

## HOUSE BILL No. 2288

By Committee on Health and Human Services

2-3

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1 AN ACT concerning the behavioral sciences; relating to professional  
2 counselors; enacting the counseling compact to provide interstate  
3 practice privileges.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. This section shall be known and may be cited as the  
7 counseling compact.  
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### SECTION 1—PURPOSE

9 The purpose of this compact is to facilitate interstate practice of  
10 licensed professional counselors with the goal of improving public access  
11 to professional counseling services. The practice of professional  
12 counseling occurs in the state where the client is located at the time of the  
13 counseling services. The compact preserves the regulatory authority of  
14 states to protect public health and safety through the current system of  
15 state licensure. This compact is designed to achieve the following  
16 objectives:

17 (a) Increase public access to professional counseling services by  
18 providing for the mutual recognition of other member state licenses;

19 (b) enhance the states' ability to protect the public's health and safety;

20 (c) encourage the cooperation of member states in regulating  
21 multistate practice for licensed professional counselors;

22 (d) support spouses of relocating active duty military personnel;

23 (e) enhance the exchange of licensure, investigative and disciplinary  
24 information among member states;

25 (f) allow for the use of telehealth technology to facilitate increased  
26 access to professional counseling services;

27 (g) support the uniformity of professional counseling licensure  
28 requirements throughout the states to promote public safety and public  
29 health benefits;

30 (h) invest all member states with the authority to hold a licensed  
31 professional counselor accountable for meeting all state practice laws in  
32 the state in which the client is located at the time care is rendered through  
33 the mutual recognition of member state licenses;

34 (i) eliminate the necessity for licenses in multiple states; and

35 (j) provide opportunities for interstate practice by licensed  
36 professional counselors who meet uniform licensure requirements.

## SECTION 2—DEFINITIONS

1  
2 As used in this compact, and except as otherwise provided, the  
3 following definitions shall apply:

4 (a) "Active duty military" means full-time duty status in the active  
5 uniformed service of the United States, including members of the national  
6 guard and reserve on active duty orders pursuant to 10 U.S.C. chapters  
7 1209 and 1211.

8 (b) "Adverse action" means any administrative, civil, equitable or  
9 criminal action permitted by a state's laws which is imposed by a licensing  
10 board or other authority against a licensed professional counselor,  
11 including actions against an individual's license or privilege to practice  
12 such as revocation, suspension, probation, monitoring of the licensee,  
13 limitation on the licensee's practice or any other encumbrance on licensure  
14 affecting a licensed professional counselor's authorization to practice,  
15 including issuance of a cease and desist action.

16 (c) "Alternative program" means a non-disciplinary monitoring or  
17 practice remediation process approved by a professional counseling  
18 licensing board to address impaired practitioners.

19 (d) "Continuing competence or education" means a requirement, as a  
20 condition of license renewal, to provide evidence of participation in, or  
21 completion of, educational and professional activities relevant to practice  
22 or area of work.

23 (e) "Counseling compact commission" or "commission" means the  
24 national administrative body whose membership consists of all states that  
25 have enacted the compact.

26 (f) "Current significant investigative information" means:

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

32 (2) investigative information that indicates that the licensed  
33 professional counselor represents an immediate threat to public health and  
34 safety regardless of whether the licensed professional counselor has been  
35 notified and had an opportunity to respond.

36 (g) "Data system" means a repository of information about licensees,  
37 including, but not limited to, continuing education, examination, licensure,  
38 investigative, privilege to practice and adverse action information.

39 (h) "Encumbered license" means a license in which an adverse action  
40 restricts the practice of licensed professional counseling by the licensee  
41 and said adverse action has been reported to the national practitioners data  
42 bank.

43 (i) "Encumbrance" means a revocation or suspension of, or any

1 limitation on, the full and unrestricted practice of licensed professional  
2 counseling by a licensing board.

3 (j) "Executive committee" means a group of directors elected or  
4 appointed to act on behalf of, and within the powers granted to them by,  
5 the commission.

6 (k) "Home state" means the member state that is the licensee's  
7 primary state of residence.

8 (l) "Impaired practitioner" means an individual who has a condition  
9 or conditions that may impair such individual's ability to practice as a  
10 licensed professional counselor without some type of intervention and may  
11 include, but are not limited to, alcohol and drug dependence, mental health  
12 impairment and neurological or physical impairments.

13 (m) "Investigative information" means information, records and  
14 documents received or generated by a professional counseling licensing  
15 board pursuant to an investigation.

16 (n) "Jurisprudence requirement" if required by a member state, means  
17 the assessment of an individual's knowledge of the laws and rules  
18 governing the practice of professional counseling in a state.

19 (o) "Licensed professional counselor" means a counselor licensed by  
20 a member state, regardless of the title used by that state, to independently  
21 assess, diagnose and treat behavioral health conditions.

22 (p) "Licensee" means an individual who currently holds an  
23 authorization from the state to practice as a licensed professional  
24 counselor.

25 (q) "Licensing board" means the agency of a state, or equivalent, that  
26 is responsible for the licensing and regulation of licensed professional  
27 counselors.

28 (r) "Member state" means a state that has enacted the compact.

29 (s) "Privilege to practice" means a legal authorization, which is  
30 equivalent to a license, permitting the practice of professional counseling  
31 in a remote state.

32 (t) "Professional counseling" means the assessment, diagnosis and  
33 treatment of behavioral health conditions by a licensed professional  
34 counselor.

35 (u) "Remote state" means a member state other than the home state,  
36 where a licensee is exercising or seeking to exercise the privilege to  
37 practice.

38 (v) "Rule" means a regulation promulgated by the commission that  
39 has the force of law.

40 (w) "Single-state license" means a licensed professional counselor  
41 license issued by a member state that authorizes practice only within the  
42 issuing state and does not include a privilege to practice in any other  
43 member state.

1 (x) "State" means any state, commonwealth, district or territory of the  
2 United States of America that regulates the practice of professional  
3 counseling.

4 (y) "Telehealth" means the application of telecommunication  
5 technology to deliver professional counseling services remotely to assess,  
6 diagnose and treat behavioral health conditions.

7 (z) "Unencumbered license" means a license that authorizes a  
8 licensed professional counselor to engage in the full and unrestricted  
9 practice of professional counseling.

10 SECTION 3—STATE PARTICIPATION  
11 IN THE COMPACT

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

13 (1) License and regulate licensed professional counselors;

14 (2) require licensees to pass a nationally recognized exam approved  
15 by the commission;

16 (3) require licensees to have a 60 semester-hour, or 90 quarter-hour,  
17 master's degree in counseling or 60 semester hours, or 90 quarter hours, of  
18 graduate coursework including the following areas:

19 (A) Professional counseling orientation and ethical practice;

20 (B) social and cultural diversity;

21 (C) human growth and development;

22 (D) career development;

23 (E) counseling and helping relationships;

24 (F) group counseling and group work;

25 (G) diagnosis and treatment, assessment and testing;

26 (H) research and program evaluation; and

27 (I) other areas as determined by the commission.

28 (4) require licensees to complete a supervised postgraduate  
29 professional experience as defined by the commission; and

30 (5) have a mechanism in place for receiving and investigating  
31 complaints about licensees.

32 (b) A member state shall:

33 (1) Participate fully in the commission's data system, including using  
34 the commission's unique identifier as defined in rules;

35 (2) notify the commission, in compliance with the terms of the  
36 compact and rules, of any adverse action or the availability of investigative  
37 information regarding a licensee;

38 (3) implement or utilize procedures for considering the criminal  
39 history records of applicants for an initial privilege to practice. These  
40 procedures shall include the submission of fingerprints or other biometric-  
41 based information by applicants for the purpose of obtaining an applicant's  
42 criminal history record information from the federal bureau of  
43 investigation and the agency responsible for retaining that state's criminal

1 records;

2 (A) a member state must fully implement a criminal background  
3 check requirement, within a time frame established by rule, by receiving  
4 the results of the federal bureau of investigation record search and shall  
5 use the results in making licensure decisions; and

6 (B) communication between a member state, the commission and  
7 among member states regarding the verification of eligibility for licensure  
8 through the compact shall not include any information received from the  
9 federal bureau of investigation relating to a federal criminal records check  
10 performed by a member state under public law 92-544;

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

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

15 (6) grant the privilege to practice to a licensee holding a valid  
16 unencumbered license in another member state in accordance with the  
17 terms of the compact and rules; and

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

20 (c) Member states may charge a fee for granting the privilege to  
21 practice.

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

27 (e) Nothing in this compact shall affect the requirements established  
28 by a member state for the issuance of a single-state license.

29 (f) A license issued to a licensed professional counselor by a home  
30 state to a resident in that state shall be recognized by each member state as  
31 authorizing a licensed professional counselor to practice professional  
32 counseling, under a privilege to practice, in each member state.

#### 33 SECTION 4—PRIVILEGE TO PRACTICE

34 (a) To exercise the privilege to practice under the terms and  
35 provisions of the compact, the licensee shall:

36 (1) Hold a license in the home state;

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

39 (3) be eligible for a privilege to practice in any member state in  
40 accordance with section 4(d), (g) and (h) of this compact;

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

43 (5) notify the commission that the licensee is seeking the privilege to

1 practice within a remote state;

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

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

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

8 (9) report to the commission any adverse action, encumbrance or  
9 restriction on license taken by any non-member state within 30 days from  
10 the date the action is taken.

11 (b) The privilege to practice is valid until the expiration date of the  
12 home state license. The licensee must comply with the requirements of  
13 section 4(a) of this compact to maintain the privilege to practice in the  
14 remote state.

15 (c) A licensee providing professional counseling in a remote state  
16 under the privilege to practice shall adhere to the laws and regulations of  
17 the remote state.

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

26 (e) If a home state license is encumbered, the licensee shall lose the  
27 privilege to practice in any remote state until the following occur:

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

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

31 (f) Once an encumbered license in the home state is restored to good  
32 standing, the licensee must meet the requirements of section 4(a) of this  
33 compact to obtain a privilege to practice in any remote state.

34 (g) If a licensee's privilege to practice in any remote state is removed,  
35 the individual may lose the privilege to practice in all other remote states  
36 until the following occur:

37 (1) The specific period of time for which the privilege to practice was  
38 removed has ended;

39 (2) all fines have been paid; and

40 (3) the individual has not had any encumbrance or restriction against  
41 any license or privilege to practice within the previous two years.

42 (h) Once the requirements of section 4(g) of this compact have been  
43 met, the licensee must meet the requirements in section 4(a) of this

1 compact to obtain a privilege to practice in a remote state.

2 SECTION 5—OBTAINING A NEW HOME STATE LICENSE  
3 BASED ON A PRIVILEGE TO PRACTICE

4 (a) A licensed professional counselor may hold a home state license,  
5 which allows for a privilege to practice in other member states, in only one  
6 member state at a time.

7 (b) If a licensed professional counselor changes primary state of  
8 residence by moving between two member states:

9 (1) The licensed professional counselor shall file an application for  
10 obtaining a new home state license based on a privilege to practice, pay all  
11 applicable fees and notify the current and new home state in accordance  
12 with applicable rules adopted by the commission.

13 (2) Upon receipt of an application for obtaining a new home state  
14 license by virtue of a privilege to practice, the new home state shall verify  
15 that the licensed professional counselor meets the pertinent criteria  
16 outlined in section 4 of this compact via the data system, without need for  
17 primary source verification except for:

18 (A) A federal bureau of investigation fingerprint-based criminal  
19 background check if not previously performed or updated pursuant to  
20 applicable rules adopted by the commission in accordance with public law  
21 92-544;

22 (B) other criminal background check as required by the new home  
23 state; and

24 (C) completion of any requisite jurisprudence requirements of the  
25 new home state.

26 (3) The former home state shall convert the former home state license  
27 into a privilege to practice once the new home state has activated the new  
28 home state license in accordance with applicable rules adopted by the  
29 commission.

30 (4) Notwithstanding any other provision of this compact, if the  
31 licensed professional counselor cannot meet the criteria in section 4 of this  
32 compact, the new home state may apply its requirements for issuing a new  
33 single-state license.

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

36 (c) If a licensed professional counselor changes primary state of  
37 residence by moving from a member state to a non-member state, or from  
38 a non-member state to a member state, the state criteria shall apply for  
39 issuance of a single-state license in the new state.

40 (d) Nothing in this compact shall interfere with a licensee's ability to  
41 hold a single-state license in multiple states, however for the purposes of  
42 this compact, a licensee shall have only one home state license.

43 (e) Nothing in this compact shall affect the requirements established

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

2 SECTION 6—ACTIVE DUTY MILITARY PERSONNEL  
3 OR THEIR SPOUSES

4 Active duty military personnel, or their spouse, shall designate a home  
5 state where the individual has a current license in good standing. The  
6 individual may retain the home state designation during the period the  
7 service member is on active duty. Subsequent to designating a home state,  
8 the individual shall only change the individual's home state through  
9 application for licensure in the new state or through the process outlined in  
10 section 5 of this compact.

11 SECTION 7—COMPACT PRIVILEGE  
12 TO PRACTICE TELEHEALTH

13 (a) Member states shall recognize the right of a licensed professional  
14 counselor, licensed by a home state in accordance with section 3 of this  
15 compact and under rules promulgated by the commission, to practice  
16 professional counseling in any member state via telehealth under a  
17 privilege to practice as provided in the compact and rules promulgated by  
18 the commission.

19 (b) A licensee providing professional counseling services in a remote  
20 state under the privilege to practice shall adhere to the laws and  
21 regulations of the remote state.

22 SECTION 8—ADVERSE ACTIONS

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

26 (1) Take adverse action against a licensed professional counselor's  
27 privilege to practice within that member state; and

28 (2) issue subpoenas for both hearings and investigations that require  
29 the attendance and testimony of witnesses as well as the production of  
30 evidence. Subpoenas issued by a licensing board in a member state for the  
31 attendance and testimony of witnesses or the production of evidence from  
32 another member state shall be enforced in the latter state by any court of  
33 competent jurisdiction, according to the practice and procedure of that  
34 court applicable to subpoenas issued in proceedings pending before it. The  
35 issuing authority shall pay any witness fees, travel expenses, mileage and  
36 other fees required by the service statutes of the state in which the  
37 witnesses or evidence are located.

38 (3) Only the home state shall have the power to take adverse action  
39 against a licensed professional counselor's license issued by the home  
40 state.

41 (b) For purposes of taking adverse action, the home state shall give  
42 the same priority and effect to reported conduct received from a member  
43 state as it would if the conduct had occurred within the home state. In so

1 doing, the home state shall apply its own state laws to determine  
2 appropriate action.

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

10 (d) A member state, if otherwise permitted by state law, may recover  
11 from the affected licensed professional counselor the costs of  
12 investigations and dispositions of cases resulting from any adverse action  
13 taken against that licensed professional counselor.

14 (e) A member state may take adverse action based on the factual  
15 findings of the remote state, provided that the member state follows its  
16 own procedures for taking the adverse action.

17 (f) Joint investigations:

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

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

25 (g) If adverse action is taken by the home state against the license of a  
26 licensed professional counselor, the licensed professional counselor's  
27 privilege to practice in all other member states shall be deactivated until all  
28 encumbrances have been removed from the state license. All home state  
29 disciplinary orders that impose adverse action against the license of a  
30 licensed professional counselor shall include a statement that the licensed  
31 professional counselor's privilege to practice is deactivated in all member  
32 states during the pendency of the order.

33 (h) If a member state takes adverse action, it shall promptly notify the  
34 administrator of the data system. The administrator of the data system shall  
35 promptly notify the home state of any adverse actions by remote states.

36 (i) Nothing in this compact shall override a member state's decision  
37 that participation in an alternative program may be used in lieu of adverse  
38 action.

39 SECTION 9—ESTABLISHMENT OF  
40 COUNSELING COMPACT COMMISSION

41 (a) The compact member states hereby create and establish a joint  
42 public agency known as the counseling compact commission:

43 (1) The commission is an instrumentality of the compact states.

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

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

9 (b) Membership, voting and meetings. (1) Each member state shall  
10 have and be limited to one delegate selected by that member state's  
11 licensing board.

12 (2) The delegate shall be either:

13 (A) A current member of the licensing board at the time of  
14 appointment, who is a licensed professional counselor or public member;  
15 or

16 (B) an administrator of the licensing board.

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

19 (4) The member state licensing board shall fill any vacancy occurring  
20 on the commission within 60 days.

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

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

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

29 (8) The commission shall by rule establish a term of office for  
30 delegates and may by rule establish term limits.

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

32 (1) Establish the fiscal year of the commission;

33 (2) establish bylaws;

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

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

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

39 (6) bring and prosecute legal proceedings or actions in the name of  
40 the commission, provided that the standing of any state licensing board to  
41 sue or be sued underapplicable law shall not be affected;

42 (7) purchase and maintain insurance and bonds;

43 (8) borrow, accept or contract for services of personnel, including, but

1 not limited to, employees of a member state;

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

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

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

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

17 (13) establish a budget and make expenditures;

18 (14) borrow money;

19 (15) appoint committees, including standing committees composed of  
20 members, state regulators, state legislators or their representatives and  
21 consumer representatives, and such other interested persons as may be  
22 designated in this compact and the bylaws;

23 (16) provide and receive information from, and cooperate with, law  
24 enforcement agencies;

25 (17) establish and elect an executive committee; and

26 (18) perform such other functions as may be necessary or appropriate  
27 to achieve the purposes of this compact consistent with the state regulation  
28 of professional counseling licensure and practice.

29 (d) The executive committee. (1) The executive committee shall have  
30 the power to act on behalf of the commission according to the terms of this  
31 compact.

32 (2) The executive committee shall be composed of up to 11 members:

33 (A) Seven voting members who are elected by the commission from  
34 the current membership of the commission; and

35 (B) up to four ex-officio, nonvoting members from four recognized  
36 national professional counselor organizations.

37 (C) The ex-officio members will be selected by their respective  
38 organizations.

39 (3) The commission may remove any member of the executive  
40 committee as provided in bylaws.

41 (4) The executive committee shall meet at least annually.

42 (5) The executive committee shall have the following duties and  
43 responsibilities:

- 1 (A) Recommend to the entire commission changes to the rules or  
2 bylaws, changes to this compact legislation, fees paid by compact member  
3 states such as annual dues and any commission compact fee charged to  
4 licensees for the privilege to practice;
- 5 (B) ensure compact administration services are appropriately  
6 provided, contractual or otherwise;
- 7 (C) prepare and recommend the budget;
- 8 (D) maintain financial records on behalf of the commission;
- 9 (E) monitor compact compliance of member states and provide  
10 compliance reports to the commission;
- 11 (F) establish additional committees as necessary; and
- 12 (G) other duties as provided in rules or bylaws.
- 13 (e) Meetings of the commission.
- 14 (1) All meetings shall be open to the public, and public notice of  
15 meetings shall be given in the same manner as required under the  
16 rulemaking provisions in section 11 of this compact.
- 17 (2) The commission or the executive committee or other committees  
18 of the commission may convene in a closed, non-public meeting if the  
19 commission or executive committee or other committees of the  
20 commission must discuss:
- 21 (A) Non-compliance of a member state with its obligations under the  
22 compact;
- 23 (B) the employment, compensation, discipline or other matters,  
24 practices or procedures related to specific employees or other matters  
25 related to the commission's internal personnel practices and procedures;
- 26 (C) current, threatened or reasonably anticipated litigation;
- 27 (D) negotiation of contracts for the purchase, lease or sale of goods,  
28 services or real estate;
- 29 (E) accusing any person of a crime or formally censuring any person;
- 30 (F) disclosure of trade secrets or commercial or financial information  
31 that is privileged or confidential;
- 32 (G) disclosure of information of a personal nature where disclosure  
33 would constitute a clearly unwarranted invasion of personal privacy;
- 34 (H) disclosure of investigative records compiled for law enforcement  
35 purposes;
- 36 (I) disclosure of information related to any investigative reports  
37 prepared by, on behalf of or for use of the commission or other committee  
38 charged with responsibility of investigation or determination of  
39 compliance issues pursuant to the compact; or
- 40 (J) matters specifically exempted from disclosure by federal or  
41 member state statute.
- 42 (3) If a meeting, or portion of a meeting, is closed pursuant to this  
43 provision, the commission's legal counsel or designee shall certify that the

1 meeting may be closed and shall reference each relevant exempting  
2 provision.

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

10 (f) Financing of the commission.

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

14 (2) The commission may accept any and all appropriate revenue  
15 sources, donations and grants of money, equipment, supplies, materials  
16 and services.

17 (3) The commission may levy on and collect an annual assessment  
18 from each member state or impose fees on other parties to cover the cost  
19 of the operations and activities of the commission and its staff, which must  
20 be in a total amount sufficient to cover its annual budget as approved each  
21 year for which revenue is not provided by other sources. The aggregate  
22 annual assessment amount shall be allocated based upon a formula to be  
23 determined by the commission, which shall promulgate a rule binding  
24 upon all member states.

25 (4) The commission shall not incur obligations of any kind prior to  
26 securing the funds adequate to meet the same, nor shall the commission  
27 pledge the credit of any of the member states, except by and with the  
28 authority of the member state.

29 (5) The commission shall keep accurate accounts of all receipts and  
30 disbursements. The receipts and disbursements of the commission shall be  
31 subject to the audit and accounting procedures established under its  
32 bylaws. However, all receipts and disbursements of funds handled by the  
33 commission shall be audited yearly by a certified or licensed public  
34 accountant, and the report of the audit shall be included in and become  
35 part of the annual report of the commission.

36 (g) Qualified immunity, defense and indemnification. (1) The  
37 members, officers, executive director, employees and representatives of  
38 the commission shall be immune from suit and liability, either personally  
39 or in their official capacity, for any claim for damage to or loss of property  
40 or personal injury or other civil liability caused by or arising out of any  
41 actual or alleged act, error or omission that occurred, or that the person  
42 against whom the claim is made had a reasonable basis for believing  
43 occurred within the scope of commission employment, duties or

1 responsibilities; provided that nothing in this paragraph shall be construed  
2 to protect any such person from suit or liability for any damage, loss,  
3 injury or liability caused by the intentional or willful or wanton  
4 misconduct of that person.

5 (2) The commission shall defend any member, officer, executive  
6 director, employee or representative of the commission in any civil action  
7 seeking to impose liability arising out of any actual or alleged act, error, or  
8 omission that occurred within the scope of commission employment,  
9 duties or responsibilities, or that the person against whom the claim is  
10 made had a reasonable basis for believing occurred within the scope of  
11 commission employment, duties or responsibilities; provided that nothing  
12 herein shall be construed to prohibit that person from retaining his or her  
13 own counsel; and provided further, that the actual or alleged act, error or  
14 omission did not result from that person's intentional or willful or wanton  
15 misconduct.

16 (3) The commission shall indemnify and hold harmless any member,  
17 officer, executive director, employee or representative of the commission  
18 for the amount of any settlement or judgment obtained against that person  
19 arising out of any actual or alleged act, error or omission that occurred  
20 within the scope of commission employment, duties or responsibilities, or  
21 that such person had a reasonable basis for believing occurred within the  
22 scope of commission employment, duties or responsibilities, provided that  
23 the actual or alleged act, error or omission did not result from the  
24 intentional or willful or wanton misconduct of that person.

#### 25 SECTION 10—DATA SYSTEM

26 (a) The commission shall provide for the development, maintenance,  
27 operation and utilization of a coordinated database and reporting system  
28 containing licensure, adverse action and investigative information on all  
29 licensed individuals in member states.

30 (b) Notwithstanding any other provision of state law to the contrary, a  
31 member state shall submit a uniform data set to the data system on all  
32 individuals to whom this compact is applicable as required by the rules of  
33 the commission, including:

- 34 (1) Identifying information;
- 35 (2) licensure data;
- 36 (3) adverse actions against a license or privilege to practice;
- 37 (4) non-confidential information related to alternative program  
38 participation;
- 39 (5) any denial of application for licensure, and the reasons for such  
40 denial;
- 41 (6) current significant investigative information; and
- 42 (7) other information that may facilitate the administration of this  
43 compact, as determined by the rules of the commission.

1 (c) Investigative information pertaining to a licensee in any member  
2 state will only be available to other member states.

3 (d) The commission shall promptly notify all member states of any  
4 adverse action taken against a licensee or an individual applying for a  
5 license. Adverse action information pertaining to a licensee in any member  
6 state will be available to any other member state.

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

10 (f) Any information submitted to the data system that is subsequently  
11 required to be expunged by the laws of the member state contributing the  
12 information shall be removed from the data system.

### 13 SECTION 11—RULEMAKING

14 (a) The commission shall promulgate reasonable rules in order to  
15 effectively and efficiently achieve the purpose of the compact.  
16 Notwithstanding the foregoing, in the event the commission exercises its  
17 rulemaking authority in a manner that is beyond the scope of the purposes  
18 of the compact, or the powers granted hereunder, then such an action by  
19 the commission shall be invalid and have no force or effect.

20 (b) The commission shall exercise its rulemaking powers pursuant to  
21 the criteria set forth in this section and the rules adopted thereunder. Rules  
22 and amendments shall become binding as of the date specified in each rule  
23 or amendment.

24 (c) If a majority of the legislatures of the member states rejects a rule,  
25 by enactment of a statute or resolution in the same manner used to adopt  
26 the compact within four years of the date of adoption of the rule, then such  
27 rule shall have no further force and effect in any member state.

28 (d) Rules or amendments to the rules shall be adopted at a regular or  
29 special meeting of the commission.

30 (e) Prior to promulgation and adoption of a final rule or rules by the  
31 commission, and at least 30 days in advance of the meeting at which the  
32 rule will be considered and voted upon, the commission shall file a notice  
33 of proposed rulemaking:

34 (1) On the website of the commission or other publicly accessible  
35 platform; and

36 (2) on the website of each member state professional counseling  
37 licensing board or other publicly accessible platform or the publication in  
38 which each state would otherwise publish proposed rules.

39 (f) The notice of proposed rulemaking shall include:

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

42 (2) the text of the proposed rule or amendment and the reason for the  
43 proposed rule;

1 (3) a request for comments on the proposed rule from any interested  
2 person; and

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

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

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

11 (1) At least 25 persons;

12 (2) a state or federal governmental subdivision or agency; or

13 (3) an association having at least 25 members.

14 (i) If a hearing is held on the proposed rule or amendment, the  
15 commission shall publish the place, time and date of the scheduled public  
16 hearing. If the hearing is held via electronic means, the commission shall  
17 publish the mechanism for access to the electronic hearing.

18 (1) All persons wishing to be heard at the hearing shall notify the  
19 executive director of the commission or other designated member in  
20 writing of their desire to appear and testify at the hearing not less than five  
21 business days before the scheduled date of the hearing.

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

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

27 (4) Nothing in this section shall be construed as requiring a separate  
28 hearing on each rule. Rules may be grouped for the convenience of the  
29 commission at hearings required by this section.

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

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

36 (l) The commission shall, by majority vote of all members, take final  
37 action on the proposed rule and shall determine the effective date of the  
38 rule, if any, based on the rulemaking record and the full text of the rule.

39 (m) Upon determination that an emergency exists, the commission  
40 may consider and adopt an emergency rule without prior notice,  
41 opportunity for comment or hearing, provided that the usual rulemaking  
42 procedures provided in the compact and in this section shall be  
43 retroactively applied to the rule as soon as reasonably possible, in no event

1 later than 90 days after the effective date of the rule. For the purposes of  
2 this provision, an emergency rule is one that must be adopted immediately  
3 in order to:

- 4 (1) Meet an imminent threat to public health, safety or welfare;
- 5 (2) prevent a loss of commission or member state funds;
- 6 (3) meet a deadline for the promulgation of an administrative rule that  
7 is established by federal law or rule; or
- 8 (4) protect public health and safety.

9 (n) The commission or an authorized committee of the commission  
10 may direct revisions to a previously adopted rule or amendment for  
11 purposes of correcting typographical errors, errors in format, errors in  
12 consistency or grammatical errors. Public notice of any revisions shall be  
13 posted on the website of the commission. The revision shall be subject to  
14 challenge by any person for a period of 30 days after posting. The revision  
15 may be challenged only on grounds that the revision results in a material  
16 change to a rule. A challenge shall be made in writing and delivered to the  
17 chair of the commission prior to the end of the notice period. If no  
18 challenge is made, the revision will take effect without further action. If  
19 the revision is challenged, the revision may not take effect without the  
20 approval of the commission.

#### 21 SECTION 12—OVERSIGHT,

#### 22 DISPUTE RESOLUTION AND ENFORCEMENT

23 (a) Oversight. (1) The executive, legislative and judicial branches of  
24 state government in each member state shall enforce this compact and take  
25 all actions necessary and appropriate to effectuate the compact's purposes  
26 and intent. The provisions of this compact and the rules promulgated  
27 hereunder shall have standing as statutory law.

28 (2) All courts shall take judicial notice of the compact and the rules in  
29 any judicial or administrative proceeding in a member state pertaining to  
30 the subject matter of this compact which may affect the powers,  
31 responsibilities or actions of the commission.

32 (3) The commission shall be entitled to receive service of process in  
33 any such proceeding and shall have standing to intervene in such a  
34 proceeding for all purposes. Failure to provide service of process to the  
35 commission shall render a judgment or order void as to the commission,  
36 this compact or promulgated rules.

37 (b) Default, technical assistance and termination. (1) If the  
38 commission determines that a member state has defaulted in the  
39 performance of its obligations or responsibilities under this compact or the  
40 promulgated rules, the commission shall:

41 (A) Provide written notice to the defaulting state and other member  
42 states of the nature of the default, the proposed means of curing the default  
43 and any other action to be taken by the commission; and

1 (B) provide remedial training and specific technical assistance  
2 regarding the default.

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

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

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

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

21 (g) The defaulting state may appeal the action of the commission by  
22 petitioning the United States district court for the District of Columbia or  
23 the federal district where the commission has its principal offices. The  
24 prevailing member shall be awarded all costs of such litigation, including  
25 reasonable attorney fees.

26 (h) Dispute resolution. (1) Upon request by a member state, the  
27 commission shall attempt to resolve disputes related to the compact that  
28 arise among member states and between member and non-member states.

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

31 (i) Enforcement. (1) The commission, in the reasonable exercise of its  
32 discretion, shall enforce the provisions and rules of this compact.

33 (2) By majority vote, the commission may initiate legal action in the  
34 United States district court for the District of Columbia or the federal  
35 district where the commission has its principal offices against a member  
36 state in default to enforce compliance with the provisions of the compact  
37 and its promulgated rules and bylaws. The relief sought may include both  
38 injunctive relief and damages. In the event judicial enforcement is  
39 necessary, the prevailing member shall be awarded all costs of such  
40 litigation, including reasonable attorney fees.

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

1                   SECTION 13—DATE OF IMPLEMENTATION OF  
2                   THE COUNSELING COMPACT COMMISSION  
3                   AND ASSOCIATED RULES, WITHDRAWAL AND AMENDMENT

4           (a) The compact shall come into effect on the date on which the  
5 compact statute is enacted into law in the 10<sup>th</sup> member state. The  
6 provisions, which become effective at that time, shall be limited to the  
7 powers granted to the commission relating to assembly and the  
8 promulgation of rules. Thereafter, the commission shall meet and exercise  
9 rulemaking powers necessary to the implementation and administration of  
10 the compact.

11          (b) Any state that joins the compact subsequent to the commission's  
12 initial adoption of the rules shall be subject to the rules as they exist on the  
13 date on which the compact becomes law in that state. Any rule that has  
14 been previously adopted by the commission shall have the full force and  
15 effect of law on the day the compact becomes law in that state.

16          (c) Any member state may withdraw from this compact by enacting a  
17 statute repealing the same.

18           (1) A member state's withdrawal shall not take effect until six months  
19 after enactment of the repealing statute.

20           (2) Withdrawal shall not affect the continuing requirement of the  
21 withdrawing state's professional counseling licensing board to comply  
22 with the investigative and adverse action reporting requirements of this act  
23 prior to the effective date of withdrawal.

24          (d) Nothing contained in this compact shall be construed to invalidate  
25 or prevent any professional counseling licensure agreement or other  
26 cooperative arrangement between a member state and a non-member state  
27 that does not conflict with the provisions of this compact.

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

31                   SECTION 14—CONSTRUCTION AND SEVERABILITY

32          This compact shall be liberally construed so as to effectuate the  
33 purposes thereof. The provisions of this compact shall be severable and if  
34 any phrase, clause, sentence or provision of this compact is declared to be  
35 contrary to the constitution of any member state or of the United States or  
36 the applicability thereof to any government, agency, person or  
37 circumstance is held invalid, the validity of the remainder of this compact  
38 and the applicability thereof to any government, agency, person or  
39 circumstance shall not be affected thereby. If this compact shall be held  
40 contrary to the constitution of any member state, the compact shall remain  
41 in full force and effect as to the remaining member states and in full force  
42 and effect as to the member state affected as to all severable matters.

43                   SECTION 15—BINDING EFFECT OF

