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. 216
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO A RESPIRATORY CARE INTERSTATE COMPACT.

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

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

Chapter 17C. Respiratory Care Interstate Compact.

§ 1701C. Title and purpose.

(a) The purpose of this Compact is to facilitate the interstate practice of respiratory therapy with the goal of improving public access to respiratory therapy services by providing respiratory therapists licensed in a member state the ability to practice in other member states. This Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

(b) This Compact is designed to achieve all the following objectives:

(1) Increase public access to respiratory therapy services by creating a responsible, streamlined pathway for licensees to practice in member states with the goal of improving outcomes for patients.

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

(3) Promote the cooperation of member states in regulating the practice of respiratory therapy within those member states.

(4) Ease administrative burdens on states by encouraging the cooperation of member states in regulating multi-state respiratory therapy practice.

(5) Support relocating active military members and their spouses.

(6) Promote mobility and address workforce shortages.

§ 1702C. Definitions.

As used in this Compact:

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DLS : HVW : CBM : 5081530220

(1) "Active military member" means any individual with a 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 state's laws which is imposed by any state authority with regulatory authority over respiratory therapists, such as license denial, censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice, not including participation in an alternative program.

(3)a. "Alternative program" means a non-disciplinary monitoring or practice remediation process applicable to a respiratory therapist approved by any state authority with regulatory authority over respiratory therapists.

b. "Alternative program" includes programs to which licensees with substance abuse or addiction issues are referred in lieu of adverse action.

(4) "Charter member states" means those member states who were the first 7 states to enact this Compact into the laws of their state.

(5) "Commission" or "Respiratory Care Interstate Compact Commission" means the government instrumentality and body politic whose membership consists of all member states that have enacted this Compact.

(6) "Commissioner" means the individual appointed by a member state to serve as the member of the Commission for that member state.

(7) "Compact" means the Respiratory Care Interstate Compact.

(8) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a respiratory therapist in the remote state under the remote state's laws and rules. The practice of respiratory therapy occurs in the member state where the patient is located at the time of the patient encounter.

(9) "Criminal background check" means the submission by the member state of fingerprints or other biometric-based information on license applicants at the time of initial licensing for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d) or successor provision, from the Federal Bureau of Investigation and the state's criminal history record repository, as defined in 28 C.F.R. § 20.3(f) or successor provision.

(10) "Data System" means the Commission's repository of information about licensees as further set forth in § 1708C of this title.

(11) "Domicile" means the jurisdiction which is the licensee's principal home for legal purposes.

(12) “Encumbered license” means a license that a state’s respiratory therapy licensing authority has limited in any way.

(13) “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.

(14) “Home state” except as set forth in § 1705C of this title, means the member state that is the licensee’s primary domicile.

(15) “Home state license” means an active license to practice respiratory therapy in a home state that is not an encumbered license.

(16) “Jurisprudence requirement” means an assessment of an individual’s knowledge of the state laws and regulations governing the practice of respiratory therapy in such state.

(17) “Licensee” means an individual who currently holds an authorization from the state to practice as a respiratory therapist.

(18) “Member state” means a state that has enacted this Compact and been admitted to the Commission in accordance with the provisions herein and Commission rules.

(19) “Model Compact” means the model for the Respiratory Care Interstate Compact on file with the Council of State Governments or other entity as designated by the Commission.

(20) “Remote state” means a member state where a licensee is exercising or seeking to exercise the compact privilege.

(21) “Respiratory therapist” or “respiratory care practitioner” means an individual who holds a credential issued by the National Board for Respiratory Care (or its successor) and holds a license in a state to practice respiratory therapy. For purposes of this Compact, any other title or status adopted by a state to replace the term “respiratory therapist” or “respiratory care practitioner” are deemed synonymous with “respiratory therapist” and confer the same rights and responsibilities to the licensee under the provisions of this Compact at the time of its enactment.

(22) “Respiratory therapy,” “respiratory therapy practice,” “respiratory care,” “the practice of respiratory care,” and “the practice of respiratory therapy” means the care and services provided by or under the direction and supervision of a respiratory therapist or respiratory care practitioner.

(23) “Respiratory therapy licensing authority” means the agency, board, or other body of a state that is responsible for licensing and regulation of respiratory therapists.

(24) “Rule” means a regulation promulgated by an entity that has the force and effect of law.

(25) "Scope of practice" means the procedures, actions, and processes a respiratory therapist licensed in a state or practicing under a compact privilege in a state is permitted to undertake in that state and the circumstances under which the respiratory therapist is permitted to undertake those procedures, actions, and processes. Such procedures, actions, and processes, and the circumstances under which they may be undertaken may be established through means, including statute, regulations, case law, and other processes available to the state respiratory therapy licensing authority or other government agency.

(26) "Significant investigative information" means information, records, and documents received or generated by a state respiratory therapy licensing authority pursuant to an investigation for which a determination has been made that there is probable cause to believe that the licensee has violated a statute or regulation that is considered more than a minor infraction for which the state respiratory therapy licensing authority could pursue adverse action against the licensee.

(27) "State" means any state, commonwealth, district, or territory of the United States.

§ 1703C. State participation in this Compact.

(a) In order to participate in this Compact and thereafter continue as a member state, a member state shall do all of the following:

(1) Enact a compact that is not materially different from the model compact.

(2) License respiratory therapists.

(3) Participate in the Commission's data system.

(4) Have a mechanism in place for receiving and investigating complaints against licensees and compact privilege holders.

(5) Notify the Commission, in compliance with the terms of this Compact and Commission rules, of any adverse action against a licensee, a compact privilege holder, or a license applicant.

(6) Notify the Commission, in compliance with the terms of this Compact and Commission rules, of the existence of significant investigative information.

(7) Comply with the rules of the Commission.

(8) Grant the compact privilege to a holder of an active home state license and otherwise meet the applicable requirements of § 1704C of this title in a member state.

(9) Complete a criminal background check for each new licensee at the time of initial licensure.

(b) Where expressly authorized or permitted by federal law, whether that federal law is in effect before, at, or after the time of a member state's enactment of this Compact, a member state's enactment of this Compact hereby authorizes the

member state's respiratory therapy licensing authority to perform criminal background checks as defined herein. The absence of such a federal law as described in this subsection does not prevent or preclude the authorization where it may be derived or granted through means other than the enactment of this Compact.

(c) Nothing in this Compact prohibits a member state from charging a fee for granting and renewing the compact privilege.

§ 1704C. Compact privilege.

(a) To exercise the compact privilege under the terms and provisions of this Compact, the licensee shall do all of the following:

(1) Hold and maintain an active home state license as a respiratory therapist.

(2) Hold and maintain an active credential from the National Board for Respiratory Care (or its successor) that would qualify them for licensure in the remote state in which they are seeking the privilege.

(3) Have not had any adverse action against a license within the previous 2 years.

(4) Notify the Commission that the licensee is seeking the compact privilege within a remote state.

(5) Pay any applicable fees, including any state and Commission fees and renewal fees, for the compact privilege.

(6) Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege.

(7) Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

(8) Report to the Commission, when applying for a compact privilege, the address of the licensee's domicile and thereafter promptly report to the Commission any change in the address of the licensee's domicile within 30 days of the effective date of the change in address.

(9) Consent to accept service of process by mail at the licensee's domicile on record with the Commission with respect to any action brought against the licensee by the Commission or a member state, and consent to accept service of a subpoena by mail at the licensee's domicile on record with the Commission with respect to any action brought or investigation conducted by the Commission or a member state.

(b) The compact privilege is valid until the expiration date or revocation of the home state license unless terminated pursuant to adverse action. The licensee must comply with all of the requirements of subsection (a) of this section to maintain the compact privilege in a remote state. If those requirements are met, no adverse actions are taken, and

the licensee has paid any applicable compact privilege renewal fees, then the licensee will maintain the licensee's compact privilege.

(c) A licensee providing respiratory therapy in a remote state under the compact privilege shall function within the scope of practice authorized by the remote state for the type of respiratory therapist license the licensee holds. The procedures, actions, processes, and the circumstances under which they may be undertaken may be established through means including statute, regulations, case law, and other processes available to the state respiratory therapy licensing authority or other government agency.

(d) If a licensee's compact privilege in a remote state is removed by the remote state, the individual loses or is ineligible for the compact privilege in that remote state until the compact privilege is no longer limited or restricted by that state.

(e) If a home state license is encumbered, the licensee loses the compact privilege in all remote states until all of the following occur:

(1) The home state license is no longer encumbered due to an adverse action.

(2) Two years have elapsed from the date on which the license is no longer encumbered due to the adverse action.

(f) Once a licensee with a restricted or limited license meets the requirements of paragraphs (e)(1) and (e)(2) of this section, the licensee must also meet the requirements of subsection (a) of this section to obtain a compact privilege in a remote state.

§ 1705C. Active military member or their spouse.

(a) An active military member, 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.

(b) An active military member and their spouse must not be required to pay to the Commission for a compact privilege any fee that may otherwise be charged by the Commission. If a remote state chooses to charge a fee for a compact privilege, it may choose to charge a reduced fee or no fee to an active military member and their spouse for a compact privilege.

§ 1706C. Adverse actions.

(a) A member state in which a licensee is licensed has authority to impose adverse action against the license issued by that member state.

(b) A member state may take adverse action based on significant investigative information of a remote state or the home state, so long as the member state follows its own procedures for imposing adverse action.

(c) Nothing in this Compact overrides a member state's decision that participation in an alternative program may be used in lieu of adverse action and that the participation must remain non-public if required by the member state's laws.

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

(1) Take adverse actions as set forth herein against a licensee's compact privilege in that state.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence as follows:

a. Subpoenas may be issued by a respiratory therapy licensing authority in a member state for the attendance and testimony of witnesses and the production of evidence.

b. Subpoenas issued by a respiratory therapy licensing authority in a member state for the attendance and testimony of witnesses must be enforced in the latter state by any court of competent jurisdiction in the latter state, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it.

c. Subpoenas issued by a respiratory therapy licensing authority in a member state for production of evidence from another member state must be enforced in the latter state, according to the practice and procedure of that court applicable to subpoenas issued in the proceedings pending before it.

d. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located.

(3) Unless otherwise prohibited by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

(4) Notwithstanding paragraph (d)(2) of this section, a member state may not issue a subpoena to gather evidence of conduct in another member state that is lawful in that other member state for the purpose of taking adverse action against a licensee's compact privilege or application for a compact privilege in that member state.

(5) Nothing in this Compact authorizes a member state to impose discipline against a respiratory therapist's compact privilege in that member state for the individual's otherwise lawful practice in another state.

(e) Joint investigations.

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

provided, however, that a member state receiving such a request has no obligation to respond to any subpoena issued regarding an investigation of conduct or practice that was lawful in a member state at the time it was undertaken.

(2) Member states shall share any significant investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this Compact. In sharing such information between member state respiratory therapy licensing authorities, all information obtained shall be kept confidential, except as otherwise mutually agreed upon by the sharing and receiving member state.

(f) Nothing in this Compact permits a member state to take any adverse action against a licensee or holder of a compact privilege for conduct or practice that was legal in the member state at the time it was undertaken.

(g) Nothing in this Compact permits a member state to take disciplinary action against a licensee or holder of a compact privilege for conduct or practice that was legal in the member state at the time it was undertaken.

§ 1707C. Establishment of the Respiratory Care Interstate Compact Commission.

(a) The Compact member states hereby create and establish a joint government agency whose membership consists of all member states that have enacted this Compact known as the Respiratory Care Interstate Compact Commission. The Commission is an instrumentality of the Compact member states acting jointly and not an instrumentality of any one state. The Commission comes into existence on or after the effective date of this Compact, as set forth in § 1711C of this title.

(b) Membership, voting, and meetings.

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

(2) The Commissioner must be an administrator or their designated staff member of the member state's respiratory therapy licensing authority.

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

(4) The Commission may recommend to a member state the removal or suspension of any Commissioner from office.

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

(6) Each Commissioner is entitled to 1 vote on all matters before the Commission requiring a vote by Commissioners.

(7) A Commissioner shall vote in person or by the other means provided in the bylaws. The bylaws may provide for Commissioners to meet by telecommunication, videoconference, or other means of communication.

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

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

(1) Establish and amend the fiscal year of the Commission.

(2) Establish and amend bylaws and policies, including a code of conduct and conflict of interest.

(3) Establish and amend rules, which are binding in all member states.

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

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

(6) Initiate and conduct legal proceedings or actions in the name of the Commission, provided that the standing of any respiratory therapy 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 authenticated business records of the Commission, and designate an agent to do so on the Commission's behalf.

(8) Purchase and maintain insurance and bonds.

(9) 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 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 do all of the following:

a. Avoid any appearance of impropriety.

b. Avoid any appearance of conflict of interest.

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

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

(16) Establish a budget and make expenditures.

(17) Borrow money in a fiscally responsible manner.

(18) Appoint committees, including standing committees, composed of Commissioners, 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.

(19) Provide and receive information from, and cooperate with, law enforcement agencies.

(20) Establish and elect an Executive Committee, including a chair, vice-chair, secretary, treasurer, and such other offices as the Commission shall establish by rule or bylaw.

(21) Enter into contracts or arrangements for the management of the affairs of the Commission.

(22) 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.

(23) Perform such 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 enforcement and compliance with the provisions of this Compact, its rules and bylaws, and other such duties as deemed necessary.

b. Recommending to the Commission changes to the rules or bylaws, changes to this Compact legislation, fees charged to Compact 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 bylaws, and exercising any other powers and duties expressly reserved to the Commission by rule or bylaw.

i. Performing other duties as provided in the rules or bylaws of the Commission.

(2) The Executive Committee is composed of up to 9 members, as further set forth in the bylaws of the Commission:

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

b. Two ex-officio, non-voting members.

(3) The Commission may remove any member of the Executive Committee 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, except that the Executive Committee may meet in a closed, non-public meeting as provided in paragraph (f)(4) of this section.

b. The Executive Committee shall give advance notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the Commission.

c. The Executive Committee may hold a special meeting in accordance with paragraph (f)(2) of this section.

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

(f) Meetings of the Commission.

(1) All meetings of the Commission that are not closed under paragraph (f)(4) of this section 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 § 1709C(g) of this title. The Commission's legal counsel shall certify that one of the reasons justifying an emergency public meeting has been met.

(3) Notice of all Commission meetings must provide the time, date, and location of the meeting, and 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 or the Executive Committee may convene in a closed, non-public meeting for the Commission or Executive Committee to receive or solicit legal advice or 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.

c. Current or threatened discipline of a licensee or compact privilege holder by the Commission or by a member state's respiratory therapy 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 where disclosure 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 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 this Compact.

k. Legal advice.

l. Matters specifically exempted from disclosure 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 in accordance with Commission rules and bylaws. All documents considered in connection with an action must be identified in such 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 appropriate revenue sources as provided herein.

(3) The Commission may levy on and collect an annual assessment from each member state and impose fees on licensees of member states to whom it grants a compact privilege to cover the cost of the operations and activities of the Commission and its staff. The aggregate annual assessment amount for member states, if any, must be allocated based upon a formula that the Commission shall promulgate by rule.

(4) The Commission may not incur obligations of any kind prior to securing the funds or a loan adequate to meet the same. The Commission may not 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 are subject to the financial review and accounting procedures established under its bylaws. However, 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 annual report of the Commission.

(h) Qualified immunity, defense, and indemnification.

(1) 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.

(2) The member states, Commissioners, officers, executive directors, employees, and agents 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 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. Nothing in this subsection 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 subsection.

(3) The Commission shall defend any Commissioner, officer, executive director, employee, and agent 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 Compact may be construed to prohibit that person from retaining their own counsel at their own expense.

(4) The Commission shall indemnify and hold harmless any Commissioner, member, officer, executive director, employee, and agent 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.

(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.

§ 1708C. 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 the presence of significant investigative information.

(b) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system as required by the rules of the Commission, including all of the following:

(1) Identifying information.

(2) Licensure data.

(3) Adverse actions against a licensee, license applicant, or compact privilege holder and information related thereto.

(4) Non-confidential information related to alternative program participation, the beginning and ending dates of such participation, and other information related to the participation not made confidential under member state law.

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

(6) The presence of current significant investigative information.

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

(c) A member state may not submit any information which constitutes criminal history record information, as defined by applicable federal law, to the data system established under this section.

(d) The records and information provided to a member state under this Compact or through the data system, when certified by the Commission or an agent thereof, constitutes 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) Significant investigative information pertaining to a licensee in any member state will only be available to other member states.

(f) It is the responsibility of the member states to report any adverse action against a licensee and to monitor the database to determine whether adverse action has been taken against a licensee. Adverse action information pertaining to a licensee in any member state will be 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 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.

§ 1709C. Rulemaking.

(a) The Commission shall promulgate reasonable rules in order 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 hereunder, or based upon another applicable standard of review.

(b) For purposes of this Compact, the rules of the Commission have the force of law in each member state.

(c) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules become binding as of the date specified in 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 that rule has no further force and effect in any member state.

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

(f) Before 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) Before 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 by all of the following means:

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

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

(3) In such other ways as 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 hearing is held via telecommunication, video conference, or other electronic means, the Commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking.

(3) The text of the proposed rule and the reason for the 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 hearings will 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 hearings required by this section.

(k) The Commission shall, by majority vote of all Commissioners, take final action on the proposed rule based on the rulemaking record and the full text of the rule, as follows:

(1) The Commission may adopt changes to the proposed rule provided the changes are consistent with 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 as well as 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 issuing 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, and with opportunity to comment, provided that the usual rulemaking procedures provided in this Compact

and in this section must 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 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 website of the Commission. 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 before 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.

(n) (1) A member state's rulemaking process or procedural requirements do not apply to the Commission.

(2) The Commission has no authority over any member state's rulemaking process or procedural requirements that do not pertain to this Compact.

(o) Nothing in this Compact, nor any rule or regulation of the Commission, 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 respiratory therapy in that state, where those laws, regulations, or other rules are not inconsistent with the provisions of this Compact.

§ 1710C. 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 must 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. 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 such 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 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 Commissioners of the member states, and all rights, privileges and benefits conferred on that state 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 this Compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, the defaulting state's respiratory therapy licensing authority and each of the member states' respiratory therapy licensing authorities.

(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, if necessary.

(f) On the termination of a state's membership from this Compact, that state shall immediately provide notice to all licensees and compact privilege holders of which the Commission has a record within that state of the termination. The terminated state shall continue to recognize all licenses granted under this Compact for a minimum of 180 days after the date of said notice of termination.

(g) The Commission may 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 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 party must be awarded all costs of such 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 non-member states.

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

(j) Enforcement.

(1) By majority vote, as may be further 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 its promulgated rules. A member state by enactment of this Compact consents to venue and jurisdiction in such court for the purposes set forth in this paragraph (j)(1). The relief sought may include both injunctive relief and damages. In the event 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)(1) 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.

(2) A member state may initiate legal action against the Commission in the U.S. 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 its promulgated rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.

(3) A person other than a member state may not enforce this Compact against the Commission.

§ 1711C. Effective date, withdrawal, and amendment.

(a) This Compact takes effect on the date on which this Compact statute is enacted into law in the seventh member state ("effective date").

(1) On or after the effective date of this Compact, the Commission shall convene and review the enactment of each of the first 7 member states ("charter member states") to determine if the statute enacted by each charter member state is materially different than the Model Compact.

a. A charter member state whose enactment is found to be materially different from the Model Compact is entitled to the default process set forth in § 1710C of this title.

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

(2) Member states enacting this Compact subsequent to the 7 initial charter member states are subject to the process set forth herein and Commission rule to determine if their enactments are materially different from the Model Compact and whether they qualify for participation in this Compact.

(3) All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of this Compact before 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. The Commission owns and has all rights to any intellectual property developed on behalf or in furtherance of the Commission by individuals or entities involved in organizing or establishing the Commission, as may be further set forth in rules of the Commission.

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

(b) Any member state may withdraw from this Compact by enacting a statute repealing the same.

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

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

(3) On the enactment of a statute withdrawing from this Compact, a state shall immediately provide notice of the withdrawal to all licensees and compact privilege holders of which the Commission has a record 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 non-member 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.

§ 1712C. 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, and 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 of this Compact 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 of this Compact 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 § 1710C 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.

§ 1713C. Consistent effect and conflict with other state laws.

(a) Nothing herein 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, including any subsequently enacted state laws.

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

(d) Other than as expressly set forth herein, nothing in this Compact will impact initial licensure.