

HOUSE BILL No. 2534

By Committee on Health and Human Services

Requested by William Wilk on behalf of the Kansas Chamber of Commerce

1-23

1 AN ACT concerning health professions and practices; relating to
2 respiratory therapy; enacting the respiratory care interstate compact to
3 provide interstate practice privileges to respiratory therapists.

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 respiratory care interstate compact.

ARTICLE 1 – TITLE AND PURPOSE

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

15 (b) This compact is designed to achieve the following objectives:

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

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

20 (3) promote the cooperation of member states in regulating the
21 practice of respiratory therapy within those member states;

22 practice of respiratory therapy within those member states;
23 (4) ease administrative burdens on states by encouraging the
24 cooperation of member states in regulating multi-state respiratory therapy
practice;

25 (5) support relocating active military members and their spouses; and
26 (6) promote mobility and address workforce shortages

ARTICLE 2 – DEFINITIONS

29 following definitions shall apply:

30 (a) "Active military member" means any person with a full-time duty
31 status in the armed forces of the United States, including members of the
32 national guard and reserve.

(b) "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by any state authority with regulatory authority over respiratory therapists, such as

1 license denial, censure, revocation, suspension, probation, monitoring of
2 the licensee or restriction on the licensee's practice, not including
3 participation in an alternative program.

4 (c) "Alternative program" means a non-disciplinary monitoring or
5 practice remediation process applicable to a respiratory therapist approved
6 by any state authority with regulatory authority over respiratory therapists.
7 This includes, but is not limited to, programs to which licensees with
8 substance abuse or addiction issues are referred in lieu of adverse action.

9 (d) "Charter member states" means those member states that were
10 the first seven states to enact the compact into the laws of their state.

11 (e) "Commission" or "respiratory care interstate compact
12 commission" means the governmental instrumentality and body politic
13 whose membership consists of all member states that have enacted the
14 compact.

15 (f) "Commissioner" means the individual appointed by a member
16 state to serve as the member of the commission for that member state.

17 (g) "Compact" means the respiratory care interstate compact.

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

23 (i) "Criminal background check" means the submission by the
24 member state of fingerprints or other biometric-based information on
25 license applicants at the time of initial licensing for the purpose of
26 obtaining that applicant's criminal history record information, as defined in
27 28 C.F.R. § 20.3(d) or successor provision, from the federal bureau of
28 investigation and the state's criminal history record repository, as defined
29 in 28 C.F.R. § 20.3(f) or successor provision.

30 (j) "Data system" means the commission's repository of information
31 about licensees as further set forth in article 8.

32 (k) "Domicile" means the jurisdiction that is the licensee's principal
33 home for legal purposes.

34 (l) "Encumbered license" means a license that a state's respiratory
35 therapy licensing authority has limited in any way.

36 (m) "Executive committee" means a group of directors elected or
37 appointed to act on behalf of and within the powers granted to them by the
38 commission.

39 (n) "Home state" except as set forth in article 5, means the member
40 state that is the licensee's primary domicile.

41 (o) "Home state license" means an active license to practice
42 respiratory therapy in a home state that is not an encumbered license.

43 (p) "Jurisprudence requirement" means an assessment of an

1 individual's knowledge of the state laws and regulations governing the
2 practice of respiratory therapy in such state.

3 (q) "Licensee" means an individual who currently holds an
4 authorization from the state to practice as a respiratory therapist.

5 (r) "Member state" means a state that has enacted the compact and
6 been admitted to the commission in accordance with the provisions in this
7 compact and commission rules.

8 (s) "Model compact" means the model for the respiratory care
9 interstate compact on file with the council of state governments or other
10 entity as designated by the commission.

11 (t) "Remote state" means a member state where a licensee is
12 exercising or seeking to exercise the compact privilege.

13 (u) "Respiratory therapist" or "respiratory care practitioner" means an
14 individual who holds a credential issued by the national board for
15 respiratory care or its successor and a license in a state to practice
16 respiratory therapy. For purposes of this compact, any other title or status
17 adopted by a state to replace the term "respiratory therapist" or "respiratory
18 care practitioner" shall be deemed synonymous with "respiratory therapist"
19 and shall confer the same rights and responsibilities to the licensee under
20 the provisions of this compact at the time of enactment.

21 (v) "Respiratory therapy," "respiratory therapy practice," "respiratory
22 care," "the practice of respiratory care" and "the practice of respiratory
23 therapy" mean the care and services provided by or under the direction and
24 supervision of a respiratory therapist or respiratory care practitioner.

25 (w) "Respiratory therapy licensing authority" means the agency,
26 board or other body of a state that is responsible for licensing and
27 regulation of respiratory therapists.

28 (x) "Rule" means a regulation promulgated by an entity that has the
29 force and effect of law.

30 (y) "Scope of practice" means the procedures, actions and processes a
31 respiratory therapist licensed in a state or practicing under a compact
32 privilege in a state is permitted to undertake in that state and the
33 circumstances under which the respiratory therapist is permitted to
34 undertake those procedures, actions and processes. Such procedures,
35 actions, processes and the circumstances under which they may be
36 undertaken may be established through means, including, but not limited
37 to, statute, regulations, case law and other processes available to the state
38 respiratory therapy licensing authority or other governmental agency.

39 (z) "Significant investigative information" means information,
40 records and documents received or generated by a state respiratory therapy
41 licensing authority pursuant to an investigation for which a determination
42 has been made that there is probable cause to believe that the licensee has
43 violated a statute or regulation that is considered more than a minor

1 infraction for which the state respiratory therapy licensing authority could
2 pursue adverse action against the licensee.

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

5 **ARTICLE 3 – STATE PARTICIPATION IN THIS COMPACT**

6 (a) In order to participate in this compact and thereafter continue as a
7 member state, a member state shall:

8 (1) Enact a compact that is not materially different from the model
9 compact;

10 (2) license respiratory therapists;

11 (3) participate in the commission's data system;

12 (4) have a mechanism in place for receiving and investigating
13 complaints against licensees and compact privilege holders;

14 (5) notify the commission, in compliance with the terms of this
15 compact and commission rules, of any adverse action against a licensee, a
16 compact privilege holder or a license applicant;

17 (6) notify the commission, in compliance with the terms of this
18 compact and commission rules, of the existence of significant investigative
19 information;

20 (7) comply with the rules of the commission;

21 (8) grant the compact privilege to a holder of an active home state
22 license and otherwise meet the applicable requirements of article 4 in a
23 member state; and

24 (9) (A) complete a criminal background check for each new licensee
25 at the time of initial licensure.

26 (B) If expressly authorized or permitted by federal law, whether such
27 federal law is in effect prior to, at or after the time of a member state's
28 enactment of this compact, a member state's enactment of this compact
29 shall hereby authorize the member state's respiratory therapy licensing
30 authority to perform criminal background checks as defined in this
31 compact. The absence of such a federal law as described in this subsection
32 shall not prevent or preclude such authorization if it may be derived or
33 granted through means other than the enactment of this compact.

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

36 **ARTICLE 4 – COMPACT PRIVILEGE**

37 (a) To exercise the compact privilege under the terms and provisions
38 of the compact, the licensee shall:

39 (1) Hold and maintain an active home state license as a respiratory
40 therapist;

41 (2) hold and maintain an active credential from the national board for
42 respiratory care or its successor that would qualify such licensee for
43 licensure in the remote state where they are seeking the privilege;

1 (3) have not had any adverse action against a license within the
2 previous two years;

3 (4) notify the commission that the licensee is seeking the compact
4 privilege within a remote state;

5 (5) pay any applicable fees, including any state fees, commission fees
6 and renewal fees, for the compact privilege;

7 (6) meet any jurisprudence requirements established by the remote
8 state where the licensee is seeking a compact privilege;

9 (7) report to the commission adverse action taken by any non-
10 member state within 30 days from the date that the adverse action is taken;

11 (8) report to the commission, when applying for a compact privilege,
12 the address of the licensee's domicile and thereafter promptly report to the
13 commission any change in the address of the licensee's domicile within 30
14 days of the effective date of the change in address; and

15 (9) consent to accept service of process by mail at the licensee's
16 domicile on record with the commission with respect to any action brought
17 against the licensee by the commission or a member state and consent to
18 accept service of a subpoena by mail at the licensee's domicile on record
19 with the commission with respect to any action brought or investigation
20 conducted by the commission or a member state.

21 (b) The compact privilege is valid until the expiration date or
22 revocation of the home state license unless terminated pursuant to adverse
23 action. The licensee shall comply with all of the requirements of
24 subsection (a) to maintain the compact privilege in a remote state. If such
25 requirements are met, no adverse actions are taken and the licensee has
26 paid any applicable compact privilege renewal fees, then the licensee shall
27 maintain the licensee's compact privilege.

28 (c) A licensee providing respiratory therapy in a remote state under
29 the compact privilege shall function within the scope of practice
30 authorized by the remote state for the type of respiratory therapist license
31 the licensee holds. Such procedures, actions, processes and the
32 circumstances under which they may be undertaken may be established
33 through means, including, but not limited to, statute, regulations, case law
34 and other processes available to the state respiratory therapy licensing
35 authority or other government agency.

36 (d) If a licensee's compact privilege in a remote state is removed by
37 the remote state, the individual shall lose or be ineligible for the compact
38 privilege in that remote state until the compact privilege is no longer
39 limited or restricted by that state.

40 (e) If a home state license is encumbered, the licensee shall lose the
41 compact privilege in all remote states until the following occur:

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

43 (2) two years have elapsed from the date that the license is no longer

1 encumbered due to the adverse action.

2 (f) Once a licensee with a restricted or limited license meets the
3 requirements of subsection (e)(1) and (2), the licensee shall also meet the
4 requirements of subsection (a) to obtain a compact privilege in a remote
5 state.

ARTICLE 5 – ACTIVE MILITARY MEMBER OR THEIR SPOUSE

8 (a) An active military member or their spouse shall designate a home
9 state where the individual has a current license in good standing. The
10 individual may retain the home state designation during the period that the
11 service member is on active duty.

12 (b) An active military member and their spouse shall not be required
13 to pay to the commission for a compact privilege any fee that may
14 otherwise be charged by the commission. If a remote state chooses to
15 charge a fee for a compact privilege, such state may choose to charge a
16 reduced fee or no fee to an active military member and their spouse for a
17 compact privilege.

ARTICLE 6 – ADVERSE ACTIONS

19 (a) A member state where a licensee is licensed shall have authority
20 to impose adverse action against the license issued by that member state.

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

24 (c) Nothing in this compact shall override a member state's decision
25 that participation in an alternative program may be used in lieu of adverse
26 action and that such participation shall remain nonpublic if required by the
27 member state's laws.

28 (d) A remote state shall have the authority to:

29 (1) Take adverse actions as set forth in this compact against a
30 licensee's compact privilege in that state:

31 (2) issue subpoenas for both hearings and investigations that require
32 the attendance and testimony of witnesses and the production of evidence;

33 (A) Subpoenas may be issued by a respiratory therapy licensing
34 authority in a member state for the attendance and testimony of witnesses
35 and the production of evidence.

36 (B) Subpoenas issued by a respiratory therapy licensing authority in a
37 member state for the attendance and testimony of witnesses shall be
38 enforced in the latter state by any court of competent jurisdiction in the
39 latter state, according to the practice and procedure of that court applicable
40 to subpoenas issued in proceedings pending before it.

41 (C) Subpoenas issued by a respiratory therapy licensing authority in a
42 member state for production of evidence from another member state shall
43 be enforced in the latter state, according to the practice and procedure of

1 that court applicable to subpoenas issued in the proceedings pending
2 before it.

3 (D) The issuing authority shall pay any witness fees, travel expenses,
4 mileage and other fees required by the service statutes of the state where
5 the witnesses or evidence are located;

6 (3) unless otherwise prohibited by state law, recover from the licensee
7 the costs of investigations and disposition of cases resulting from any
8 adverse action taken against that licensee;

9 (4) notwithstanding subsection (d)(2), a member state shall not issue
10 a subpoena to gather evidence of conduct in another member state that is
11 lawful in such other member state for the purpose of taking adverse action
12 against a licensee's compact privilege or application for a compact
13 privilege in that member state; and

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

17 (e) Joint investigations:

18 (1) In addition to the authority granted to a member state by its
19 respective respiratory therapy practice act or other applicable state law, a
20 member state may participate with other member states in joint
21 investigations of licensees, except that a member state receiving such a
22 request has no obligation to respond to any subpoena issued regarding an
23 investigation of conduct or practice that was lawful in a member state at
24 the time it was undertaken.

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

31 (f) Nothing in this compact shall be construed to permit a member
32 state to take any adverse action against a licensee or holder of a compact
33 privilege for conduct or practice that was legal in the member state at the
34 time such conduct or practice was undertaken.

35 (g) Nothing in this compact shall be construed to permit a member
36 state to take disciplinary action against a licensee or holder of a compact
37 privilege for conduct or practice that was legal in the member state at the
38 time such conduct or practice was undertaken.

ARTICLE 7 – ESTABLISHMENT OF THE RESPIRATORY CARE INTERSTATE COMPACT COMMISSION

41 (a) The compact member states hereby create and establish a joint
42 governmental agency whose membership consists of all member states that
43 have enacted the compact known as the respiratory care interstate compact

1 commission. The commission is an instrumentality of the compact member
2 states acting jointly and not an instrumentality of any one state. The
3 commission shall come into existence on or after the effective date of the
4 compact, as set forth in article 11.

5 (b) Membership, voting and meetings:

6 (1) Each member state shall have and be limited to one commissioner
7 selected by that member state's respiratory therapy licensing authority.

8 (2) The commissioner shall be an administrator or their designated
9 staff member of the member state's respiratory therapy licensing authority.

10 (3) The commission shall by rule or bylaw establish a term of office
11 for commissioners and may by rule or bylaw establish term limits.

12 (4) The commission may recommend to a member state the removal
13 or suspension any commissioner from office.

14 (5) A member state's respiratory therapy licensing authority shall fill
15 any vacancy of its commissioner occurring on the commission within 60
16 days of the vacancy.

17 (6) Each commissioner shall be entitled to one vote on all matters
18 before the commission requiring a vote by commissioners.

19 (7) A commissioner shall vote in person or by such other means as
20 provided in the bylaws. The bylaws may provide for commissioners to
21 meet by telecommunication, videoconference or other means of
22 communication.

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

25 (c) The commission shall have the following powers:

26 (1) Establish and amend the fiscal year of the commission;

27 (2) establish and amend bylaws and policies, including, but not
28 limited to, a code of conduct and conflict of interest;

29 (3) establish and amend rules that shall be binding in all member
30 states;

31 (4) maintain its financial records in accordance with the bylaws;

32 (5) meet and take such actions as are consistent with the provisions of
33 this compact, the commission's rules and the bylaws;

34 (6) initiate and conduct legal proceedings or actions in the name of
35 the commission, except that the standing of any respiratory therapy
36 licensing authority to sue or be sued under applicable law shall not be
37 affected;

38 (7) maintain and certify records and information provided to a
39 member state as the authenticated business records of the commission and
40 designate an agent to do so on the commission's behalf;

41 (8) purchase and maintain insurance and bonds;

42 (9) accept or contract for services of personnel, including, but not
43 limited to, employees of a member state;

- 1 (10) conduct an annual financial review;
- 2 (11) hire employees, elect or appoint officers, fix compensation,
- 3 define 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 (12) assess and collect fees;
- 8 (13) accept, receive, utilize and dispose of the same, any and all
- 9 appropriate gifts, donations, grants of money, other sources of revenue,
- 10 equipment, supplies, materials and services, except that at all times:
- 11 (A) The commission shall avoid any appearance of impropriety; and
- 12 (B) the commission shall avoid any appearance of conflict of interest;
- 13 (14) lease, purchase, retain, own, hold, improve or use any property,
- 14 real, personal or mixed or any undivided interest therein;
- 15 (15) sell, convey, mortgage, pledge, lease, exchange, abandon or
- 16 otherwise dispose of any property real, personal or mixed;
- 17 (16) establish a budget and make expenditures;
- 18 (17) borrow money in a fiscally responsible manner;
- 19 (18) appoint committees, including standing committees, composed
- 20 of commissioners state regulators, state legislators or their representatives
- 21 and consumer representatives and such other interested persons as may be
- 22 designated in this compact and the bylaws;
- 23 (19) provide and receive information from and cooperate with law
- 24 enforcement agencies;
- 25 (20) establish and elect an executive committee, including a
- 26 chairperson, vice chairperson, secretary, treasurer and such other offices as
- 27 the commission shall establish by rule or bylaw;
- 28 (21) enter into contracts or arrangements for the management of the
- 29 affairs of the commission;
- 30 (22) determine whether a state's adopted language is materially
- 31 different from the model compact language such that the state would not
- 32 qualify for participation in the compact; and
- 33 (23) perform such other functions as may be necessary or appropriate
- 34 to achieve the purposes of this compact.

35 (d) The executive committee:

- 36 (1) The executive committee shall have the power to act on behalf of
- 37 the commission according to the terms of this compact. The powers, duties
- 38 and responsibilities of the executive committee shall include:
- 39 (A) Overseeing the day-to-day activities of the administration of the
- 40 compact, including enforcement and compliance with the provisions of the
- 41 compact, its rules and bylaws and other such duties as deemed necessary;
- 42 (B) recommending to the commission changes to the rules or bylaws,
- 43 changes to this compact legislation, fees charged to compact member

1 states, fees charged to licensees and other fees;

2 (C) ensuring compact administration services are appropriately

3 provided, including by contract;

4 (D) preparing and recommending the budget;

5 (E) maintaining financial records on behalf of the commission;

6 (F) monitoring compact compliance of member states and providing

7 compliance reports to the commission;

8 (G) establishing additional committees as necessary;

9 (H) exercising the powers and duties of the commission during the

10 interim between commission meetings, except for adopting or amending

11 rules, adopting or amending bylaws and exercising any other powers and

12 duties expressly reserved to the commission by rule or bylaw; and

13 (I) performing other duties as provided in the rules or bylaws of the

14 commission.

15 (2) The executive committee shall be composed of up to nine

16 members, as further set forth in the bylaws of the commission:

17 (A) Seven voting members who are elected by the commission from

18 the current membership of the commission; and

19 (B) two ex officio, nonvoting members.

20 (3) The commission may remove any member of the executive

21 committee as provided in the commission's bylaws.

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

23 (A) Executive committee meetings shall be open to the public, except

24 that the executive committee may meet in a closed, nonpublic meeting as

25 provided in subsection (f)(4) below;

26 (B) the executive committee shall give advance notice of its

27 meetings, posted on its website and as determined to provide notice to

28 persons with an interest in the business of the commission; and

29 (C) the executive committee may hold a special meeting in

30 accordance with subsection (f)(2) below.

31 (e) The commission shall adopt and provide to the member states an

32 annual report.

33 (f) Meetings of the commission:

34 (1) All meetings of the commission that are not closed pursuant to

35 paragraph (4) shall be open to the public. Notice of public meetings shall

36 be posted on the commission's website at least 30 days prior to the public

37 meeting.

38 (2) Notwithstanding paragraph (1), the commission may convene an

39 emergency public meeting by providing at least 24 hours' prior notice on

40 the commission's website and any other means as provided in the

41 commission's rules, for any of the reasons it may dispense with notice of

42 proposed rulemaking under article 9(g). The commission's legal counsel

43 shall certify that one of the reasons justifying an emergency public

1 meeting has been met.

2 (3) Notice of all commission meetings shall provide the time, date
3 and location of the meeting, and if the meeting is to be held or accessible
4 via telecommunication, video conference or other electronic means, the
5 notice shall include the mechanism for access to the meeting.

6 (4) The commission or the executive committee may convene in a
7 closed, nonpublic meeting for the commission or executive committee to
8 receive or solicit legal advice or to discuss:

9 (A) Noncompliance of a member state with its obligations under the
10 compact;

11 (B) the employment, compensation, discipline or other matters,
12 practices or procedures related to specific employees;

13 (C) current or threatened discipline of a licensee or compact privilege
14 holder by the commission or by a member state's respiratory therapy
15 licensing authority;

16 (D) current, threatened or reasonably anticipated litigation;

17 (E) negotiation of contracts for the purchase, lease or sale of goods,
18 services or real estate;

19 (F) accusing any person of a crime or formally censuring any person;

20 (G) trade secrets or commercial or financial information that is
21 privileged or confidential;

22 (H) information of a personal nature where disclosure would
23 constitute a clearly unwarranted invasion of personal privacy;

24 (I) investigative records compiled for law enforcement purposes;

25 (J) information related to any investigative reports prepared by or on
26 behalf of or for use of the commission or other committee charged with
27 responsibility of investigation or determination of compliance issues
28 pursuant to the compact;

29 (K) legal advice;

30 (L) matters specifically exempted from disclosure by federal or
31 member state law; or

32 (M) other matters as promulgated by the commission by rule.

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

37 (6) The commission shall keep minutes in accordance with
38 commission rules and bylaws. All documents considered in connection
39 with an action shall be identified in such minutes. All minutes and
40 documents of a closed meeting shall remain under seal, subject to release
41 only by a majority vote of the commission or order of a court of competent
42 jurisdiction.

43 (g) Financing of the commission:

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

4 (2) The commission may accept any and all appropriate revenue
5 sources as provided in this compact.

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

12 (4) The commission shall not incur obligations of any kind prior to
13 securing the funds or a loan adequate to meet such obligations nor shall the
14 commission pledge the credit of any of the member states, except by and
15 with the authority of the member state.

16 (5) The commission shall keep accurate accounts of all receipts and
17 disbursements. The receipts and disbursements of the commission shall be
18 subject to the financial review and accounting procedures established
19 under its bylaws. However, all receipts and disbursements of funds
20 handled by the commission shall be subject to an annual financial review
21 by a certified or licensed public accountant, and the report of the financial
22 review shall be included in and become part of the annual report of the
23 commission.

24 (h) Qualified immunity, defense and indemnification:

25 (1) The provisions of this compact shall not be construed as a
26 limitation on the liability of any licensee for professional malpractice or
27 misconduct, which shall be governed solely by any other applicable state
28 laws.

29 (2) The member states, commissioners, officers, executive directors,
30 employees and agents of the commission shall be immune from suit and
31 liability, both personally and in their official capacity, for any claim for
32 damage to or loss of property or personal injury or other civil liability
33 caused by or arising out of any actual or alleged act, error or omission that
34 occurred or that the person against whom the claim is made had a
35 reasonable basis for believing occurred within the scope of commission
36 employment, duties or responsibilities, except that nothing in this
37 subsection shall be construed to protect any such person from suit or
38 liability for any damage, loss, injury or liability caused by the intentional
39 or willful or wanton misconduct of such person. The procurement of
40 insurance of any type by the commission shall not in any way compromise
41 or limit the immunity granted hereunder.

42 (3) The commission shall defend any commissioner, officer,
43 executive director, employee and agent of the commission in any civil

1 action seeking to impose liability arising out of any actual or alleged act,
2 error or omission that occurred within the scope of commission
3 employment, duties or responsibilities or as determined by the commission
4 that the person against whom the claim is made had a reasonable basis for
5 believing occurred within the scope of commission employment, duties or
6 responsibilities, except that nothing in this compact shall be construed to
7 prohibit such person from retaining their own counsel at their own expense
8 and that the actual or alleged act, error or omission did not result from
9 such person's intentional or willful or wanton misconduct.

10 (4) The commission shall indemnify and hold harmless any
11 commissioner, member, officer, executive director, employee and agent of
12 the commission for the amount of any settlement or judgment obtained
13 against that person arising out of any actual or alleged act, error or
14 omission that occurred within the scope of commission employment,
15 duties or responsibilities or that such person had a reasonable basis for
16 believing occurred within the scope of commission employment, duties or
17 responsibilities if that the actual or alleged act, error or omission did not
18 result from the intentional or willful or wanton misconduct of such person.

19 (5) Nothing in this compact shall be interpreted to waive or otherwise
20 abrogate a member state's state action immunity or state action affirmative
21 defense with respect to antitrust claims under the Sherman act, Clayton act
22 or any other state or federal antitrust or anticompetitive law or regulation.

23 (6) Nothing in this compact shall be construed to be a waiver of
24 sovereign immunity by the member states or by the commission.

ARTICLE 8 – DATA SYSTEM

25 (a) The commission shall provide for the development, maintenance,
26 operation and utilization of a coordinated database and reporting system
27 containing licensure, adverse action and the presence of significant
28 investigative information.

29 (b) Notwithstanding any other provision of state law to the contrary, a
30 member state shall submit a uniform data set to the data system as required
31 by the rules of the commission, including, but not limited to:

32 (1) Identifying information;
33 (2) licensure data;

34 (3) adverse actions against a licensee, license applicant or compact
35 privilege holder and information related thereto;

36 (4) nonconfidential information related to alternative program
37 participation, the beginning and ending dates of such participation and
38 other information related to such participation not made confidential under
39 member state law;

40 (5) any denial of application for licensure and the reason for such
41 denial;

42 (6) the presence of current significant investigative information; and

1 (7) other information that may facilitate the administration of this
2 compact or the protection of the public, as determined by the rules of the
3 commission.

4 (c) A member state shall not submit any information that constitutes
5 criminal history record information, as defined by applicable federal law,
6 to the data system established hereunder.

7 (d) The records and information provided to a member state pursuant
8 to this compact or through the data system, when certified by the
9 commission or an agent thereof, shall constitute the authenticated business
10 records of the commission and shall be entitled to any associated hearsay
11 exception in any relevant judicial, quasi-judicial or administrative
12 proceedings in a member state.

13 (e) Significant investigative information pertaining to a licensee in
14 any member state shall only be available to other member states.

15 (f) It shall be the responsibility of the member states to report any
16 adverse action against a licensee and to monitor the database to determine
17 whether adverse action has been taken against a licensee. Adverse action
18 information pertaining to a licensee in any member state shall be available
19 to any other member state.

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

23 (h) Any information submitted to the data system that is subsequently
24 expunged pursuant to federal law or the laws of the member state
25 contributing the information shall be removed from the data system.

26 ARTICLE 9 – RULEMAKING

27 (a) The commission shall promulgate reasonable rules in order to
28 effectively and efficiently implement and administer the purposes and
29 provisions of the compact. A rule shall be invalid and have no force and
30 effect only if a court of competent jurisdiction holds that the rule is invalid
31 because the commission exercised its rulemaking authority in a manner
32 that is beyond the scope and purposes of the compact or the powers
33 granted hereunder or based upon another applicable standard of review.

34 (b) For purposes of the compact, the rules of the commission shall
35 have the force of law in each member state.

36 (c) The commission shall exercise its rulemaking powers pursuant to
37 the criteria set forth in this section and the rules adopted thereunder. Rules
38 shall become binding as of the date specified in each rule.

39 (d) If a majority of the legislatures of the member states rejects a rule
40 or portion of a rule, by enactment of a statute or resolution in the same
41 manner used to adopt the compact within four years of the date of adoption
42 of the rule, then such rule shall have no further force and effect in any
43 member state.

1 (e) Rules shall be adopted at a regular or special meeting of the
2 commission.

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

6 (g) Prior to adoption of a proposed rule by the commission and at
7 least 30 days in advance of the meeting where the commission will hold a
8 public hearing on the proposed rule, the commission shall provide a notice
9 of proposed rulemaking:

10 (1) On the website of the commission or other publicly accessible
11 platform;

12 (2) to persons who have requested notice of the commission's notices
13 of proposed rulemaking; and

14 (3) in such other ways as the commission may specify by rule.

15 (h) The notice of proposed rulemaking shall include:

16 (1) The time, date and location of the public hearing where the
17 commission will hear public comments on the proposed rule and, if
18 different, the time, date and location of the meeting where the commission
19 will consider and vote on the proposed rule;

20 (2) if the hearing is held via telecommunication, video conference or
21 other electronic means, the commission shall include the mechanism for
22 access to the hearing in the notice of proposed rulemaking;

23 (3) the text of the proposed rule and the reason therefor;

24 (4) a request for comments on the proposed rule from any interested
25 person; and

26 (5) the manner in which interested persons may submit written
27 comments.

28 (i) All hearings will be recorded. A copy of the recording and all
29 written comments and documents received by the commission in response
30 to the proposed rule shall be available to the public.

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

34 (k) The commission shall, by majority vote of all commissioners, take
35 final action on the proposed rule based on the rulemaking record and the
36 full text of the rule.

37 (1) The commission may adopt changes to the proposed rule if the
38 changes are consistent with the original purpose of the proposed rule.

39 (2) The commission shall provide an explanation of the reasons for
40 substantive changes made to the proposed rule as well as reasons for
41 substantive changes not made that were recommended by commenters.

42 (3) The commission shall determine a reasonable effective date for
43 the rule. Except for an emergency as provided in subsection (l), the

1 effective date of the rule shall be not earlier than 30 days after issuing the
2 notice that it adopted or amended the rule.

3 (l) Upon determination that an emergency exists, the commission
4 may consider and adopt an emergency rule with 24 hours' notice and an
5 opportunity to comment, except that the usual rulemaking procedures
6 provided in the compact and in this section shall be retroactively applied to
7 the rule as soon as reasonably possible but in no event later than 90 days
8 after the effective date of the rule. For the purposes of this provision, an
9 emergency rule is one that shall be adopted immediately in order to:

10 (1) Meet an imminent threat to public health, safety or welfare;
11 (2) prevent a loss of commission or member state funds;
12 (3) meet a deadline for the promulgation of a rule that is established
13 by federal law or rule; and
14 (4) protect public health and safety.

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

27 (n) A member state's rulemaking process or procedural requirements
28 shall not apply to the commission. The commission shall have no authority
29 over any member state's rulemaking process or procedural requirements
30 that do not pertain to the compact.

31 (o) The provisions of this compact and any rule or regulation of the
32 commission shall not be construed to limit, restrict or in any way reduce
33 the ability of a member state to enact and enforce laws, regulations or
34 other rules related to the practice of respiratory therapy in that state, where
35 those laws, regulations or other rules are not inconsistent with the
36 provisions of this compact.

ARTICLE 10 – OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

39 (a) Oversight:
40 (1) The executive and judicial branches of state government in each
41 member state shall enforce this compact and take all actions necessary and
42 appropriate to implement the compact.

43 (2) Venue is proper, and judicial proceedings by or against the

1 commission shall be brought solely and exclusively in a court of
2 competent jurisdiction where the principal office of the commission is
3 located. The commission may waive venue and jurisdictional defenses to
4 the extent it adopts or consents to participate in alternative dispute
5 resolution proceedings. The provisions of this compact shall not affect or
6 limit the selection or propriety of venue in any action against a licensee for
7 professional malpractice, misconduct or any such similar matter.

8 (3) The commission shall be entitled to receive service of process in
9 any proceeding regarding the enforcement or interpretation of the compact
10 and have standing to intervene in such a proceeding for all purposes.
11 Failure to provide the commission service of process shall render a
12 judgment or order void as to the commission, this compact or promulgated
13 rules.

14 (b) Default, technical assistance and termination.

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

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

24 (c) If a state in default fails to cure the default, the defaulting state
25 may be terminated from the compact upon an affirmative vote of a
26 majority of the commissioners of the member states and all rights,
27 privileges and benefits conferred on that state by this compact may be
28 terminated on the effective date of termination. A cure of the default shall
29 not relieve the offending state of obligations or liabilities incurred during
30 the period of default.

31 (d) Termination of membership in the compact shall be imposed only
32 after all other means of securing compliance have been exhausted. Notice
33 of intent to suspend or terminate shall be given by the commission to the
34 governor, the majority and minority leaders of the defaulting state's
35 legislature, the defaulting state's respiratory therapy licensing authority and
36 each of the member states' respiratory therapy licensing authorities.

37 (e) A state that has been terminated shall be responsible for all
38 assessments, obligations and liabilities incurred through the effective date
39 of termination, including obligations that extend beyond the effective date
40 of termination, if necessary.

41 (f) Upon the termination of a state's membership from this compact,
42 that state shall immediately provide notice of such termination to all
43 licensees and compact privilege holders, of which the commission has a

1 record, within that state. The terminated state shall continue to recognize
2 all licenses granted pursuant to this compact for a minimum of 180 days
3 after the date of such notice of termination.

4 (g) The commission shall not bear any costs related to a state that is
5 found to be in default or that has been terminated from the compact unless
6 agreed upon in writing between the commission and the defaulting state.

7 (h) The defaulting state may appeal the action of the commission by
8 petitioning the United States district court for the District of Columbia or
9 the federal district where the commission has its principal offices. The
10 prevailing party shall be awarded all costs of such litigation, including
11 reasonable attorney fees.

12 (i) Dispute resolution:

13 (1) Upon request by a member state, the commission shall attempt to
14 resolve disputes related to the compact that arise among member states and
15 between member and nonmember states.

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

18 (j) Enforcement:

19 (1) By majority vote, as may be further provided by rule, the
20 commission may initiate legal action against a member state in default in
21 the United States district court for the District of Columbia or the federal
22 district where the commission has its principal offices to enforce
23 compliance with the provisions of the compact and its promulgated rules.
24 A member state by enactment of this compact consents to venue and
25 jurisdiction in such court for the purposes set forth in this compact. The
26 relief sought may include both injunctive relief and damages. In the event
27 that judicial enforcement is necessary, the prevailing party shall be
28 awarded all costs of such litigation, including reasonable attorney fees.
29 The remedies in this compact shall not be the exclusive remedies of the
30 commission. The commission may pursue any other remedies available
31 under federal or the defaulting member state's law.

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

39 (3) No person other than a member state shall enforce this compact
40 against the commission.

ARTICLE 11 – EFFECTIVE DATE, WITHDRAWAL AND AMENDMENT

43 (a) The compact shall come into effect on the date that the compact

1 statute is enacted into law in the seventh member state.

2 (1) On or after the effective date of the compact, the commission
3 shall convene and review the enactment of each of the first seven member
4 states, charter member states, to determine if the statute enacted by each
5 such charter member state is materially different than the model compact.

6 (A) A charter member state whose enactment is found to be
7 materially different from the model compact shall be entitled to the default
8 process set forth in article 10.

9 (B) If any member state is later found to be in default or is terminated
10 or withdraws from the compact, the commission shall remain in existence
11 and the compact shall remain in effect even if the number of member
12 states should be fewer than seven.

13 (2) Member states enacting the compact subsequent to the seven
14 initial charter member states shall be subject to the process set forth in this
15 compact and commission rule to determine if such states enactments are
16 materially different from the model compact and whether such states
17 qualify for participation in the compact.

18 (3) All actions taken for the benefit of the commission or in
19 furtherance of the purposes of the administration of the compact prior to
20 the effective date of the compact or the commission coming into existence
21 shall be considered to be actions of the commission unless specifically
22 repudiated by the commission. The commission shall own and have all
23 rights to any intellectual property developed on behalf or in furtherance of
24 the commission by individuals or entities involved in organizing or
25 establishing the commission, as may be further set forth in rules of the
26 commission.

27 (4) Any state that joins the compact subsequent to the commission's
28 initial adoption of the rules and bylaws shall be subject to the rules and
29 bylaws as they exist on the date that the compact becomes law in that state.
30 Any rule that has been previously adopted by the commission shall have
31 the full force and effect of law on the date that the compact becomes law
32 in that state.

33 (b) Any member state may withdraw from such compact by enacting
34 a statute repealing the same.

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

37 (2) Withdrawal shall not affect the continuing requirement of the
38 withdrawing state's respiratory therapy licensing authority to comply with
39 the investigative and adverse action reporting requirements of this compact
40 prior to the effective date of withdrawal.

41 (3) Upon the enactment of a statute withdrawing from this compact, a
42 state shall immediately provide notice of such withdrawal to all licensees
43 and compact privilege holders, of which the commission has a record,

1 within that state. Notwithstanding any subsequent statutory enactment to
2 the contrary, such withdrawing state shall continue to recognize all
3 licenses granted pursuant to this compact for a minimum of 180 days after
4 the date of such notice of withdrawal.

5 (c) The provisions of this compact shall not be construed to invalidate
6 or prevent any licensure agreement or other cooperative arrangement
7 between a member state and a nonmember state that does not conflict with
8 the provisions of this compact.

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

12 ARTICLE 12 – CONSTRUCTION AND SEVERABILITY

13 (a) This compact and the commission's rulemaking authority shall be
14 liberally construed so as to effectuate the purposes and the implementation
15 and administration of the compact. Provisions of the compact expressly
16 authorizing or requiring the promulgation of rules shall not be construed to
17 limit the commission's rulemaking authority solely for those purposes.

18 (b) The provisions of this compact shall be severable, and if any
19 phrase, clause, sentence or provision of this compact is held by a court of
20 competent jurisdiction to be contrary to the constitution of any member
21 state, a state seeking participation in the compact or of the United States or
22 the applicability thereof to any government, agency, person or
23 circumstance is held to be unconstitutional by a court of competent
24 jurisdiction, the validity of the remainder of this compact and the
25 applicability thereof to any other government, agency, person or
26 circumstance shall not be affected thereby.

27 (c) Notwithstanding subsection (b), the commission may deny a
28 state's participation in the compact or, in accordance with the requirements
29 of article 10, terminate a member state's participation in the compact if the
30 commission determines that a constitutional requirement of a member state
31 is a material departure from the compact. If this compact shall be held to
32 be contrary to the constitution of any member state, the compact shall
33 remain in full force and effect as to the remaining member states and in
34 full force and effect as to the member state affected as to all severable
35 matters.

36 ARTICLE 13 – CONSISTENT EFFECT AND 37 CONFLICT WITH OTHER STATE LAWS

38 (a) Nothing in this compact shall prevent or inhibit the enforcement
39 of any other law of a member state that is not inconsistent with the
40 compact.

41 (b) Any laws, statutes, regulations or other legal requirements in a
42 member state in conflict with the compact are superseded to the extent of
43 the conflict, including any subsequently enacted state laws.

1 (c) All permissible agreements between the commission and the
2 member states shall be binding in accordance with their terms.

3 (d) Except as expressly set forth in this compact, nothing in this
4 compact shall impact initial licensure.

5 Sec. 2. This act shall take effect and be in force from and after its
6 publication in the statute book.