

Senate File 127 - Introduced

SENATE FILE 127
BY COMMITTEE ON HEALTH AND
HUMAN SERVICES

(SUCCESSOR TO SSB 1012)

A BILL FOR

- 1 An Act establishing the professional counselors licensure
- 2 compact.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147G.1 Professional counselors
2 licensure compact.

3 1. *Purpose.* The purpose of this compact is to facilitate
4 the interstate practice of licensed professional counselors
5 with the goal of improving public access to professional
6 counseling services. The practice of professional counseling
7 occurs in the state where the client is located at the time of
8 the counseling services. The compact preserves the regulatory
9 authority of states to protect public health and safety
10 through the current system of state licensure. This compact is
11 designed to achieve the following objectives:

12 *a.* Increase public access to professional counseling
13 services by providing for the mutual recognition of other
14 member state licenses.

15 *b.* Enhance the states' ability to protect the public's
16 health and safety.

17 *c.* Encourage the cooperation of member states in regulating
18 multistate practice for licensed professional counselors.

19 *d.* Support spouses of relocating active duty military
20 personnel.

21 *e.* Enhance the exchange of licensure, investigative, and
22 disciplinary information among member states.

23 *f.* Allow for the use of telehealth technology to facilitate
24 increased access to professional counseling services.

25 *g.* Support the uniformity of professional counseling
26 licensure requirements throughout the states to promote public
27 safety and public health benefits.

28 *h.* Invest all member states with the authority to hold a
29 licensed professional counselor accountable for meeting all
30 state practice laws in the state in which the client is located
31 at the time care is rendered through the mutual recognition of
32 member state licenses.

33 *i.* Eliminate the necessity for licenses in multiple states.

34 *j.* Provide opportunities for interstate practice by
35 licensed professional counselors who meet uniform licensure

1 requirements.

2 2. *Definitions.* As used in this compact, and except as
3 otherwise provided:

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

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

18 c. "*Alternative program*" means a nondisciplinary monitoring
19 or practice remediation process approved by a professional
20 counseling licensing board to address impaired practitioners.

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

25 e. "*Counseling compact commission*" or "*commission*" means the
26 national administrative body whose membership consists of all
27 states that have enacted the compact.

28 f. "*Current significant investigative information*" means all
29 of the following:

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

1 (2) Investigative information that indicates that the
2 licensed professional counselor represents an immediate threat
3 to public health and safety regardless of whether the licensed
4 professional counselor has been notified and had an opportunity
5 to respond.

6 *g. "Data system"* means a repository of information about
7 licensees, including but not limited to continuing education,
8 examination, licensure, investigative, privilege to practice,
9 and adverse action information.

10 *h. "Encumbered license"* means a license in which an
11 adverse action restricts the practice of licensed professional
12 counseling by the licensee and said adverse action has been
13 reported to the national practitioners data bank.

14 *i. "Encumbrance"* means a revocation or suspension of, or any
15 limitation on, the full and unrestricted practice of licensed
16 professional counseling by a licensing board.

17 *j. "Executive committee"* means a group of directors elected
18 or appointed to act on behalf of, and within the powers granted
19 to them by, the commission.

20 *k. "Home state"* means the member state that is the
21 licensee's primary state of residence.

22 *l. "Impaired practitioner"* means an individual who has a
23 condition that may impair the individual's ability to practice
24 as a licensed professional counselor without some type of
25 intervention and may include but is not limited to alcohol and
26 drug dependence, mental health impairment, and neurological or
27 physical impairments.

28 *m. "Investigative information"* means information, records,
29 and documents received or generated by a professional
30 counseling licensing board pursuant to an investigation.

31 *n. "Jurisprudence requirement"*, if required by a member
32 state, means the assessment of an individual's knowledge of
33 the laws and rules governing the practice of professional
34 counseling in a state.

35 *o. "Licensed professional counselor"* means a counselor

1 licensed by a member state, regardless of the title used by
2 that state, to independently assess, diagnose, and treat
3 behavioral health conditions.

4 *p. "Licensee"* means an individual who currently holds
5 an authorization from the state to practice as a licensed
6 professional counselor.

7 *q. "Licensing board"* means the agency of a state, or
8 equivalent, that is responsible for the licensing and
9 regulation of licensed professional counselors.

10 *r. "Member state"* means a state that has enacted the
11 compact.

12 *s. "Privilege to practice"* means a legal authorization,
13 which is equivalent to a license, permitting the practice of
14 professional counseling in a remote state.

15 *t. "Professional counseling"* means the assessment,
16 diagnosis, and treatment of behavioral health conditions by a
17 licensed professional counselor.

18 *u. "Remote state"* means a member state other than the home
19 state, where a licensee is exercising or seeking to exercise
20 the privilege to practice.

21 *v. "Rule"* means a regulation promulgated by the commission
22 that has the force of law.

23 *w. "Single-state license"* means a licensed professional
24 counselor license issued by a member state that authorizes
25 practice only within the issuing state and does not include a
26 privilege to practice in any other member state.

27 *x. "State"* means any state, commonwealth, district, or
28 territory of the United States that regulates the practice of
29 professional counseling.

30 *y. "Telehealth"* means the application of telecommunication
31 technology to deliver professional counseling services remotely
32 to assess, diagnose, and treat behavioral health conditions.

33 *z. "Unencumbered license"* means a license that authorizes
34 a licensed professional counselor to engage in the full and
35 unrestricted practice of professional counseling.

1 3. *State participation in the compact.*

2 a. To participate in the compact, a state must currently do
3 all of the following:

4 (1) License and regulate licensed professional counselors.

5 (2) Require a licensee to pass a nationally recognized exam
6 approved by the commission.

7 (3) Require a licensee to have a sixty semester-hour or
8 ninety quarter-hour master's degree in counseling or sixty
9 semester-hours or ninety quarter-hours of graduate course work
10 including the following topic areas:

11 (a) Professional counseling orientation and ethical
12 practice.

13 (b) Social and cultural diversity.

14 (c) Human growth and development.

15 (d) Career development.

16 (e) Counseling and helping relationships.

17 (f) Group counseling and group work.

18 (g) Diagnosis, treatment, assessment, and testing.

19 (h) Research and program evaluation.

20 (i) Other areas as determined by the commission.

21 (4) Require a licensee to complete a supervised
22 postgraduate professional experience as defined by the
23 commission.

24 (5) Have a mechanism in place for receiving and
25 investigating complaints about licensees.

26 b. A member state shall do all of the following:

27 (1) Participate fully in the commission's data system,
28 including using the commission's unique identifier as defined
29 in rules.

30 (2) Notify the commission, in compliance with the terms
31 of the compact and rules, of any adverse action or the
32 availability of investigative information regarding a licensee.

33 (3) Implement or utilize procedures for considering the
34 criminal history records of applicants for an initial privilege
35 to practice. These procedures shall include the submission of

1 fingerprints or other biometric-based information by applicants
2 for the purpose of obtaining an applicant's criminal history
3 record information from the federal bureau of investigation
4 and the agency responsible for retaining that state's criminal
5 records.

6 (a) A member state must fully implement a criminal
7 background check requirement, within a time frame established
8 by rule, by receiving the results of the federal bureau of
9 investigation record search and shall use the results in making
10 licensure decisions.

11 (b) Communication between a member state, the commission,
12 and among member states regarding the verification of
13 eligibility for licensure through the compact shall not
14 include any information received from the federal bureau of
15 investigation relating to a federal criminal records check
16 performed by a member state under Pub. L. No. 92-544.

17 (4) Comply with the rules of the commission.

18 (5) Require an applicant to obtain or retain a license
19 in the home state and meet the home state's qualifications
20 for licensure or renewal of licensure, as well as all other
21 applicable state laws.

22 (6) Grant the privilege to practice to a licensee holding
23 a valid unencumbered license in another member state in
24 accordance with the terms of the compact and rules.

25 (7) Provide for the attendance of the state's commissioner
26 at commission meetings.

27 c. A member state may charge a fee for granting the
28 privilege to practice.

29 d. An individual not residing in a member state shall
30 continue to be able to apply for a member state's single-state
31 license as provided under the laws of each member state.
32 However, the single-state license granted to these individuals
33 shall not be recognized as granting a privilege to practice
34 professional counseling in any other member state.

35 e. Nothing in this compact shall affect the requirements

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

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

8 4. *Privilege to practice.*

9 *a.* To exercise the privilege to practice under the terms of
10 the compact, the licensee shall do all of the following:

11 (1) Hold a license in the home state.

12 (2) Have a valid United States social security number or
13 national practitioner identifier.

14 (3) Be eligible for a privilege to practice in any member
15 state in accordance with paragraphs "*d*", "*g*", and "*h*".

16 (4) Have not had any encumbrance or restriction against any
17 license or privilege to practice within the previous two years
18 from the date of application.

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

21 (6) Pay any applicable fees, including any state fee, for
22 the privilege to practice.

23 (7) Meet any continuing competence or continuing education
24 requirements established by the home state.

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

28 (9) Report to the commission any adverse action,
29 encumbrance, or restriction on any license taken by any
30 nonmember state within thirty days from the date the action is
31 taken.

32 *b.* The privilege to practice is valid until the expiration
33 date of the home state license. The licensee must comply with
34 the requirements of paragraph "*a*" to maintain the privilege to
35 practice in the remote state.

1 *c.* A licensee providing professional counseling in a remote
2 state under the privilege to practice shall adhere to the laws
3 and regulations of the remote state.

4 *d.* A licensee providing professional counseling services in
5 a remote state is subject to that state's regulatory authority.
6 A remote state may, in accordance with due process and that
7 state's laws, remove a licensee's privilege to practice in the
8 remote state for a specific period of time, impose fines, or
9 take any other necessary actions to protect the health and
10 safety of its citizens. The licensee may be ineligible for a
11 privilege to practice in any member state until the specific
12 time for removal has passed and all fines are paid.

13 *e.* If a home state license is encumbered, the licensee shall
14 lose the privilege to practice in any remote state until all
15 of the following occur:

16 (1) The home state license is no longer encumbered.

17 (2) The licensee has not had any encumbrance or restriction
18 against any license or privilege to practice within the
19 previous two years.

20 *f.* Once an encumbered license in the home state is restored
21 to good standing, the licensee must meet the requirements of
22 paragraph "a" to obtain a privilege to practice in any remote
23 state.

24 *g.* If a licensee's privilege to practice in any remote state
25 is removed, the individual may lose the privilege to practice
26 in all other remote states until all of the following occur:

27 (1) The specific period of time for which the privilege to
28 practice was removed has ended.

29 (2) All fines have been paid.

30 (3) The licensee has not had any encumbrance or restriction
31 against any license or privilege to practice within the
32 previous two years.

33 *h.* Once the requirements of paragraph "g" have been met, the
34 licensee must meet the requirements of paragraph "a" to obtain a
35 privilege to practice in a remote state.

1 5. *Obtaining a new home state license based on a privilege*
2 *to practice.*

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

6 b. If a licensed professional counselor changes primary
7 state of residence by moving between two member states:

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

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

19 (a) A federal bureau of investigation fingerprint-based
20 criminal background check if not previously performed or
21 updated pursuant to applicable rules adopted by the commission
22 in accordance with Pub. L. No. 92-544.

23 (b) Other criminal background checks as required by the new
24 home state.

25 (c) Completion of any requisite jurisprudence requirements
26 of the new home state.

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

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

35 (5) The licensed professional counselor shall pay all

1 applicable fees to the new home state in order to be issued a
2 new home state license.

3 *c.* If a licensed professional counselor changes primary
4 state of residence by moving from a member state to a nonmember
5 state, or from a nonmember state to a member state, the state
6 criteria shall apply for issuance of a single state license in
7 the new state.

8 *d.* Nothing in this compact shall interfere with a licensee's
9 ability to hold a single state license in multiple states;
10 however, for the purposes of this compact, a licensee shall
11 have only one home state license.

12 *e.* Nothing in this compact shall affect the requirements
13 established by a member state for the issuance of a single
14 state license.

15 6. *Active duty military personnel or their spouses.* Active
16 duty military personnel or their spouses shall designate a
17 home state where the individual has a current license in good
18 standing. The individual may retain the home state designation
19 during the period the service member is on active duty.
20 Subsequent to designating a home state, the individual shall
21 only change their home state through application for licensure
22 in the new state or through the process outlined in subsection
23 5.

24 7. *Compact privilege to practice telehealth.*

25 *a.* Member states shall recognize the right of a licensed
26 professional counselor, licensed by a home state in accordance
27 with subsection 3 and under rules promulgated by the
28 commission, to practice professional counseling in any member
29 state via telehealth under a privilege to practice as provided
30 in the compact and rules promulgated by the commission.

31 *b.* A licensee providing professional counseling services in
32 a remote state under the privilege to practice shall adhere to
33 the laws and regulations of the remote state.

34 8. *Adverse actions.*

35 *a.* In addition to the other powers conferred by state law,

1 a remote state shall have the authority, in accordance with
2 existing state due process law, to do all of the following:

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

5 (2) Issue subpoenas for both hearings and investigations
6 that require the attendance and testimony of witnesses as well
7 as the production of evidence. Subpoenas issued by a licensing
8 board in a member state for the attendance and testimony of
9 witnesses or the production of evidence from another member
10 state shall be enforced in the latter state by any court of
11 competent jurisdiction, according to the practice and procedure
12 of that court applicable to subpoenas issued in proceedings
13 pending before it. The issuing authority shall pay any witness
14 fees, travel expenses, mileage, and other fees required by
15 the service statutes of the state in which the witnesses or
16 evidence are located.

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

20 *b.* For purposes of taking adverse action, the home state
21 shall give the same priority and effect to reported conduct
22 received from a member state as it would if the conduct had
23 occurred within the home state. In so doing, the home state
24 shall apply its own state laws to determine appropriate action.

25 *c.* The home state shall complete any pending investigations
26 of a licensed professional counselor who changes primary state
27 of residence during the course of the investigations. The home
28 state shall also have the authority to take appropriate action
29 and shall promptly report the conclusions of the investigations
30 to the administrator of the data system. The administrator of
31 the coordinated licensure information system shall promptly
32 notify the new home state of any adverse actions.

33 *d.* A member state, if otherwise permitted by state law,
34 may recover from the affected licensed professional counselor
35 the costs of investigations and dispositions of cases

1 resulting from any adverse action taken against that licensed
2 professional counselor.

3 *e.* A member state may take adverse action based on the
4 factual findings of the remote state, provided that the member
5 state follows its own procedures for taking the adverse action.

6 *f. Joint investigations.*

7 (1) In addition to the authority granted to a member state
8 by its respective professional counseling practice compact or
9 other applicable state law, any member state may participate
10 with other member states in joint investigations of licensees.

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

14 *g.* If adverse action is taken by the home state against
15 the license of a licensed professional counselor, the licensed
16 professional counselor's privilege to practice in all other
17 member states shall be deactivated until all encumbrances
18 have been removed from the state license. All home state
19 disciplinary orders that impose adverse action against the
20 license of a licensed professional counselor shall include a
21 statement that the licensed professional counselor's privilege
22 to practice is deactivated in all member states during the
23 pendency of the order.

24 *h.* If a member state takes adverse action, it shall promptly
25 notify the administrator of the data system. The administrator
26 of the data system shall promptly notify the home state of any
27 adverse actions by remote states.

28 *i.* Nothing in this compact shall override a member state's
29 decision that participation in an alternative program may be
30 used in lieu of adverse action.

31 9. *Establishment of counseling compact commission.*

32 *a.* The compact member states hereby create and establish a
33 joint public agency known as the counseling compact commission.

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

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

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

9 *b. Membership, voting, and meetings.*

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

12 (2) The delegate shall be one of the following:

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

16 (b) An administrator of the licensing board.

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

20 (4) The member state licensing board shall fill any vacancy
21 occurring on the commission within sixty days of a vacancy.

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

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

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

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

35 *c.* The commission shall have the following powers and

1 duties:

2 (1) Establish the fiscal year of the commission.

3 (2) Establish bylaws.

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

6 (4) Meet and take such actions as are consistent with the
7 provisions of this compact and the bylaws.

8 (5) Promulgate rules which shall be binding to the extent
9 and in the manner provided for in the compact.

10 (6) Bring and prosecute legal proceedings or actions in the
11 name of the commission, provided that the standing of any state
12 licensing board to sue or be sued under applicable law shall
13 not be affected.

14 (7) Purchase and maintain insurance and bonds.

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

17 (9) Hire employees, elect or appoint officers, fix
18 compensation, define duties, grant such individuals appropriate
19 authority to carry out the purposes of the compact, and
20 establish the commission's personnel policies and programs
21 relating to conflicts of interest, qualifications of personnel,
22 and other related personnel matters.

23 (10) Accept any and all appropriate donations and grants
24 of money, equipment, supplies, materials, and services, and
25 receive, utilize, and dispose of the same; provided that at all
26 times the commission shall avoid any appearance of impropriety
27 or conflict of interest.

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

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

35 (13) Establish a budget and make expenditures.

1 (14) Borrow money.

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

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

9 (17) Establish and elect an executive committee.

10 (18) Perform such other functions as may be necessary or
11 appropriate to achieve the purposes of this compact consistent
12 with the state regulation of professional counseling licensure
13 and practice.

14 *d. The executive committee.*

15 (1) The executive committee shall have the power to act
16 on behalf of the commission according to the terms of this
17 compact.

18 (2) The executive committee shall be composed of up to
19 eleven members:

20 (a) Seven voting members who are elected by the commission
21 from the current membership of the commission.

22 (b) Up to four ex officio, nonvoting members from four
23 recognized national professional counselor organizations.

24 (c) The ex officio, nonvoting members shall be selected by
25 their respective organizations.

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

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

29 (5) The executive committee shall have the following duties
30 and responsibilities:

31 (a) Recommend to the entire commission changes to the rules
32 or bylaws, changes to this compact legislation, fees paid by
33 compact member states such as annual dues, and any commission
34 compact fee charged to licensees for the privilege to practice.

35 (b) Ensure compact administration services are

1 appropriately provided, contractual or otherwise.

2 (c) Prepare and recommend the budget.

3 (d) Maintain financial records on behalf of the commission.

4 (e) Monitor compact compliance of member states and provide
5 compliance reports to the commission.

6 (f) Establish additional committees as necessary.

7 (g) Other duties as provided in rules or bylaws.

8 *e. Meetings of the commission.*

9 (1) All meetings shall be open to the public, and public
10 notice of meetings shall be given in the same manner as
11 required under the rulemaking provisions in subsection 11.

12 (2) The commission or the executive committee or other
13 committees of the commission may convene in a closed, nonpublic
14 meeting if the commission or executive committee or other
15 committees of the commission must discuss any of the following:

16 (a) Noncompliance of a member state with its obligations
17 under the compact.

18 (b) The employment, compensation, discipline, or other
19 matters, practices, or procedures related to specific employees
20 or other matters related to the commission's internal personnel
21 practices and procedures.

22 (c) Current, threatened, or reasonably anticipated
23 litigation.

24 (d) Negotiation of contracts for the purchase, lease, or
25 sale of goods, services, or real estate.

26 (e) Accusing any person of a crime or formally censuring any
27 person.

28 (f) Disclosure of trade secrets or commercial or financial
29 information that is privileged or confidential.

30 (g) Disclosure of information of a personal nature where
31 disclosure would constitute a clearly unwarranted invasion of
32 personal privacy.

33 (h) Disclosure of investigative records compiled for law
34 enforcement purposes.

35 (i) Disclosure of information related to any investigative

1 reports prepared by or on behalf of or for use of the
2 commission or other committee charged with responsibility of
3 investigation or determination of compliance issues pursuant
4 to the compact.

5 (j) Matters specifically exempted from disclosure by
6 federal or member state statute.

7 (3) If a meeting, or portion of a meeting, is closed
8 pursuant to this paragraph "e", the commission's legal counsel
9 or designee shall certify that the meeting may be closed and
10 shall reference each relevant exempting provision.

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

20 *f. Financing the commission.*

21 (1) The commission shall pay, or provide for the payment of,
22 the reasonable expenses of its establishment, organization, and
23 ongoing activities.

24 (2) The commission may accept any and all appropriate
25 revenue sources, donations, and grants of money, equipment,
26 supplies, materials, and services.

27 (3) The commission may levy on and collect an annual
28 assessment from each member state or impose fees on other
29 parties to cover the cost of the operations and activities
30 of the commission and its staff, which must be in a total
31 amount sufficient to cover its annual budget as approved each
32 year for which revenue is not provided by other sources. The
33 aggregate annual assessment amount shall be allocated based
34 upon a formula to be determined by the commission, which shall
35 promulgate a rule binding upon all member states.

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

5 (5) The commission shall keep accurate accounts of all
6 receipts and disbursements. The receipts and disbursements of
7 the commission shall be subject to the audit and accounting
8 procedures established under its bylaws. However, all receipts
9 and disbursements of funds handled by the commission shall be
10 audited yearly by a certified or licensed public accountant,
11 and the report of the audit shall be included in and become
12 part of the annual report of the commission.

13 *g. Qualified immunity, defense, and indemnification.*

14 (1) The members, officers, executive director, employees,
15 and representatives of the commission shall be immune from suit
16 and liability, either personally or in their official capacity,
17 for any claim for damage to or loss of property or personal
18 injury or other civil liability caused by or arising out of any
19 actual or alleged act, error, or omission that occurred, or
20 that the person against whom the claim is made had a reasonable
21 basis for believing occurred within the scope of commission
22 employment, duties, or responsibilities; provided that nothing
23 in this paragraph "g" shall be construed to protect any such
24 person from suit or liability for any damage, loss, injury,
25 or liability caused by the intentional or willful or wanton
26 misconduct of that person.

27 (2) The commission shall defend any member, officer,
28 executive director, employee, or representative of the
29 commission in any civil action seeking to impose liability
30 arising out of any actual or alleged act, error, or omission
31 that occurred within the scope of commission employment,
32 duties, or responsibilities, or that the person against
33 whom the claim is made had a reasonable basis for believing
34 occurred within the scope of commission employment, duties,
35 or responsibilities; provided that nothing herein shall be

1 construed to prohibit that person from retaining the person's
2 own counsel; and provided further, that the actual or alleged
3 act, error, or omission did not result from that person's
4 intentional or willful or wanton misconduct.

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

16 10. *Data system.*

17 a. The commission shall provide for the development,
18 maintenance, operation, and utilization of a coordinated
19 database and reporting system containing licensure, adverse
20 action, and investigative information on all licensed
21 individuals in member states.

22 b. Notwithstanding any other provision of state law to
23 the contrary, a member state shall submit a uniform data set
24 to the data system on all individuals to whom this compact
25 is applicable as required by the rules of the commission,
26 including all of the following:

27 (1) Identifying information.

28 (2) Licensure data.

29 (3) Adverse actions against a license or privilege to
30 practice.

31 (4) Nonconfidential information related to alternative
32 program participation.

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

35 (6) Current significant investigative information.

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

4 c. Investigative information pertaining to a licensee in any
5 member state will only be available to other member states.

6 d. The commission shall promptly notify all member states of
7 any adverse action taken against a licensee or an individual
8 applying for a license. Adverse action information pertaining
9 to a licensee in any member state will be available to any
10 other member state.

11 e. Member states contributing information to the data
12 system may designate information that may not be shared with
13 the public without the express permission of the contributing
14 state.

15 f. Any information submitted to the data system that is
16 subsequently required to be expunged by the laws of the member
17 state contributing the information shall be removed from the
18 data system.

19 11. *Rulemaking.*

20 a. The commission shall promulgate reasonable rules in
21 order to effectively and efficiently achieve the purpose of
22 the compact. Notwithstanding the foregoing, in the event the
23 commission exercises its rulemaking authority in a manner that
24 is beyond the scope of the purposes of the compact, or the
25 powers granted hereunder, then such an action by the commission
26 shall be invalid and have no force or effect.

27 b. The commission shall exercise its rulemaking powers
28 pursuant to the criteria set forth in this subsection and the
29 rules adopted thereunder. Rules and amendments shall become
30 binding as of the date specified in each rule or amendment.

31 c. If a majority of the legislatures of the member states
32 rejects a rule, by enactment of a statute or resolution in the
33 same manner used to adopt the compact within four years of the
34 date of adoption of the rule, then such rule shall have no
35 further force and effect in any member state.

1 *d.* Rules or amendments to the rules shall be adopted at a
2 regular or special meeting of the commission.

3 *e.* Prior to promulgation and adoption of a final rule by
4 the commission, and at least thirty days in advance of the
5 meeting at which the rule will be considered and voted upon,
6 the commission shall file a notice of proposed rulemaking in
7 all of the following places:

8 (1) On the internet site of the commission or other publicly
9 accessible platform.

10 (2) On the internet site of each member state professional
11 counseling licensing board or other publicly accessible
12 platform or the publication in which each state would otherwise
13 publish proposed rules.

14 *f.* The notice of proposed rulemaking shall include all of
15 the following:

16 (1) The proposed time, date, and location of the meeting in
17 which the rule will be considered and voted upon.

18 (2) The text of the proposed rule or amendment and the
19 reason for the proposed rule.

20 (3) A request for comments on the proposed rule from any
21 interested person.

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

25 *g.* Prior to adoption of a proposed rule, the commission
26 shall allow persons to submit written data, facts, opinions,
27 and arguments, which shall be made available to the public.

28 *h.* The commission shall grant an opportunity for a public
29 hearing before it adopts a rule or amendment if a hearing is
30 requested by any of the following:

31 (1) At least twenty-five persons.

32 (2) A state or federal governmental subdivision or agency.

33 (3) An association having at least twenty-five members.

34 *i.* If a hearing is held on the proposed rule or amendment,
35 the commission shall publish the place, time, and date of

1 the scheduled public hearing. If the hearing is held via
2 electronic means, the commission shall publish the mechanism
3 for access to the electronic hearing.

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

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

12 (3) All hearings shall be recorded. A copy of the recording
13 shall be made available on request.

14 (4) Nothing in this paragraph "h" shall be construed as
15 requiring a separate hearing on each rule. Rules may be
16 grouped for the convenience of the commission at hearings
17 required by this subsection.

18 *j.* Following the scheduled hearing date, or by the close
19 of business on the scheduled hearing date if the hearing was
20 not held, the commission shall consider all written and oral
21 comments received.

22 *k.* If no written notice of intent to attend the public
23 hearing by interested parties is received, the commission may
24 proceed with promulgation of the proposed rule without a public
25 hearing.

26 *l.* The commission shall, by majority vote of all members,
27 take final action on the proposed rule and shall determine the
28 effective date of the rule, if any, based on the rulemaking
29 record and the full text of the rule.

30 *m.* Upon determination that an emergency exists, the
31 commission may consider and adopt an emergency rule without
32 prior notice, opportunity for comment, or hearing, provided
33 that the usual rulemaking procedures provided in the compact
34 and in this subsection shall be retroactively applied to the
35 rule as soon as reasonably possible, in no event later than

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

4 (1) Meet an imminent threat to public health, safety, or
5 welfare.

6 (2) Prevent a loss of commission or member state funds.

7 (3) Meet a deadline for the promulgation of an
8 administrative rule that is established by federal law or rule.

9 (4) Protect public health and safety.

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

24 12. *Oversight, dispute resolution, and enforcement.*

25 a. *Oversight.*

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

32 (2) All courts shall take judicial notice of the compact
33 and the rules in any judicial or administrative proceeding in a
34 member state pertaining to the subject matter of this compact
35 which may affect the powers, responsibilities, or actions of

1 the commission.

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

8 *b. Default, technical assistance, and termination.*

9 (1) If the commission determines that a member state
10 has defaulted in the performance of its obligations or
11 responsibilities under this compact or the promulgated rules,
12 the commission shall do all of the following:

13 (a) Provide written notice to the defaulting state and other
14 member states of the nature of the default, the proposed means
15 of curing the default, or any other action to be taken by the
16 commission.

17 (b) Provide remedial training and specific technical
18 assistance regarding the default.

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

26 *d.* Termination of membership in the compact shall be imposed
27 only after all other means of securing compliance have been
28 exhausted. Notice of intent to suspend or terminate shall
29 be given by the commission to the governor, the majority and
30 minority leaders of the defaulting state's legislature, and
31 each of the member states.

32 *e.* A state that has been terminated is responsible for all
33 assessments, obligations, and liabilities incurred through
34 the effective date of termination, including obligations that
35 extend beyond the effective date of termination.

1 *f.* The commission shall not bear any costs related to
2 a state that is found to be in default or that has been
3 terminated from the compact unless agreed upon in writing
4 between the commission and the defaulting state.

5 *g.* The defaulting state may appeal the action of the
6 commission by petitioning the United States district court
7 for the District of Columbia or the federal district where
8 the commission has its principal offices. The prevailing
9 member shall be awarded all costs of such litigation including
10 reasonable attorney fees.

11 *h. Dispute resolution.*

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

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

18 *i. Enforcement.*

19 (1) The commission, in the reasonable exercise of its
20 discretion, shall enforce the provisions and rules of this
21 compact.

22 (2) By majority vote, the commission may initiate legal
23 action in the United States district court for the District
24 of Columbia or the federal district where the commission has
25 its principal offices against a member state in default to
26 enforce compliance with the provisions of the compact and its
27 promulgated rules and bylaws. The relief sought may include
28 both injunctive relief and damages. In the event judicial
29 enforcement is necessary, the prevailing member shall be
30 awarded all costs of such litigation including reasonable
31 attorney fees.

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

35 13. *Date of implementation of the counseling compact*

1 *commission and associated rules, withdrawal, and amendment.*

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

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

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

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

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

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

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

34 14. *Construction and severability.* This compact shall be
35 liberally construed so as to effectuate the purposes thereof.

1 The provisions of this compact shall be severable and if any
 2 phrase, clause, sentence, or provision of this compact is
 3 declared to be contrary to the constitution of any member
 4 state or of the United States or the applicability thereof
 5 to any government, agency, person, or circumstance is held
 6 invalid, the validity of the remainder of this compact and the
 7 applicability thereof to any government, agency, person, or
 8 circumstance shall not be affected thereby. If this compact
 9 shall be held contrary to the constitution of any member state,
 10 the compact shall remain in full force and effect as to the
 11 remaining member states and in full force and effect as to the
 12 member state affected as to all severable matters.

13 15. *Binding effect of compact and other laws.*

14 a. A licensee providing professional counseling services in
 15 a remote state under the privilege to practice shall adhere to
 16 the laws and regulations, including scope of practice, of the
 17 remote state.

18 b. Nothing herein prevents the enforcement of any other law
 19 of a member state that is not inconsistent with the compact.

20 c. All laws in a member state in conflict with the compact
 21 are superseded to the extent of the conflict.

22 d. All lawful actions of the commission, including all rules
 23 and bylaws properly promulgated by the commission, are binding
 24 upon the member states.

25 e. All permissible agreements between the commission and the
 26 member states are binding in accordance with their terms.

27 f. In the event any provision of the compact exceeds the
 28 constitutional limits imposed on the legislature of any member
 29 state, the provision shall be ineffective to the extent of the
 30 conflict with the constitutional provision in question in that
 31 member state.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
 34 the explanation's substance by the members of the general assembly.

35 This bill relates to the adoption of the professional

1 counselors interstate licensure compact.

2 The compact establishes a system whereby professional
3 counselors licensed to practice in one member state may
4 practice in another member state under a compact privilege
5 without applying for a license in that state. The compact
6 imposes certain minimum requirements on the licensure of
7 professional counselors in member states. The compact becomes
8 effective upon enactment of the compact by 10 states.

9 The compact creates a commission to administer the operation
10 of the compact. The commission is an instrumentality of the
11 member states. The compact includes provisions relating to
12 the purpose, establishment, and membership of the commission;
13 powers and privileges of the commission; active duty military
14 personnel; telehealth; adverse actions; joint investigations;
15 meetings and voting requirements; commission bylaws and rules;
16 commission committees; commission finances; records of the
17 commission; compact state compliance; venue for judicial
18 proceedings; qualified immunity, defense, and indemnification;
19 data and reporting; rulemaking; oversight, dispute resolution,
20 and enforcement; technical assistance and termination;
21 effective dates and amendments to the compact; withdrawal,
22 default, and expulsion; severability and construction; and the
23 binding effect of the compact and other laws.