

By: Raney

H.B. No. 5289

A BILL TO BE ENTITLED

AN ACT

relating to the professional counselors licensure compact.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 503, Occupations Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. PROFESSIONAL COUNSELORS LICENSURE COMPACT

Sec. 503.501. PROFESSIONAL COUNSELORS LICENSURE COMPACT.

The Professional Counselors Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

ARTICLE I

PURPOSE

The compact is designed to achieve the following purposes and objectives:

(1) Facilitate interstate practice of licensed professional counseling to increase public access to professional counseling services by providing for the mutual recognition of other member state licenses.

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

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

(4) Support spouses of relocating active duty military

1 personnel.

2 (5) Facilitate the exchange of information between member
3 states regarding licensure, investigations, adverse actions, and
4 disciplinary history of licensed professional counselors.

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

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

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

15 (9) Eliminate the necessity for licensed professional
16 counselors to hold licenses in multiple states and provide
17 opportunities for interstate practice by licensed professional
18 counselors who meet uniform licensure requirements.

19 ARTICLE II

20 DEFINITIONS

21 As used in this compact, the term:

22 (1) "Active duty military" means full-time duty status in
23 the active uniformed service of the United States, including, but
24 not limited to, members of the National Guard and Reserve on active
25 duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.

26 (2) "Adverse action" means any administrative, civil, or
27 criminal action authorized by a state's laws which is imposed by a

1 licensing board or other authority against a licensed professional
2 counselor, including actions against an individual's license or
3 privilege to practice, such as revocation, suspension, probation,
4 monitoring of the licensee, limitation on the licensee's practice,
5 issuance of a cease and desist action, or any other encumbrance on
6 licensure affecting a licensed professional counselor's
7 authorization to practice.

8 (3) "Alternative program" means a nondisciplinary
9 monitoring or practice remediation process approved by a
10 professional counseling licensing board to address impaired
11 practitioners.

12 (4) "Continuing education" means a requirement, as a
13 condition of license renewal, to participate in or complete
14 educational and professional activities relevant to the licensee's
15 practice or area of work.

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

19 (6) "Current significant investigative information" means:

20 (a) Investigative information that a licensing board, after
21 a preliminary inquiry that includes notification and an opportunity
22 for the licensed professional counselor to respond, if required by
23 state law, has reason to believe is not groundless and, if proved
24 true, would indicate more than a minor infraction; or

25 (b) Investigative information that indicates that the
26 licensed professional counselor represents an immediate threat to
27 public health and safety, regardless of whether the licensed

1 professional counselor has been notified and had an opportunity to
2 respond.

3 (7) "Data system" means a repository of information about
4 licensees, including, but not limited to, information relating to
5 continuing education, examinations, licensure statuses,
6 investigations, the privilege to practice, and adverse actions.

7 (8) "Encumbered license" means a license in which an adverse
8 action restricts the practice of licensed professional counseling
9 by the licensee and said adverse action has been reported to the
10 National Practitioner Data Bank.

11 (9) "Encumbrance" means a revocation or suspension of, or
12 any limitation on, the full and unrestricted practice of licensed
13 professional counseling by a licensing board.

14 (10) "Executive committee" means a group of directors
15 elected or appointed to act on behalf of, and within the powers
16 granted to them by, the commission.

17 (11) "Home state" means the member state that is the
18 licensee's primary state of residence.

19 (12) "Impaired practitioner" means an individual who has a
20 condition that may impair his or her ability to safely practice as a
21 licensed professional counselor without intervention. Such
22 impairment may include, but is not limited to, alcohol or drug
23 dependence, mental health conditions, and neurological or physical
24 conditions.

25 (13) "Investigative information" means information,
26 records, or documents received or generated by a professional
27 counseling licensing board pursuant to an investigation.

1 (14) "Jurisprudence requirement," if required by a member
2 state, means the assessment of an individual's knowledge of the
3 laws and rules governing the practice of professional counseling in
4 a state.

5 (15) "Licensed professional counselor" means a counselor
6 licensed by a member state, regardless of the title used by that
7 state, to independently assess, diagnose, and treat behavioral
8 health conditions.

9 (16) "Licensee" means an individual who currently holds an
10 authorization from the state to practice as a licensed professional
11 counselor.

12 (17) "Licensing board" means the agency of a state, or
13 equivalent, that is responsible for the licensing and regulation of
14 licensed professional counselors.

15 (18) "Member state" means a state that has enacted the
16 compact.

17 (19) "Privilege to practice" means a legal authorization,
18 which is equivalent to a license, authorizing the practice of
19 professional counseling in a remote state.

20 (20) "Professional counseling" means the assessment,
21 diagnosis, and treatment of behavioral health conditions by a
22 licensed professional counselor.

23 (21) "Remote state" means a member state, other than the
24 home state, where a licensee is exercising or seeking to exercise
25 the privilege to practice.

26 (22) "Rule" means a regulation adopted by the commission
27 which has the force of law.

1 (23) "Single state license" means a licensed professional
2 counselor license issued by a member state which authorizes
3 practice only within the issuing state and does not include a
4 privilege to practice in any other member state.

5 (24) "State" means any state, commonwealth, district, or
6 territory of the United States of America which regulates the
7 practice of professional counseling.

8 (25) "Telehealth" means the application of
9 telecommunication technology to deliver professional counseling
10 services remotely to assess, diagnose, and treat behavioral health
11 conditions.

12 (26) "Unencumbered license" means a license that authorizes
13 a licensed professional counselor to engage in the full and
14 unrestricted practice of professional counseling.

15 ARTICLE III

16 STATE PARTICIPATION

17 (1) To participate in the compact, a state must currently do
18 all of the following:

19 (a) License and regulate licensed professional counselors.

20 (b) Require licensees to pass a nationally recognized exam
21 approved by the commission.

22 (c) Require licensees to have a 60 semester hour, or 90
23 quarter hour, master's degree in counseling or 60 semester hours,
24 or 90 quarter hours, of graduate coursework including all of the
25 following topic areas:

26 1. Professional counseling orientation and ethical
27 practice.

1 2. Social and cultural diversity.

2 3. Human growth and development.

3 4. Career development.

4 5. Counseling and helping relationships.

5 6. Group counseling and group work.

6 7. Diagnosis, assessment, testing, and treatment.

7 8. Research and program evaluation.

8 9. Other areas as determined by the commission.

9 (d) Require licensees to complete a supervised postgraduate
10 professional experience as defined by the commission.

11 (e) Have a mechanism in place for receiving and
12 investigating complaints about licensees.

13 (2) A member state shall do all of the following:

14 (a) Participate fully in the commission's data system,
15 including using the commission's unique identifier as defined in
16 rules adopted by the commission.

17 (b) Notify the commission, in compliance with the terms of
18 the compact and rules adopted by the commission, of any adverse
19 action or the availability of investigative information regarding a
20 licensee.

21 (c) Implement or utilize procedures for considering the
22 criminal history records of applicants for an initial privilege to
23 practice. These procedures must include the submission of
24 fingerprints or other biometric-based information by applicants
25 for the purpose of obtaining an applicant's criminal history record
26 information from the Federal Bureau of Investigation and the agency
27 responsible for retaining that state's criminal records.

1 1. A member state must fully implement a criminal background
2 check requirement, within a timeframe established by rule, by
3 receiving the results of the Federal Bureau of Investigation record
4 search and shall use the results in making licensure decisions.

5 2. Communication between a member state and the commission
6 and among member states regarding the verification of eligibility
7 for licensure through the compact may not include any information
8 received from the Federal Bureau of Investigation relating to a
9 federal criminal records check performed by a member state under
10 Public Law 92-544.

11 (d) Comply with the rules adopted by the commission.

12 (e) Require an applicant to obtain or retain a license in
13 the home state and meet the home state's qualifications for
14 licensure or renewal of licensure, as well as all other applicable
15 state laws.

16 (f) Grant the privilege to practice to a licensee holding a
17 valid unencumbered license in another member state in accordance
18 with the terms of the compact and rules adopted by the commission.

19 (g) Provide for the attendance of the state's commissioner
20 at the commission meetings.

21 (3) Individuals not residing in a member state may continue
22 to apply for a member state's single state license as provided under
23 the laws of each member state. However, the single state license
24 granted to these individuals may not be recognized as granting a
25 privilege to practice professional counseling under the compact in
26 any other member state.

27 (4) Nothing in this compact affects the requirements

1 established by a member state for the issuance of a single state
2 license.

3 (5) A professional counselor license issued by a home state
4 to a resident of that state must be recognized by each member state
5 as authorizing that licensed professional counselor to practice
6 professional counseling, under a privilege to practice, in each
7 member state.

8 ARTICLE IV

9 PRIVILEGE TO PRACTICE

10 (1) To exercise the privilege to practice under the terms
11 and provisions of the compact, the licensee must meet all of the
12 following criteria:

13 (a) Hold a license in the home state.

14 (b) Have a valid United States Social Security Number or
15 national provider identifier.

16 (c) Be eligible for a privilege to practice in any member
17 state in accordance with subsections (4), (7), and (8).

18 (d) Have not had any encumbrance or restriction against any
19 license or privilege to practice within the preceding 2 years.

20 (e) Notify the commission that the licensee is seeking the
21 privilege to practice within a remote state.

22 (f) Meet any continuing education requirements established
23 by the home state.

24 (g) Meet any jurisprudence requirements established by the
25 remote state in which the licensee is seeking a privilege to
26 practice.

27 (h) Report to the commission any adverse action,

1 encumbrance, or restriction on a license taken by any nonmember
2 state within 30 days after the action is taken.

3 (2) The privilege to practice is valid until the expiration
4 date of the home state license. The licensee must continue to meet
5 the criteria specified in subsection (1) to renew the privilege to
6 practice in the remote state.

7 (3) For purposes of the compact, the practice of
8 professional counseling occurs in the state where the client is
9 located at the time of the counseling services. The compact does
10 not affect the regulatory authority of states to protect public
11 health and safety through their own system of state licensure.

12 (4) A licensee providing professional counseling in a
13 remote state under the privilege to practice must adhere to the laws
14 and regulations of the remote state.

15 (5) A licensee providing professional counseling services
16 in a remote state is subject to that state's regulatory authority.
17 A remote state may, in accordance with due process and that state's
18 laws, remove a licensee's privilege to practice in the remote state
19 for a specified period of time, impose fines, or take any other
20 action necessary to protect the health and safety of its residents.
21 The licensee may be ineligible for a privilege to practice in any
22 member state until the specific time for removal has passed and all
23 fines are paid.

24 (6) If a home state license is encumbered, a licensee loses
25 the privilege to practice in any remote state until both of the
26 following conditions are met:

27 (a) The home state license is no longer encumbered.

1 then the licensed professional counselor must file an application
2 for obtaining a new home state license based on a privilege to
3 practice and notify the current and new home state in accordance
4 with applicable rules adopted by the commission.

5 (3) Upon receipt of an application for obtaining a new home
6 state license based on a privilege to practice, the new home state
7 must verify that the licensed professional counselor meets the
8 criteria outlined in article IV through the data system. The new
9 home state does not need to seek primary source verification for
10 information obtained from the data system, except for the
11 following:

12 (a) A Federal Bureau of Investigation fingerprint-based
13 criminal background check, if not previously performed or updated
14 pursuant to applicable rules adopted by the commission in
15 accordance with Public Law 92-544;

16 (b) Any other criminal background check as required by the
17 new home state; and

18 (c) Proof of completion of any requisite jurisprudence
19 requirements of the new home state.

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

24 (5) Notwithstanding any other provision of the compact, if
25 the licensed professional counselor does not meet the criteria in
26 article IV, the new home state may apply its own requirements for
27 issuing a new single state license.

1 (6) If a licensed professional counselor changes his or her
2 primary state of residence by moving from a member state to a
3 nonmember state or from a nonmember state to a member state, the new
4 state's own criteria apply for issuance of a single state license in
5 the new state.

6 (7) The compact does not interfere with a licensee's ability
7 to hold a single state license in multiple states. However, for the
8 purposes of the compact, a licensee may have only one home state
9 license.

10 (8) The compact does not affect the requirements
11 established by a member state for the issuance of a single state
12 license.

13 ARTICLE VI

14 ACTIVE DUTY MILITARY PERSONNEL AND THEIR SPOUSES

15 Active duty military personnel, or their spouse, shall
16 designate a home state where the individual has a current license in
17 good standing. The individual may retain the home state license
18 designation during the period the service member is on active duty.
19 Subsequent to designating a home state, the individual may change
20 his or her home state only through application for licensure in the
21 new state or through the process outlined in article V.

22 ARTICLE VII

23 COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

24 (1) Member states shall recognize the right of a licensed
25 professional counselor, licensed by a home state in accordance with
26 article III and under rules adopted by the commission, to practice
27 professional counseling in any member state through telehealth

1 under a privilege to practice as provided in the compact and rules
2 adopted by the commission.

3 (2) A licensee providing professional counseling services
4 in a remote state through telehealth under the privilege to
5 practice must adhere to the laws and rules of the remote state.

6 ARTICLE VIII

7 ADVERSE ACTIONS

8 (1) In addition to the other powers conferred by state law,
9 a remote state has the authority, in accordance with existing state
10 due process law, to do any of the following:

11 (a) Take adverse action against a licensed professional
12 counselor's privilege to practice within that member state.

13 (b) Issue subpoenas for both hearings and investigations
14 that require the attendance and testimony of witnesses or the
15 production of evidence. Subpoenas issued by a licensing board in a
16 member state for the attendance and testimony of witnesses or the
17 production of evidence from another member state must be enforced
18 in the latter state by any court of competent jurisdiction,
19 according to the practice and procedure of that court applicable to
20 subpoenas issued in proceedings pending before it. The issuing
21 authority shall pay any witness fees, travel expenses, mileage, and
22 other fees required by the service statutes of the state in which
23 the witnesses or evidence is located.

24 (2) Only the home state has the power to take adverse action
25 against a licensed professional counselor's license issued by the
26 home state.

27 (3) For purposes of taking adverse action, the home state

1 shall give the same priority and effect to reported conduct
2 received from a member state as it would if the conduct had occurred
3 within the home state. The home state shall apply its own state
4 laws to determine appropriate action in such cases.

5 (4) The home state shall complete any pending
6 investigations of a licensed professional counselor who changes
7 primary state of residence during the course of the investigations.
8 The home state may also take appropriate action and shall promptly
9 report the conclusions of the investigations to the administrator
10 of the data system. The administrator of the data system shall
11 promptly notify the new home state of any adverse actions.

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

16 (6) A member state may take adverse action against a
17 licensed professional counselor based on the factual findings of a
18 remote state, provided that the member state follows its own
19 statutory procedures for taking adverse action.

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

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

27 (8) If adverse action is taken by the home state against the

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

9 (9) If a member state takes adverse action, it must promptly
10 notify the administrator of the data system. The administrator
11 shall promptly notify the licensee's home state of any adverse
12 actions by remote states.

13 (10) Nothing in the compact overrides a member state's
14 decision to allow a licensed professional counselor to participate
15 in an alternative program in lieu of adverse action.

16 ARTICLE IX

17 ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

18 (1) COMMISSION CREATED. – The compact member states hereby
19 create and establish a joint public agency known as the Counseling
20 Compact Commission.

21 (a) The commission is an instrumentality of the compact
22 states.

23 (b) Venue is proper, and judicial proceedings by or against
24 the commission shall be brought solely and exclusively in a court of
25 competent jurisdiction where the principal office of the commission
26 is located. The commission may waive venue and jurisdictional
27 defenses to the extent that it adopts or consents to participate in

1 alternative dispute resolution proceedings.

2 (c) Nothing in the compact may be construed to be a waiver of
3 sovereign immunity.

4 (2) MEMBERSHIP.-

5 (a) The commission shall consist of one voting delegate,
6 appointed by each member state's licensing board. The commission,
7 by rule, shall establish a term of office for delegates and may
8 establish term limits.

9 (b) The delegate must be either:

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

13 2. An administrator of the licensing board.

14 (c) A delegate may be removed or suspended from office as
15 provided by the law of the state from which the delegate is
16 appointed.

17 (d) The member state licensing board must fill any vacancy
18 occurring on the commission within 60 days.

19 (e) Each delegate is entitled to one vote with regard to the
20 adoption of rules and creation of bylaws and shall otherwise
21 participate in the business and affairs of the commission.

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

26 (3) MEETINGS OF THE COMMISSION.-

27 (a) The commission shall meet at least once during each

1 calendar year. Additional meetings must be held as set forth in the
2 bylaws.

3 (b) All meetings must be open to the public, and public
4 notice of meetings must be given in the same manner as required
5 under the rulemaking provisions in article XI.

6 (c) The commission or the executive committee or other
7 committees of the commission may convene in a closed, nonpublic
8 meeting if the commission or executive committee or other
9 committees of the commission must discuss any of the following:

10 1. Noncompliance of a member state with its obligations
11 under the compact.

12 2. The employment, compensation, discipline, or other
13 matters, practices, or procedures related to specific employees, or
14 other matters related to the commission's internal personnel
15 practices and procedures.

16 3. Current, threatened, or reasonably anticipated
17 litigation.

18 4. Negotiation of contracts for the purchase, lease, or sale
19 of goods, services, or real estate.

20 5. Accusing any person of a crime or formally censuring any
21 person.

22 6. Disclosure of trade secrets or commercial or financial
23 information that is privileged or confidential.

24 7. Disclosure of information of a personal nature if
25 disclosure would constitute a clearly unwarranted invasion of
26 personal privacy.

27 8. Disclosure of investigative records compiled for law

1 enforcement purposes.

2 9. Disclosure of information related to any investigative
3 reports prepared by or on behalf of or for use of the commission or
4 other committee charged with responsibility of investigation or
5 determination of compliance issues pursuant to the compact.

6 10. Matters specifically exempted from disclosure by
7 federal or member state law.

8 (d) If a meeting, or portion of a meeting, is closed under
9 this subsection, the commission's legal counsel or designee must
10 certify that the meeting may be closed and must reference each
11 relevant exempting provision.

12 (e) The commission shall keep minutes that fully and clearly
13 describe all matters discussed in a meeting and shall provide a full
14 and accurate summary of actions taken, and the reasons therefore,
15 including a description of the views expressed. All documents
16 considered in connection with an action must be identified in such
17 minutes. All minutes and documents of a closed meeting must remain
18 under seal, subject to release by a majority vote of the commission
19 or order of a court of competent jurisdiction.

20 (4) POWERS. – The commission may do any of the following:

21 (a) Establish the fiscal year of the commission.

22 (b) Establish bylaws.

23 (c) Maintain its financial records in accordance with the
24 bylaws.

25 (d) Meet and take actions that are consistent with the
26 compact and bylaws.

27 (e) Adopt rules that are binding to the extent and in the

1 manner provided for in the compact.

2 (f) Initiate and prosecute legal proceedings or actions in
3 the name of the commission, provided that the standing of any state
4 licensing board to sue or be sued under applicable law is not
5 affected.

6 (g) Purchase and maintain insurance and bonds.

7 (h) Borrow, accept, or contract for services of personnel,
8 including, but not limited to, employees of a member state.

9 (i) Hire employees and elect or appoint officers; fix
10 compensation for, define duties of, and grant appropriate authority
11 to such employees and officers to carry out the purposes of the
12 compact; and establish the commission's personnel policies and
13 programs relating to conflicts of interest, qualifications of
14 personnel, and other related personnel matters.

15 (j) Accept any and all appropriate donations and grants of
16 money, equipment, supplies, materials, and services, and receive,
17 utilize, and dispose of the same, provided that at all times the
18 commission avoids any appearance of impropriety or conflict of
19 interest.

20 (k) Lease, purchase, accept appropriate gifts or donations
21 of, or otherwise own, hold, improve, or use, any property, real,
22 personal, or mixed, provided that at all times the commission
23 avoids any appearance of impropriety or conflict of interest.

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

27 (m) Establish a budget and make expenditures.

1 (n) Borrow money.

2 (o) Appoint committees, including standing committees
3 consisting of commission members, state regulators, state
4 legislators or their representatives, and consumer
5 representatives, and such other interested persons as may be
6 designated in the compact and bylaws.

7 (p) Provide information to, receive information from, and
8 cooperate with law enforcement agencies.

9 (q) Establish and elect an executive committee.

10 (r) Perform any other function that may be necessary or
11 appropriate to achieve the purposes of the compact and is
12 consistent with the state regulation of professional counseling
13 licensure and practice.

14 (5) THE EXECUTIVE COMMITTEE.—

15 (a) The executive committee may act on behalf of the
16 commission according to the terms of the compact and shall consist
17 of up to 11 members, as follows:

18 1. Seven voting members who are elected by the commission
19 from the current membership of the commission.

20 2. Up to four ex officio, nonvoting members from four
21 recognized national professional counselor organizations. The ex
22 officio members shall be selected by their respective
23 organizations.

24 (b) The commission may remove any member of the executive
25 committee as provided in its bylaws.

26 (c) The executive committee shall meet at least annually.

27 (d) The executive committee shall do all of the following:

1 1. Make recommendations to the commission for any changes to
2 the rules, bylaws, or compact legislation.

3 2. Ensure compact administration services are appropriately
4 provided, contractually or otherwise.

5 3. Prepare and recommend the budget.

6 4. Maintain financial records on behalf of the commission.

7 5. Monitor compact compliance of member states and provide
8 compliance reports to the commission.

9 6. Establish additional committees as necessary.

10 7. Perform any other duties provided for in the rules or
11 bylaws.

12 (6) FINANCING OF THE COMMISSION.—

13 (a) The commission shall pay, or provide for the payment of,
14 the reasonable expenses of its establishment, organization, and
15 ongoing activities.

16 (b) The commission may accept any appropriate revenue
17 sources, donations, or grants of money, equipment, supplies,
18 materials, or services.

19 (c) The commission may not incur obligations of any kind
20 before securing the funds adequate to meet the same; nor may the
21 commission pledge the credit of any of the member states, except by
22 and with the authority of the member state.

23 (d) The commission shall keep accurate accounts of all
24 receipts and disbursements. The receipts and disbursements of the
25 commission are subject to the audit and accounting procedures
26 established under its bylaws. However, all receipts and
27 disbursements of funds handled by the commission must be audited

1 annually by a certified or licensed public accountant, and the
2 report of the audit must be included in and become part of the
3 annual report of the commission.

4 (7) QUALIFIED IMMUNITY, DEFENSE, AND INDEMNIFICATION.—

5 (a) The members, officers, executive director, employees,
6 and representatives of the commission are immune from suit and
7 liability, either personally or in their official capacity, for any
8 claim for damage to or loss of property or personal injury or other
9 civil liability caused by or arising out of any actual or alleged
10 act, error, or omission that occurred, or that the person against
11 whom the claim is made had a reasonable basis for believing
12 occurred, within the scope of commission employment, duties, or
13 responsibilities. This paragraph may not be construed to protect
14 any such person from suit or liability for any damage, loss, injury,
15 or liability caused by the intentional or willful or wanton
16 misconduct of that person.

17 (b) The commission shall defend any member, officer,
18 executive director, employee, or representative of the commission
19 in any civil action seeking to impose liability arising out of any
20 actual or alleged act, error, or omission that occurred, or that the
21 person against whom the claim is made had a reasonable basis for
22 believing occurred, within the scope of commission employment,
23 duties, or responsibilities, provided that the actual or alleged
24 act, error, or omission did not result from that person's
25 intentional or willful or wanton misconduct. This paragraph may
26 not be construed to prohibit that person from retaining his or her
27 own counsel.

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

10 ARTICLE X

11 DATA SYSTEM

12 (1) The commission shall provide for the development,
13 operation, and maintenance of a coordinated database and reporting
14 system containing licensure, adverse action, and investigative
15 information on all licensed professional counselors in member
16 states.

17 (2) Notwithstanding any other provision of state law to the
18 contrary, a member stateshall submit a uniform data set to the data
19 system on all licensees to whom the compact is applicable, as
20 required by the rules of the commission, including all of the
21 following:

22 (a) Identifying information.

23 (b) Licensure data.

24 (c) Adverse actions against a license or privilege to
25 practice.

26 (d) Nonconfidential information related to alternative
27 program participation.

1 (e) Any denial of application for licensure and the reason
2 for such denial.

3 (f) Current significant investigative information.

4 (g) Other information that may facilitate the
5 administration of the compact, as determined by the rules of the
6 commission.

7 (3) Investigative information pertaining to a licensee in
8 any member state may be made available only to other member states.

9 (4) The commission shall promptly notify all member states
10 of any adverse action taken against a licensee or an individual
11 applying for a license. Adverse action information pertaining to a
12 licensee in any member state must be made available to any other
13 member state.

14 (5) Member states reporting information to the data system
15 may designate information that may not be shared with the public
16 without the express permission of the reporting state.

17 (6) Any information submitted to the data system which is
18 subsequently required to be expunged by the laws of the member state
19 reporting the information must be removed from the data system.

20 ARTICLE XI

21 RULEMAKING

22 (1) The commission shall adopt reasonable rules to
23 effectively and efficiently achieve the purposes of the compact.
24 If, however, the commission exercises its rulemaking authority in a
25 manner that is beyond the scope of the purposes of the compact, or
26 the powers granted hereunder, then such an action by the commission
27 is invalid and has no force or effect.

1 (2) The commission shall exercise its rulemaking powers
2 pursuant to the criteria set forth in this article and the rules
3 adopted thereunder. Rules and amendments become binding as of the
4 date specified in each rule or amendment.

5 (3) If a majority of the legislatures of the member states
6 rejects a rule by enactment of a statute or resolution in the same
7 manner used to adopt the compact within 4 years after the date of
8 adoption of the rule, such rule does not have further force and
9 effect in any member state.

10 (4) Rules or amendments to the rules must be adopted at a
11 regular or special meeting of the commission.

12 (5) Before adoption of a final rule by the commission, and
13 at least 30 days in advance of the meeting at which the rule will be
14 considered and voted upon, the commission shall file a notice of
15 proposed rulemaking:

16 (a) On the website of the commission or other publicly
17 accessible platform; and

18 (b) On the website of each member state's professional
19 counseling licensing board or other publicly accessible platform or
20 in the publication in which each state would otherwise publish
21 proposed rules.

22 (6) The notice of proposed rulemaking must include:

23 (a) The proposed time, date, and location of the meeting in
24 which the rule will be considered and voted upon;

25 (b) The text of the proposed rule or amendment and the
26 reason for the proposed rule;

27 (c) A request for comments on the proposed rule from any

1 interested person; and

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

5 (7) Before adoption of a proposed rule, the commission must
6 allow persons to submit written data, facts, opinions, and
7 arguments, which must be made available to the public.

8 (8) The commission shall grant an opportunity for a public
9 hearing before it adopts a rule or an amendment if a hearing is
10 requested by:

11 (a) At least 25 persons who submit comments independently of
12 each other;

13 (b) A state or federal governmental subdivision or agency;
14 or

15 (c) An association that has at least 25 members.

16 (9) If a hearing is held on the proposed rule or amendment,
17 the commission must publish the place, time, and date of the
18 scheduled public hearing. If the hearing is held through
19 electronic means, the commission must publish the mechanism for
20 access to the electronic hearing.

21 (a) All persons wishing to be heard at the hearing must
22 notify the executive director of the commission or other designated
23 member in writing of their desire to appear and testify at the
24 hearing at least 5 business days before the scheduled date of the
25 hearing.

26 (b) Hearings must be conducted in a manner providing each
27 person who wishes to comment a fair and reasonable opportunity to

1 comment orally or in writing.

2 (c) All hearings must be recorded. A copy of the recording
3 must be made available on request.

4 (d) This section may not be construed to require a separate
5 hearing on each rule. Rules may be grouped at hearings required by
6 this section for the convenience of the commission.

7 (10) If the commission does not receive a written notice of
8 intent to attend the public hearing by interested parties, the
9 commission may proceed with adoption of the proposed rule without a
10 public hearing.

11 (11) Following the scheduled hearing date, or by the close
12 of business on the scheduled hearing date if the hearing was not
13 held, the commission shall consider all written and oral comments
14 received.

15 (12) The commission, by majority vote of all members, shall
16 take final action on the proposed rule and shall determine the
17 effective date of the rule based on the rulemaking record and the
18 full text of the rule.

19 (13) Upon determination that an emergency exists, the
20 commission may consider and adopt an emergency rule without prior
21 notice, opportunity for comment, or hearing, provided that the
22 usual rulemaking procedures provided in the compact and in this
23 section are retroactively applied to the rule as soon as reasonably
24 possible, but no later than 90 days after the effective date of the
25 rule. For purposes of this subsection, an emergency rule is one
26 that must be adopted immediately in order to:

27 (a) Meet an imminent threat to public health, safety, or

1 welfare;

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

3 (c) Meet a deadline for the adoption of an administrative
4 rule established by federal law or rule; or

5 (d) Protect public health and safety.

6 (14) The commission or an authorized committee of the
7 commission may direct revisions to a previously adopted rule or
8 amendment for purposes of correcting typographical errors, errors
9 in format, errors in consistency, or grammatical errors. Public
10 notice of any revision must be posted on the website of the
11 commission. Revisions are subject to challenge by any person for a
12 period of 30 days after posting. A revision may be challenged only
13 on grounds that the revision results in a material change to a rule.
14 A challenge must be made in writing and delivered to the chair of
15 the commission before the end of the notice period. If a challenge
16 is not made, the revision takes effect without further action. If a
17 revision is challenged, the revision may not take effect without
18 the approval of the commission.

19 ARTICLE XII

20 OVERSIGHT; DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION; DISPUTE
21 RESOLUTION; AND ENFORCEMENT

22 (1) OVERSIGHT.—

23 (a) The executive, legislative, and judicial branches of
24 state government in each member state shall enforce the compact and
25 take all actions necessary and appropriate to effectuate the
26 compact's purposes and intent. The compact and the rules adopted
27 thereunder have standing as statutory law.

1 (b) All courts shall take judicial notice of the compact and
2 the rules in any judicial or administrative proceeding in a member
3 state pertaining to the subject matter of the compact which may
4 affect the powers, responsibilities, or actions of the commission.

5 (c) The commission is entitled to receive service of process
6 in any judicial or administrative proceeding specified in paragraph
7 (b) and has standing to intervene in such a proceeding for all
8 purposes. Failure to provide service of process to the commission
9 renders a judgment or an order void as to the commission, the
10 compact, or adopted rules.

11 (2) DEFAULT, TECHNICAL ASSISTANCE, AND TERMINATION.—

12 (a) If the commission determines that a member state has
13 defaulted in the performance of its obligations or responsibilities
14 under the compact or adopted rules, the commission must:

15 1. Provide written notice to the defaulting state and other
16 member states of the nature of the default, the proposed means of
17 curing the default, and any other action to be taken by the
18 commission; and

19 2. Provide remedial training and specific technical
20 assistance regarding the default.

21 (b) If a state in default fails to cure the default, the
22 defaulting state may be terminated from the compact upon an
23 affirmative vote of a majority of the member states, and all rights,
24 privileges, and benefits conferred by the compact are terminated on
25 the effective date of termination. A cure of the default does not
26 relieve the offending state of obligations or liabilities incurred
27 during the period of default.

1 (c) Termination of membership in the compact may be imposed
2 only after all other means of securing compliance have been
3 exhausted. The commission shall submit a notice of intent to
4 suspend or terminate a defaulting member state to that state's
5 governor, to the majority and minority leaders of that state's
6 legislature, and to each member state.

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

11 (e) The commission may not bear any costs related to a
12 member state that is found to be in default or that has been
13 terminated from the compact, unless agreed upon in writing between
14 the commission and the defaulting member state.

15 (f) The defaulting member state may appeal the action of the
16 commission by petitioning the United States District Court for the
17 District of Columbia or the federal district where the commission
18 has its principal offices. The prevailing party must be awarded all
19 costs of such litigation, including reasonable attorney fees.

20 (3) DISPUTE RESOLUTION.—

21 (a) Upon request by a member state, the commission shall
22 attempt to resolve disputes related to the compact which arise
23 among member states and between member and nonmember states.

24 (b) The commission shall adopt rules providing for both
25 mediation and binding dispute resolution for disputes as
26 appropriate.

27 (4) ENFORCEMENT.—

1 (a) The commission, in the reasonable exercise of its
2 discretion, shall enforce the provisions and rules of the compact.

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

12 (c) The remedies under this article are not the exclusive
13 remedies to the commission. The commission may pursue any other
14 remedies available under federal or state law.

15 ARTICLE XIII

16 DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND
17 ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

18 (1) The compact becomes effective on the date on which the
19 compact is enacted into law in the 10th member state. The
20 provisions that become effective at that time are limited to the
21 powers granted to the commission relating to assembly and the
22 adoption of rules. Thereafter, the commission shall meet and
23 exercise rulemaking powers necessary for implementation and
24 administration of the compact.

25 (2) Any state that joins the compact subsequent to the
26 commission's initial adoption of the rules is subject to the rules
27 as they exist on the date on which the compact becomes law in that

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

4 (3) Any member state may withdraw from the compact by
5 enacting a statute repealing the compact.

6 (a) A member state's withdrawal does not take effect until 6
7 months after enactment of the repealing statute.

8 (b) Withdrawal does not affect the continuing requirement
9 of the withdrawing state's professional counseling licensing board
10 to comply with the investigative and adverse action reporting
11 requirements of the compact before the effective date of
12 withdrawal.

13 (4) The compact may not be construed to invalidate or
14 prevent any professional counseling licensure agreement or other
15 cooperative arrangement between a member state and a nonmember
16 state which does not conflict with the compact.

17 (5) The compact may be amended by the member states. An
18 amendment to the compact is not effective and binding upon any
19 member state until it is enacted into the laws of all member states.

20 ARTICLE XIV

21 BINDING EFFECT OF COMPACT AND OTHER LAWS

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

26 (2) The compact does not prevent the enforcement of any
27 other law of a member state which is not inconsistent with the

1 compact.

2 (3) Any laws in a member state which conflict with the
3 compact are superseded to the extent of the conflict.

4 (4) Any lawful actions of the commission, including all
5 rules and bylaws properly adopted by the commission, are binding on
6 the member states.

7 (5) All permissible agreements between the commission and
8 the member states are binding in accordance with their terms.

9 (6) If any provision of the compact exceeds the
10 constitutional limits imposed on the legislature of any member
11 state, the provision shall be ineffective to the extent of the
12 conflict with the constitutional provision in question in that
13 member state.

14 ARTICLE XV

15 CONSTRUCTION AND SEVERABILITY

16 The compact must be liberally construed so as to effectuate
17 the purposes thereof. The provisions of the compact are severable,
18 and if any phrase, clause, sentence, or provision of the compact is
19 declared to be contrary to the constitution of any member state or
20 of the United States or the applicability thereof to any
21 government, agency, person, or circumstance is held invalid, the
22 validity of the remainder of the compact and the applicability
23 thereof to any government, agency, person, or circumstance is not
24 affected thereby. If the compact is held contrary to the
25 constitution of any member state, the compact remains in full force
26 and effect as to the remaining member states and in full force and
27 effect as to the member state affected as to all severable matters.

1 Sec. 503.502. ADMINISTRATION OF COMPACT. The executive
2 council is the Professional Counselors Licensure Compact
3 administrator for this state.

4 Sec. 503.503. RULES. The executive council may adopt rules
5 necessary to implement this subchapter.

6 SECTION 2. This Act takes effect September 1, 2023.