available to other Member states.

(d) The Commission shall promptly notify all Member states of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member state will be available to any other Member state.

(e) 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 state.

(f) Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member state contributing the information shall be removed from the Data System.

§ 3011A. Rulemaking.

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

(b) The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

(c) If a majority of the legislatures of the Member states rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member state.

(d) Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

(e) Prior to promulgation and adoption of a final Rule by the Commission, and at least 30 days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

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

(2) On the website of each Member state Professional Counseling Licensing Board or other publicly accessible platform or the publication in which each state would otherwise publish proposed Rules.

(f) The Notice of Proposed Rulemaking shall include:

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

(2) The text of the proposed Rule or amendment and the reason for the proposed Rule;

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

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

(g) Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(h) The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

(1) At least 25 persons;

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

(3) An association having at least 25 members.

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

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

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

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

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

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

(k) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

(*l*) The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

(m) Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than 90 days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

(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 an administrative Rule that is established by federal law or Rule; or

(4) Protect public health and safety.

(n) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be 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 shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

§ 3012A. Oversight, dispute resolution, and enforcement.

(a)(1) Oversight. The executive, legislative, and judicial branches of state government in each Member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

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

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

(b) Default, technical assistance, and termination. 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:

(1) Provide written notice to the defaulting state and other Member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

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

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

(d) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the Member states.

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

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

(h)(1) Dispute resolution. Upon request by a Member state, the Commission shall attempt to resolve disputes related to the Compact that arise among Member states and between member and non-Member states.

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

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

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

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

§ 3013A. Date of implementation of the Counseling Compact Commission and associated rules, withdrawal, and amendment.

(a) The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

(b) Any state that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that state. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

(c)(1) Any Member state may withdraw from this Compact by enacting a statute repealing the same.

(2) A Member state's withdrawal shall not take effect until 6 months after enactment of the repealing statute.

(3) Withdrawal shall not affect the continuing requirement of the withdrawing state's Professional Counseling Licensing Board to comply with the investigative and Adverse Action reporting requirements of this Act prior to the effective date of withdrawal.

(d) Nothing contained in this Compact shall be construed to invalidate or prevent any Professional Counseling licensure agreement or other cooperative arrangement between a Member state and a non-Member state that does not conflict with the provisions of this Compact.

(e) This Compact may be amended by the Member states. No amendment to this Compact shall become effective and binding upon any Member state until it is enacted into the laws of all Member states.

§ 3014A. Construction and severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member state or of the United States or the applicability thereof to any government, agency, person or

circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member state, the Compact shall remain 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.

§ 3015A. Binding effect of Compact and other laws.

(a) A Licensee providing Professional Counseling services in a Remote state under the Privilege to Practice shall adhere to the laws and regulations, including scope of practice, of the Remote state.

(b) Nothing herein prevents the enforcement of any other law of a Member state that is not inconsistent with the Compact.

(c) Any laws in a Member state in conflict with the Compact are superseded to the extent of the conflict.

(d) Any lawful actions of the Commission, including all Rules and bylaws properly promulgated by the Commission, are binding upon the Member states.

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

(f) In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member state.

Section 2. This Act takes effect upon the enactment of the Multistate Professional Counselor Licensure Compact by the tenth state. The Secretary of State shall provide notice published in the Register of Regulations that the Multistate Professional Counselor Licensure Compact has been adopted by 10 states.

SYNOPSIS

This Act is an interstate compact called the Multistate Professional Counselor Licensure Compact, and it facilitates the interstate practice of licensed professional counseling. The Counseling Compact allows a counselor who is licensed in their home state and has not had any encumbrances on their license within the last 2 years to obtain the ability to practice counseling in other states participating in the Compact if the counselor satisfies the requirements, including completion of a criminal background check. A counselor must comply with the rules of any state in which they are practicing. Any state in which the counselor practices has the authority to remove the counselor's ability to practice in their state for a specific period of time, impose fines, and take other actions necessary to protect the health and safety of its citizens. If the counselor's home state license becomes encumbered, the counselor will lose the ability to practice interstate under the Compact until their home state license is no longer encumbered and at least 2 years have passed.

Additionally, the Compact establishes protections, including data sharing requirements between participating states to enhance the exchange of licensure, investigative, and disciplinary information among participating states. The Compact establishes a commission to administer the Compact, and establishes that each participating state will have one delegate that serves on the Commission. The Compact also has a special provision to make it easier for active duty military personnel or their spouses who are counselors to practice counseling despite frequent moves.

Counselors do not have to participate in the Compact to practice; counselors may choose to only apply for their state's license or to apply for licenses in other states without going through the Compact.

The Counseling Compact must be enacted in 10 states to become effective. As of March 26, 2022, the Counseling Compact has been enacted in 6 states. The Compact is pending in 16 other states.

Author: Senator Gay