

House Study Bill 120 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON BLOOMINGDALE)

A BILL FOR

- 1 An Act enacting the respiratory care interstate compact.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **147J.1 Respiratory care interstate**
2 **compact.**

3 1. *Title and purpose.*

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

11 b. This compact is designed to achieve the following
12 objectives:

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

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

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

21 (4) Ease administrative burdens on states by encouraging the
22 cooperation of member states in regulating multistate respiratory
23 therapy practice.

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

26 (6) Promote mobility and address workforce shortages.

27 2. *Definitions.* As used in this compact, unless the context
28 otherwise requires, the following definitions shall apply:

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

32 b. "Adverse action" means an administrative, civil,
33 equitable, or criminal action permitted by a state's laws which
34 is imposed by a state authority with regulatory authority over
35 respiratory therapists, such as license denial, censure,

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

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

10 *d. "Charter member states"* means those member states that
11 were the first seven states to enact the compact into the laws of
12 their state.

13 *e. "Commission" or "respiratory care interstate compact
14 commission"* means the government instrumentality and body politic
15 whose membership consists of all member states that have enacted
16 the compact.

17 *f. "Commissioner"* means the individual appointed by a member
18 state to serve as the member of the commission for that member
19 state.

20 *g. "Compact"* means the respiratory care interstate compact.

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

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

35 *j. "Data system"* means the commission's repository of

1 information about licensees as further set forth in subsection 8.

2 k. "Domicile" means the jurisdiction which is the licensee's
3 principal home for legal purposes.

4 l. "Encumbered license" means a license that a state's
5 respiratory therapy licensing authority has limited in any way.

6 m. "Executive committee" means a group of directors elected
7 or appointed to act on behalf of, and within the powers granted
8 to the directors by, the commission.

9 n. "Home state" means the member that is the licensee's
10 primary domicile, except as set forth in subsection 5.

11 o. "Home state license" means an active license to practice
12 respiratory therapy in a home state that is not an encumbered
13 license.

14 p. "Jurisprudence requirement" means an assessment of an
15 individual's knowledge of the state laws and regulations
16 governing the practice of respiratory therapy in such state.

17 q. "Licensee" means an individual who currently holds an
18 authorization from the state to practice as a respiratory
19 therapist.

20 r. "Member state" means a state that has enacted the compact
21 and been admitted to the commission in accordance with the
22 provisions of this compact and commission rules.

23 s. "Model compact" means the model for the respiratory care
24 interstate compact on file with the council of state governments
25 or other entity as designated by the commission.

26 t. "Remote state" means a member state where a licensee is
27 exercising or seeking to exercise the compact privilege.

28 u. "Respiratory therapist" or "respiratory care practitioner"
29 means an individual who holds a credential issued by the national
30 board for respiratory care or its successor and holds a license
31 in a state to practice respiratory therapy. For purposes of this
32 compact, any other title or status adopted by a state to replace
33 the term "respiratory therapist" or "respiratory care
34 practitioner" shall be deemed synonymous with "respiratory
35 therapist" and shall confer the same rights and responsibilities

1 to the licensee under the provisions of this compact at the time
2 of its enactment.

3 v. "*Respiratory therapy*", "*respiratory therapy practice*",
4 "*respiratory care*", "*the practice of respiratory care*", and "*the*
5 *practice of respiratory therapy*" mean the care and services
6 provided by or under the direction and supervision of a
7 respiratory therapist or respiratory care practitioner.

8 w. "*Respiratory therapy licensing authority*" means the
9 agency, board, or other body of a state that is responsible for
10 licensing and regulation of respiratory therapists.

11 x. "*Rule*" means a regulation promulgated by an entity that
12 has the force and effect of law.

13 y. "*Scope of practice*" means the procedures, actions, and
14 processes a respiratory therapist licensed in a state or
15 practicing under a compact privilege in a state is permitted to
16 undertake in that state and the circumstances under which the
17 respiratory therapist is permitted to undertake those procedures,
18 actions, and processes. Such procedures, actions, and processes,
19 and the circumstances under which they may be undertaken, may be
20 established through means including but not limited to statute,
21 regulations, case law, and other processes available to the state
22 respiratory therapy licensing authority or other government
23 agency.

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

32 aa. "*State*" means a state, commonwealth, district, or
33 territory of the United States.

34 3. *State participation in this compact.*

35 a. In order to participate in this compact and thereafter

1 continue as a member state, a member state shall do all of the
2 following:

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

5 (2) License respiratory therapists.

6 (3) Participate in the commission's data system.

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

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

12 (6) Notify the commission, in compliance with the terms of
13 this compact and commission rules, of the existence of
14 significant investigative information.

15 (7) Comply with the rules of the commission.

16 (8) Grant the compact privilege to a holder of an active home
17 state license and otherwise meet the applicable requirements of
18 subsection 4 in a member state.

19 (9) Complete a criminal background check for each new
20 licensee at the time of initial licensure. Where expressly
21 authorized or permitted by federal law, whether such federal law
22 is in effect prior to, at, or after the time of a member state's
23 enactment of this compact, a member state's enactment of this
24 compact shall hereby authorize the member state's respiratory
25 therapy licensing authority to perform criminal background checks
26 as defined in this compact. The absence of such a federal law as
27 described in this subsection shall not prevent or preclude such
28 authorization where it may be derived or granted through means
29 other than the enactment of this compact.

30 b. Nothing in this compact prohibits a member state from
31 charging a fee for granting and renewing the compact privilege.

32 4. *Compact privilege.*

33 a. To exercise the compact privilege under the terms and
34 provisions of the compact, the licensee shall meet all of the
35 following requirements:

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

3 (2) Hold and maintain an active credential from the national
4 board for respiratory care or its successor that would qualify
5 the licensee for licensure in the remote state in which the
6 licensee is seeking the privilege.

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

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

11 (5) Pay any applicable fee, including any state and
12 commission fees and renewal fees, for the compact privilege.

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

16 (7) Report to the commission adverse action taken by a
17 nonmember state within thirty days from the date that adverse
18 action is taken.

19 (8) Report to the commission, when applying for a compact
20 privilege, the address of the licensee's domicile and thereafter
21 promptly report to the commission any change in the address of
22 the licensee's domicile within thirty days of the effective date
23 of the change in address.

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

31 b. The compact privilege is valid until the expiration date
32 or revocation of the home state license unless terminated
33 pursuant to adverse action. The licensee must comply with all
34 the requirements of paragraph "a" to maintain the compact
35 privilege in a remote state. If those requirements are met, no

1 adverse actions are taken, and the licensee has paid any
2 applicable compact privilege renewal fees, then the licensee will
3 maintain the licensee's compact privilege.

4 c. A licensee providing respiratory therapy in a remote state
5 under the compact privilege shall function within the scope of
6 practice authorized by the remote state for the type of
7 respiratory therapist license the licensee holds. Such
8 procedures, actions, processes, and the circumstances under which
9 they may be undertaken, may be established through means
10 including but not limited to statute, regulations, case law, and
11 other processes available to the state respiratory therapy
12 licensing authority or other government agency.

13 d. If a licensee's compact privilege in a remote state is
14 removed by the remote state, the individual shall lose or be
15 ineligible for the compact privilege in that remote state until
16 the compact privilege is no longer limited or restricted by that
17 state.

18 e. If a home state license is encumbered, the licensee shall
19 lose the compact privilege in all remote states until all of the
20 following occur:

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

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

24 f. Once a licensee with a restricted or limited license meets
25 the requirements of paragraph "e", the licensee must also meet
26 the requirements of paragraph "a" to obtain a compact privilege
27 in a remote state.

28 5. *Active military members and spouses.*

29 a. An active military member or a spouse of an active
30 military member shall designate a home state where the individual
31 has a current license in good standing. The individual may
32 retain the home state designation during the period the service
33 member is on active duty.

34 b. An active military member or a spouse of an active
35 military member shall not be required to pay to the commission

1 for a compact privilege any fee that may otherwise be charged by
2 the commission. If a remote state chooses to charge a fee for a
3 compact privilege, it may choose to charge a reduced fee or no
4 fee to an active military member or a spouse of an active
5 military member for a compact privilege.

6 6. *Adverse actions.*

7 a. A member state in which a licensee is licensed shall have
8 authority to impose adverse action against the license issued by
9 that member state.

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

14 c. Nothing in this compact shall override a member state's
15 decision that participation in an alternative program may be used
16 in lieu of adverse action and that such participation shall
17 remain nonpublic if required by the member state's laws.

18 d. A remote state shall have the authority to do all of the
19 following:

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

22 (2) Issue subpoenas for both hearings and investigations that
23 require the attendance and testimony of witnesses and the
24 production of evidence.

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

28 (b) Subpoenas issued by a respiratory therapy licensing
29 authority in a member state for the attendance and testimony of
30 witnesses shall be enforced in the latter state by any court of
31 competent jurisdiction in the latter state, according to the
32 practice and procedure of that court applicable to subpoenas
33 issued by the proceedings pending before it.

34 (c) Subpoenas issued by a respiratory therapy licensing
35 authority in a member state for production of evidence from

1 another member state shall be enforced in the latter state,
2 according to the practice and procedure of that court applicable
3 to subpoenas issued in the proceedings pending before it.

4 (d) The issuing authority shall pay witness fees, travel
5 expenses, mileage, and other fees required by the service
6 statutes of the state where the witness or evidence is located.

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

10 (4) Notwithstanding paragraph "d", subparagraph (2), a member
11 state shall not issue a subpoena to gather evidence of conduct in
12 another member state that is lawful in such other member state
13 for the purpose of taking adverse action against a licensee's
14 compact privilege or application for a compact privilege in that
15 member state.

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

20 e. Joint investigations.

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

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

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

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

9 7. *Establishment of the respiratory care interstate compact*
10 *commission.*

11 a. The compact member states hereby create and establish a
12 joint government agency whose membership consists of all member
13 states that have enacted the compact, known as the respiratory
14 care interstate compact commission. The commission is an
15 instrumentality of the compact member states acting jointly and
16 not an instrumentality of any one state. The commission shall
17 come into existence on or after the effective date of the compact
18 as set forth in subsection 11.

19 b. Membership, voting, and meetings.

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

23 (2) The commissioner shall be an administrator of the member
24 state's respiratory therapy licensing authority or a staff member
25 designated by the administrator.

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

29 (4) The commission may recommend to a member state the
30 removal or suspension of a commissioner from office.

31 (5) A member state's respiratory therapy licensing authority
32 shall fill any vacancy of its commissioner occurring on the
33 commission within sixty days of the vacancy.

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

1 (7) A commissioner shall vote in person or by such other
2 means as provided in the bylaws. The bylaws may provide for
3 commissioners to meet by telecommunication, videoconference, or
4 other means of communication.

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

8 c. The commission shall have all of the following powers:

9 (1) Establish and amend the fiscal year of the commission.

10 (2) Establish and amend bylaws and policies, including but
11 not limited to a code of conduct and conflict of interest.

12 (3) Establish and amend rules, which shall be binding in all
13 member states.

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

16 (5) Meet and take such actions as are consistent with the
17 provisions of this compact, the commission's rules, and the
18 bylaws.

19 (6) Initiate and conduct legal proceedings or actions in the
20 name of the commission, provided that the standing of any
21 respiratory therapy licensing authority to sue or be sued under
22 applicable law shall not be affected.

23 (7) Maintain and certify records and information provided to
24 a member state as the authenticated business records of the
25 commission, and designate an agent to do so on the commission's
26 behalf.

27 (8) Purchase and maintain insurance and bonds.

28 (9) Accept or contract for services of personnel, including
29 but not limited to employees of a member state.

30 (10) Conduct an annual financial review.

31 (11) Hire employees, elect or appoint officers, fix
32 compensation, define duties, grant such individuals appropriate
33 authority to carry out the purposes of the compact, and establish
34 the commission's personnel policies and programs relating to
35 conflicts of interest, qualifications of personnel, and other

1 related personnel matters.

2 (12) Assess and collect fees.

3 (13) Accept any and all appropriate gifts, donations, grants
4 of money, other sources of revenue, equipment, supplies,
5 materials, and services, and receive, utilize, and dispose of the
6 same, provided that at all times the commission does all of the
7 following:

8 (a) Avoid any appearance of impropriety.

9 (b) Avoid any appearance of conflict of interest.

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

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

16 (16) Establish a budget and make expenditures.

17 (17) Borrow money in a fiscally responsible manner.

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

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

25 (20) Establish and elect an executive committee, including a
26 chair, vice chair, secretary, treasurer, and such other offices
27 as the commission shall establish by rule or bylaw.

28 (21) Enter into contracts or arrangements for the management
29 of the affairs of the commission.

30 (22) Determine whether a state's adopted language is
31 materially different from the model compact language such that
32 the state would not qualify for participation in the compact.

33 (23) Perform such other functions as may be necessary or
34 appropriate to achieve the purposes of this compact.

35 d. The executive committee.

1 (1) The executive committee shall have the power to act on
2 behalf of the commission according to the terms of this compact.
3 The powers, duties, and responsibilities of the executive
4 committee shall include all of the following:

5 (a) Overseeing the day-to-day activities of the
6 administration of the compact, including enforcement and
7 compliance with the provisions of the compact, its rules and
8 bylaws, and other such duties as deemed necessary.

9 (b) Recommending to the commission changes to the rules or
10 bylaws, changes to this compact legislation, fees charged to
11 compact member states, fees charged to licensees, and other fees.

12 (c) Ensuring compact administration services are
13 appropriately provided, including by contract.

14 (d) Preparing and recommending the budget.

15 (e) Maintaining financial records on behalf of the
16 commission.

17 (f) Monitoring compact compliance of member states and
18 providing compliance reports to the commission.

19 (g) Establishing additional committees as necessary.

20 (h) Exercising the powers and duties of the commission during
21 the interim between commission meetings, except for adopting or
22 amending rules, adopting or amending bylaws, and exercising any
23 other powers and duties expressly reserved to the commission by
24 rule or bylaw.

25 (i) Performing other duties as provided in the rules or
26 bylaws of the commission.

27 (2) The executive committee shall be composed of up to nine
28 of the following members, as further set forth in the bylaws of
29 the commission:

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

32 (b) Two ex officio, nonvoting members.

33 (3) The commission may remove any member of the executive
34 committee as provided in the commission's bylaws.

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

1 (a) Executive committee meetings shall be open to the public,
2 except that the executive committee may meet in a closed,
3 nonpublic meeting as provided in paragraph "f", subparagraph (4).

4 (b) The executive committee shall give advance notice of its
5 meetings, posted on its internet site and as determined to
6 provide notice to persons with an interest in the business of the
7 commission.

8 (c) The executive committee may hold a special meeting in
9 accordance with paragraph "f", subparagraph (2).

10 e. The commission shall adopt and provide to the member
11 states an annual report.

12 f. Meetings of the commission.

13 (1) All meetings of the commission that are not closed
14 pursuant to subparagraph (4) shall be open to the public. Notice
15 of public meetings shall be posted on the commission's internet
16 site at least thirty days prior to the public meeting.

17 (2) Notwithstanding subparagraph (1), the commission may
18 convene an emergency public meeting by providing at least
19 twenty-four hours' prior notice on the commission's internet
20 site, and any other means as provided in the commission's rules,
21 for any of the reasons it may dispense with notice of proposed
22 rulemaking under subsection 9, paragraph "g". The commission's
23 legal counsel shall certify that one of the reasons justifying an
24 emergency public meeting has been met.

25 (3) Notice of all commission meetings shall provide the time,
26 date, and location of the meeting, and if the meeting is to be
27 held or accessible via telecommunication, videoconference, or
28 other electronic means, the notice shall include the mechanism
29 for access to the meeting.

30 (4) The commission or the executive committee may convene in
31 a closed, nonpublic meeting for the commission or executive
32 committee to receive or solicit legal advice or to discuss any of
33 the following:

34 (a) Noncompliance of a member state with its obligations
35 under the compact.

1 (b) The employment, compensation, discipline, or other
2 matters, practices, or procedures related to specific employees.

3 (c) Current or threatened discipline of a licensee or compact
4 privilege holder by the commission or by a member state's
5 respiratory therapy licensing authority.

6 (d) Current, threatened, or reasonably anticipated
7 litigation.

8 (e) Negotiation of contracts for the purchase, lease, or sale
9 of goods, services, or real estate.

10 (f) Accusing any person of a crime or formally censuring any
11 person.

12 (g) Trade secrets or commercial or financial information that
13 is privileged or confidential.

14 (h) Information of a personal nature where disclosure would
15 constitute a clearly unwarranted invasion of personal privacy.

16 (i) Investigative records compiled for law enforcement
17 purposes.

18 (j) Information related to any investigative reports prepared
19 by or on behalf of or for use of the commission or other
20 committee charged with responsibility of investigation or
21 determination of compliance issues pursuant to this compact.

22 (k) Legal advice.

23 (l) Matters specifically exempted from disclosure by federal
24 or member state law.

25 (m) Other matters as promulgated by the commission by rule.

26 (5) If a meeting or portion of a meeting is closed, the
27 presiding officer shall state that the meeting will be closed and
28 reference each relevant exempting provision, and such reference
29 shall be recorded in the minutes.

30 (6) The commission shall keep minutes in accordance with
31 commission rules and bylaws. All documents considered in
32 connection with an action shall be identified in such minutes.
33 All minutes and documents of a closed meeting shall remain under
34 seal, subject to release only by a majority vote of the
35 commission or order of a court of competent jurisdiction.

1 g. Financing the commission.

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

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

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

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

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

27 h. Qualified immunity, defense, and indemnification.

28 (1) Nothing in this paragraph shall be construed as a
29 limitation on the liability of any licensee for professional
30 malpractice or misconduct, which shall be governed solely by any
31 other applicable state laws.

32 (2) The member states, commissioners, officers, executive
33 directors, employees, and agents of the commission shall be
34 immune from suit and liability, both personally and in their
35 official capacity, for any claim for damage to or loss of

1 property or personal injury or other civil liability caused by or
2 arising out of any actual or alleged act, error, or omission that
3 occurred, or that the person against whom the claim is made had a
4 reasonable basis for believing occurred within the scope of
5 commission employment, duties, or responsibilities, provided that
6 nothing in this subparagraph shall be construed to protect any
7 such person from suit or liability for any damage, loss, injury,
8 or liability caused by the intentional or willful or wanton
9 misconduct of that person. The procurement of insurance of any
10 type by the commission shall not in any way compromise or limit
11 the immunity granted in this subparagraph.

12 (3) The commission shall defend any commissioner, officer,
13 executive director, employee, or agent of the commission in any
14 civil action seeking to impose liability arising out of any
15 actual or alleged act, error, or omission that occurred within
16 the scope of commission employment, duties, or responsibilities,
17 or as determined by the commission that the person against whom
18 the claim is made had a reasonable basis for believing occurred
19 within the scope of commission employment, duties, or
20 responsibilities, provided that nothing in this subparagraph
21 shall be construed to prohibit that person from retaining counsel
22 at that person's own expense, and provided further that the
23 actual or alleged act, error, or omission did not result from
24 that person's intentional or willful or wanton misconduct.

25 (4) The commission shall indemnify and hold harmless any
26 commissioner, member, officer, executive director, employee, and
27 agent of the commission for the amount of any settlement or
28 judgment obtained against that person arising out of any actual
29 or alleged act, error, or omission that occurred within the scope
30 of commission employment, duties, or responsibilities, or that
31 such person had a reasonable basis for believing occurred within
32 the scope of commission employment, duties, or responsibilities,
33 provided that the actual or alleged act, error, or omission did
34 not result from the intentional or willful or wanton misconduct
35 of that person.

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

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

8 8. *Data system.*

9 a. The commission shall provide for the development,
10 maintenance, operation, and utilization of a coordinated database
11 and reporting system containing licensure, adverse action, and
12 the presence of significant investigative information.

13 b. Notwithstanding any other provision of state law to the
14 contrary, a member state shall submit a uniform data set to the
15 data system as required by the rules of the commission, including
16 but not limited to all of the following:

17 (1) Identifying information.

18 (2) Licensure data.

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

21 (4) Nonconfidential information related to alternative
22 program participation, the beginning and ending dates of such
23 participation, and other information related to such
24 participation not made confidential under member state law.

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

27 (6) The presence of current significant investigative
28 information.

29 (7) Other information that may facilitate the administration
30 of this compact or the protection of the public, as determined by
31 the rules of the commission.

32 c. No member state shall submit any information which
33 constitutes criminal history record information, as defined by
34 applicable federal law, to the data system established in this
35 subsection.

1 d. The records and information provided to a member state
2 pursuant to this compact or through the data system, when
3 certified by the commission or an agent thereof, shall constitute
4 the authenticated business records of the commission, and shall
5 be entitled to any associated hearsay exception in any relevant
6 judicial, quasi-judicial, or administrative proceedings in a
7 member state.

8 e. Significant investigative information pertaining to a
9 licensee in any member state will only be available to other
10 member states.

11 f. It is the responsibility of the member states to report
12 any adverse action against a licensee and to monitor the database
13 to determine whether adverse action has been taken against a
14 licensee. Adverse action information pertaining to a licensee in
15 any member state will be available to any other member state.

16 g. Member states contributing information to the data system
17 may designate information that may not be shared with the public
18 without the express permission of the contributing state.

19 h. Any information submitted to the data system that is
20 subsequently expunged pursuant to federal law or the laws of the
21 member state contributing the information shall be removed from
22 the data system.

23 9. *Rulemaking.*

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

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

35 c. The commission shall exercise its rulemaking powers

1 pursuant to the criteria set forth in this subsection and the
2 rules adopted pursuant to this subsection. Rules shall become
3 binding as of the date specified in each rule.

4 d. If a majority of the legislatures of the member states
5 rejects a rule or portion of a rule, by enactment of a statute or
6 resolution in the same manner used to adopt the compact, within
7 four years of the date of application of the rule, then such rule
8 shall have no further force and effect in any member state.

9 e. Rules shall be adopted at a regular or special meeting of
10 the commission.

11 f. Prior to adoption of a proposed rule, the commission shall
12 hold a public hearing and allow persons to provide oral and
13 written comments, data, facts, opinions, and arguments.

14 g. Prior to adoption of a proposed rule by the commission,
15 and at least thirty days in advance of the meeting at which the
16 commission will hold a public hearing on the proposed rule, the
17 commission shall provide a notice of proposed rulemaking by all
18 of the following methods:

19 (1) On the internet site of the commission or other publicly
20 accessible platform.

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

23 (3) In such other way as the commission may by rule specify.

24 h. The notice of proposed rulemaking shall include all of the
25 following:

26 (1) The time, date, and location of the public hearing at
27 which the commission will hear public comments on the proposed
28 rule and, if different, the time, date, and location of the
29 meeting where the commission will consider and vote on the
30 proposed rule.

31 (2) If the hearing is held via telecommunication,
32 videoconference, or other electronic means, the commission shall
33 include the mechanism for access to the hearing in the notice of
34 proposed rulemaking.

35 (3) The text of the proposed rule and the reason therefor.

1 (4) A request for comments on the proposed rule from any
2 interested person.

3 (5) The manner in which interested persons may submit written
4 comments.

5 i. All hearings shall be recorded. A copy of the recording
6 and all written comments and documents received by the commission
7 in response to the proposed rule shall be available to the
8 public.

9 j. Nothing in this subsection shall be construed as requiring
10 a separate hearing on each rule. Rules may be grouped for the
11 convenience of the commission at hearings required by this
12 subsection.

13 k. The commission shall, by majority vote of all
14 commissioners, take final action on the proposed rule based on
15 the rulemaking record and the full text of the rule.

16 (1) The commission may adopt changes to the proposed rule,
17 provided that the changes are consistent with the original
18 purpose of the proposed rule.

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

23 (3) The commission shall determine a reasonable effective
24 date for the rule. Except for an emergency as provided in
25 paragraph "l", the effective date of the rule shall be no sooner
26 than thirty days after issuing the notice that it adopted or
27 amended the rule.

28 l. Upon determination that an emergency exists, the
29 commission may consider and adopt an emergency rule with
30 twenty-four hours' notice, and with opportunity to comment,
31 provided that the usual rulemaking procedures provided in the
32 compact and in this subsection shall be retroactively applied to
33 the rule as soon as reasonably possible, in no event later than
34 ninety days after the effective date of the rule. For the
35 purposes of this provision, an emergency rule is one that must be

1 adopted immediately in order to do one of the following:

2 (1) Meet an imminent threat to public health, safety, or
3 welfare.

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

5 (3) Meet a deadline for the promulgation of a rule that is
6 established by federal law or rule.

7 (4) Protect public health and safety.

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

22 n. No member state's rulemaking process or procedural
23 requirements shall apply to the commission. The commission shall
24 have no authority over any member state's rulemaking process or
25 procedural requirements that do not pertain to the compact.

26 o. Nothing in this compact, nor any rule or regulation of the
27 commission, shall be construed to limit, restrict, or in any way
28 reduce the ability of a member state to enact and enforce laws,
29 regulations, or other rules related to the practice of
30 respiratory therapy in that state where those laws, regulations,
31 or other rules are not inconsistent with the provisions of this
32 compact.

33 10. *Oversight, dispute resolution, and enforcement.*

34 a. Oversight.

35 (1) The executive and judicial branches of state government

1 in each member state shall enforce this compact and take all
2 actions necessary and appropriate to implement the compact.

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

9 Nothing in this subparagraph shall affect or limit the selection
10 or propriety of venue in any action against a licensee for
11 professional malpractice, misconduct, or any such similar matter.

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

19 b. Default, technical assistance, and termination.

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

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

30 c. If a state in default fails to cure the default, the
31 defaulting state may be terminated from the compact upon an
32 affirmative vote of a majority of the commissioners of the member
33 states, and all rights, privileges, and benefits conferred on
34 that state by this compact may be terminated on the effective
35 date of termination. A cure of the default does not relieve the

1 offending state of obligations or liabilities incurred during the
2 period of default.

3 *d.* Termination of membership in the compact shall be imposed
4 only after all other means of securing compliance have been
5 exhausted. Notice of intent to suspend or terminate shall be
6 given by the commission to the governor, the majority and
7 minority leaders of the defaulting state's legislature, the
8 defaulting state's respiratory therapy licensing authority, and
9 each of the member states' respiratory therapy licensing
10 authorities.

11 *e.* A state that has been terminated is responsible for all
12 assessments, obligations, and liabilities incurred through the
13 effective date of termination, including obligations that extend
14 beyond the effective date of termination, if necessary.

15 *f.* Upon termination of a state's membership from this
16 compact, that state shall immediately provide notice to all
17 licensees and compact privilege holders of which the commission
18 has a record within that state of such termination. The
19 terminated state shall continue to recognize all licenses granted
20 pursuant to this compact for a minimum of one hundred eighty days
21 after the date of said notice of termination.

22 *g.* The commission shall not bear any costs related to a state
23 that is found to be in default or that has been terminated from
24 the compact, unless agreed upon in writing between the commission
25 and the defaulting state.

26 *h.* The defaulting state may appeal the action of the
27 commission by petitioning the United States district court for
28 the District of Columbia or the federal district where the
29 commission has its principal offices. The prevailing party shall
30 be awarded all costs of such litigation, including reasonable
31 attorney fees.

32 *i.* Dispute resolution.

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

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

4 j. Enforcement.

5 (1) By majority vote, as may be further provided by rule, the
6 commission may initiate legal action against a member state in
7 default in the United States district court for the District of
8 Columbia or the federal district where the commission has its
9 principal offices to enforce compliance with the provisions of
10 the compact and its promulgated rules. A member state by
11 enactment of this compact consents to venue and jurisdiction in
12 such court for the purposes set forth in this subparagraph. The
13 relief sought may include both injunctive relief and damages. In
14 the event judicial enforcement is necessary, the prevailing party
15 shall be awarded all costs of such litigation, including
16 reasonable attorney fees. The remedies in this subparagraph
17 shall not be the exclusive remedies of the commission. The
18 commission may pursue other remedies available under federal or
19 the defaulting member state's law.

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

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

31 11. *Effective date, withdrawal, and amendment.*

32 a. The compact shall come into effect on the date on which
33 the compact statute is enacted into law in the seventh member
34 state.

35 (1) On or after the effective date of the compact, the

1 commission shall convene and review the enactment of each of the
2 first seven member states to determine if the statute enacted by
3 each such charter member state is materially different than the
4 model compact.

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

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

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

17 (3) All actions taken for the benefit of the commission or in
18 furtherance of the purposes of the administration of the compact
19 prior to the effective date of the compact or the commission
20 coming into existence shall be considered to be the actions of
21 the commission unless specifically repudiated by the commission.
22 The commission shall own and have all rights to any intellectual
23 property developed on behalf or in furtherance of the commission
24 by individuals or entities involved in organizing or establishing
25 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
28 commission's initial adoption of the rules and bylaws shall be
29 subject to the rules and bylaws as they exist on the date on
30 which the compact becomes law in that state. Any rule that has
31 been previously adopted by the commission shall have the full
32 force and effect of law on the date the compact becomes law in
33 that state.

34 b. Any member state may withdraw from this compact by
35 enacting a statute repealing the same.

1 (1) A member state's withdrawal shall not take effect until
2 one hundred eighty days after enactment of the repealing statute.

3 (2) Withdrawal shall not affect the continuing requirements
4 of the withdrawing state's respiratory therapy licensing
5 authority to comply with the investigative and adverse action
6 reporting requirements of this compact prior to the effective
7 date of withdrawal.

8 (3) Upon the enactment of a statute withdrawing from this
9 compact, a state shall immediately provide notice of such
10 withdrawal to all licensees and compact privilege holders of
11 which the commission has a record within that state.
12 Notwithstanding any subsequent statutory enactment to the
13 contrary, such withdrawing state shall continue to recognize all
14 licenses granted pursuant to this compact for a minimum of one
15 hundred eighty days after the date of such notice of withdrawal.

16 c. Nothing contained in this compact shall be construed to
17 invalidate or prevent any licensure agreement or other
18 cooperative arrangement between a member state and a nonmember
19 state that does not conflict with the provisions of this compact.

20 d. This compact may be amended by the member states. No
21 amendment to this compact shall become effective and binding upon
22 any member state until it is enacted into the laws of all member
23 states.

24 12. *Construction and severability.*

25 a. This compact and the commission's rulemaking authority
26 shall be liberally construed so as to effectuate the purposes and
27 the implementation and administration of the compact. Provisions
28 of the compact expressly authorizing or requiring the
29 promulgation of rules shall not be construed to limit the
30 commission's rulemaking authority solely for those purposes.

31 b. The provisions of this compact shall be severable, and if
32 any phrase, clause, sentence, or provision of this compact is
33 held by a court of competent jurisdiction to be contrary to the
34 constitution of any member state, a state seeking participation
35 in the compact, or of the United States, or the applicability

1 thereof to any government, agency, person, or circumstance is
2 held to be unconstitutional by a court of competent jurisdiction,
3 the validity of the remainder of this compact and the
4 applicability thereof to any other government, agency, person, or
5 circumstance shall not be affected thereby.

6 c. Notwithstanding paragraph "b", the commission may deny a
7 state's participation in the compact or, in accordance with the
8 requirements of subsection 10, terminate a member state's
9 participation in the compact if it determines that a
10 constitutional requirement of a member state is a material
11 departure from the compact. Otherwise, if this compact shall be
12 held to be contrary to the constitution of any member state, the
13 compact shall remain in full force and effect as to the remaining
14 member states and in full force and effect as to the member state
15 affected as to all severable matters.

16 13. *Consistent effect and conflict with other state laws.*

17 a. Nothing in this subsection shall prevent or inhibit the
18 enforcement of any other law of a member state that is not
19 inconsistent with the compact.

20 b. Any laws, statutes, regulations, or other legal
21 requirements in a member state in conflict with the compact are
22 superseded to the extent of the conflict, including any
23 subsequently enacted state laws.

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

26 d. Other than as expressly set forth herein, nothing in this
27 compact impacts initial licensure.

28 **EXPLANATION**

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

31 This bill establishes the respiratory care interstate compact.

32 The compact establishes a system whereby a respiratory
33 therapist licensed to practice in one participating state
34 may practice in another participating state under a compact
35 privilege without applying for a license in that state. The

1 compact imposes certain minimum requirements on the licensure of
2 respiratory therapists in participating states.

3 The compact creates a commission to administer the operation
4 of the compact. The commission is an instrumentality of the
5 participating states. The compact includes provisions relating
6 to the establishment and membership of the commission; powers
7 of the commission; meetings and voting requirements of the
8 commission; commission bylaws and rules; commission committees;
9 commission finances; the establishment of a data system;
10 compacting state compliance; venue for judicial proceedings;
11 defense and indemnification; effective dates and amendments to
12 the compact; withdrawal, default, and expulsion; severability and
13 construction; and the binding effect of the compact and other
14 laws.

15 The compact becomes effective upon the adoption of the compact
16 by the seventh participating state.