

House Bill 395 (COMMITTEE SUBSTITUTE)

By: Representatives Belton of the 112th, Werkheiser of the 157th, Corbett of the 174th, Lumsden of the 12th, Holcomb of the 81st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10A of Title 43 of the Official Code of Georgia Annotated, relating to
2 professional counselors, social workers, and marriage and family therapists, so as to revise
3 certain licensing provisions; to enter into an interstate compact known as the "Professional
4 Counselors Licensure Compact"; to authorize the Georgia Composite Board of Professional
5 Counselors, Social Workers, and Marriage and Family Therapists to administer the compact
6 in this state; to authorize the board to conduct national background checks; to provide for
7 conditions; to provide for eligibility; to provide for related matters; to provide for a short
8 title; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 10A of Title 43 of the Official Code of Georgia Annotated, relating to professional
12 counselors, social workers, and marriage and family therapists, is amended by revising Code
13 Section 43-10A-5, relating to requirement of oath, quorum, powers and duties of board,
14 ethics, reimbursement of members, and meetings, by adding new subsections to read as
15 follows:

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16 "(h) The board shall administer the Professional Counselors Licensure Compact contained
17 in Article 2 of this chapter.

18 (i) The board is authorized to conduct national background checks by the submission of
19 fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information
20 Center; provided, however, that reports from such background checks shall not be shared
21 with entities outside of this state."

22 SECTION 2.

23 Said chapter is further amended by revising subsection (a) of Code Section 43-10A-8,
24 relating to eligibility for licensure, as follows:

25 "43-10A-8.

26 No person shall be eligible for licensure under this chapter unless such person furnishes
27 satisfactory evidence to the board of all of the following:

28 (1) Having met the education, training, and experience requirements of Code Section
29 43-10A-11, 43-10A-12, or 43-10A-13 regarding that specialty for which a license is
30 sought;

31 (2) Having successfully passed the examination established for that specialty under Code
32 Section 43-10A-9, except that persons meeting the requirements of
33 subparagraph (a)(2)(A) of Code Section 43-10A-13 shall not be required to pass such
34 examination;

35 (3) Having paid any required license fee; ~~and~~

36 (4) Having furnished at least two personal references from supervisors, teachers, or any
37 combination thereof; and

38 (5) Having satisfactory results from a fingerprint record check report conducted by the
39 Georgia Crime Information Center and the Federal Bureau of Investigation, as
40 determined by the board. Application for the issuance of a license under this Code
41 section shall constitute express consent and authorization for the board to perform a

criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. Any such applicant shall be responsible for all fees associated with the performance of such background check."

SECTION 3.

Said chapter is further amended by redesignating provisions of said chapter as Article 1, by replacing "this chapter" with "this article" everywhere such term occurs in the new article, and by adding a new article to read as follows:

"ARTICLE 2

43-10A-50.

This article shall be known and may be cited as 'The Professional Counselors Licensure Compact Act.'

43-10A-51.

The Professional Counselors Licensure Compact is enacted into law and entered into by the State of Georgia with any and all other states legally joining therein in the form substantially as follows:

'PROFESSIONAL COUNSELORS LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services.

The practice of Professional Counseling occurs in the State where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Professional Counseling services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multistate practice for Licensed Professional Counselors;

D. Support spouses of relocating Active Duty Military personnel;

E. Enhance the exchange of licensure, investigative, and disciplinary information among Member States;

F. Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

G. Support the uniformity of Professional Counseling licensure requirements throughout the States to promote public safety and public health benefits;

H. Invest all Member States with the authority to hold a Licensed Professional Counselor accountable for meeting all State practice laws in the State in which the client is located at the time care is rendered through the mutual recognition of Member State licenses;

I. Eliminate the necessity for licenses in multiple States; and

J. Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

88 A. "Active Duty Military" means full-time duty status in the active uniformed service of
89 the United States, including members of the National Guard and Reserve on active duty
90 orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

91 B. "Adverse Action" means any administrative, civil, equitable or criminal action
92 permitted by a State's laws which is imposed by a licensing board or other authority against
93 a Licensed Professional Counselor, including actions against an individual's license or
94 Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee,
95 limitation on the licensee's practice, or any other Encumbrance on licensure affecting a
96 Licensed Professional Counselor's authorization to practice, including issuance of a cease
97 and desist action.

98 C. "Alternative Program" means a non-disciplinary monitoring or practice remediation
99 process approved by a Professional Counseling Licensing Board to address Impaired
100 Practitioners.

101 D. "Continuing Competence/Education" means a requirement, as a condition of license
102 renewal, to provide evidence of participation in, and/or completion of, educational and
103 professional activities relevant to practice or area of work.

104 E. "Counseling Compact Commission" or "Commission" means the national
105 administrative body whose membership consists of all States that have enacted the
106 Compact.

107 F. "Current Significant Investigative Information" means:

108 1. Investigative Information that a Licensing Board, after a preliminary inquiry that
109 includes notification and an opportunity for the Licensed Professional Counselor to
110 respond, if required by State law, has reason to believe is not groundless and, if proved
111 true, would indicate more than a minor infraction; or

112 2. Investigative Information that indicates that the Licensed Professional Counselor
113 represents an immediate threat to public health and safety regardless of whether the
114 Licensed Professional Counselor has been notified and had an opportunity to respond.

115 G. "Data System" means a repository of information about Licensees, including, but not
116 limited to, continuing education, examination, licensure, investigative, Privilege to Practice
117 and Adverse Action information.

118 H. "Encumbered License" means a license in which an Adverse Action restricts the
119 practice of licensed Professional Counseling by the Licensee and said Adverse Action has
120 been reported to the National Practitioners Data Bank (NPDB).

121 I. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and
122 unrestricted practice of Licensed Professional Counseling by a Licensing Board.

123 J. "Executive Committee" means a group of directors elected or appointed to act on behalf
124 of, and within the powers granted to them by, the Commission.

125 K. "Home State" means the Member State that is the Licensee's primary State of residence.

126 L. "Impaired Practitioner" means an individual who has a condition(s) that may impair
127 their ability to practice as a Licensed Professional Counselor without some type of
128 intervention and may include, but are not limited to, alcohol and drug dependence, mental
129 health impairment, and neurological or physical impairments.

130 M. "Investigative Information" means information, records, and documents received or
131 generated by a Professional Counseling Licensing Board pursuant to an investigation.

132 N. "Jurisprudence Requirement" if required by a Member State, means the assessment of
133 an individual's knowledge of the laws and Rules governing the practice of Professional
134 Counseling in a State.

135 O. "Licensed Professional Counselor" means a counselor licensed by a Member State,
136 regardless of the title used by that State, to independently assess, diagnose, and treat
137 behavioral health conditions.

138 P. "Licensee" means an individual who currently holds an authorization from the State to
139 practice as a Licensed Professional Counselor.

140 Q. "Licensing Board" means the agency of a State, or equivalent, that is responsible for
141 the licensing and regulation of Licensed Professional Counselors.

142 R. "Member State" means a State that has enacted the Compact.

143 S. "Privilege to Practice" means a legal authorization, which is equivalent to a license,
144 permitting the practice of Professional Counseling in a Remote State.

145 T. "Professional Counseling" means the assessment, diagnosis, and treatment of behavioral
146 health conditions by a Licensed Professional Counselor.

147 U. "Remote State" means a Member State other than the Home State, where a Licensee
148 is exercising or seeking to exercise the Privilege to Practice.

149 V. "Rule" means a regulation promulgated by the Commission that has the force of law.

150 W. "Single State License" means a Licensed Professional Counselor license issued by a
151 Member State that authorizes practice only within the issuing State and does not include
152 a Privilege to Practice in any other Member State.

153 X. "State" means any state, commonwealth, district, or territory of the United States of
154 America that regulates the practice of Professional Counseling.

155 Y. "Telehealth" means the application of telecommunication technology to deliver
156 Professional Counseling services remotely to assess, diagnose, and treat behavioral health
157 conditions.

158 Z. "Unencumbered License" means a license that authorizes a Licensed Professional
159 Counselor to engage in the full and unrestricted practice of Professional Counseling.

160 SECTION 3. STATE PARTICIPATION IN THE COMPACT

161 A. To Participate in the Compact, a State must currently:

162 1. License and regulate Licensed Professional Counselors;

163 2. Require Licensees to pass a nationally recognized exam approved by the Commission;

164 3. Require Licensees to have a 60 semester-hour (or 90 quarter-hour) master's degree in
165 counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including
166 the following topic areas:

167 a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

4. Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

5. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

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

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws;

6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member State in accordance with the terms of the Compact and Rules; and

7. Provide for the attendance of the State's commissioner to the Counseling Compact Commission meetings.

C. Member States may charge a fee for granting the Privilege to Practice.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. A license issued to a Licensed Professional Counselor by a Home State to a resident in that State shall be recognized by each Member State as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member State.

218 SECTION 4. PRIVILEGE TO PRACTICE

219 A. To exercise the Privilege to Practice under the terms and provisions of the Compact,
220 the Licensee shall:

221 1. Hold a license in the Home State;

222 2. Have a valid United States Social Security Number or National Practitioner Identifier;

223 3. Be eligible for a Privilege to Practice in any Member State in accordance with
224 Section 4(D), (G) and (H);

225 4. Have not had any Encumbrance or restriction against any license or Privilege to
226 Practice within the previous two (2) years;

227 5. Notify the Commission that the Licensee is seeking the Privilege to Practice within
228 a Remote State(s);

229 6. Pay any applicable fees, including any State fee, for the Privilege to Practice;

230 7. Meet any Continuing Competence/Education requirements established by the Home
231 State;

232 8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the
233 Licensee is seeking a Privilege to Practice; and

234 9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license
235 taken by any non-Member State within 30 days from the date the action is taken.

236 B. The Privilege to Practice is valid until the expiration date of the Home State license.
237 The Licensee must comply with the requirements of Section 4(A) to maintain the Privilege
238 to Practice in the Remote State.

239 C. A Licensee providing Professional Counseling in a Remote State under the Privilege
240 to Practice shall adhere to the laws and regulations of the Remote State.

241 D. A Licensee providing Professional Counseling services in a Remote State is subject to
242 that State's regulatory authority. A Remote State may, in accordance with due process and
243 that State's laws, remove a Licensee's Privilege to Practice in the Remote State for a
244 specific period of time, impose fines, and/or take any other necessary actions to protect the

health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

E. If a Home State license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

F. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4(A) to obtain a Privilege to Practice in any Remote State.

G. If a Licensee's Privilege to Practice in any Remote State is removed, the individual may lose the Privilege to Practice in all other Remote States until the following occur:

1. The specific period of time for which the Privilege to Practice was removed has ended;

2. All fines have been paid; and

3. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

H. Once the requirements of Section 4(G) have been met, the Licensee must meet the requirements in Section 4(A) to obtain a Privilege to Practice in a Remote State.

SECTION 5. OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

A. A Licensed Professional Counselor may hold a Home State license, which allows for a Privilege to Practice in other Member States, in only one Member State at a time.

B. If a Licensed Professional Counselor changes primary State of residence by moving between two Member States:

270 1. The Licensed Professional Counselor shall file an application for obtaining a new
271 Home State license based on a Privilege to Practice, pay all applicable fees, and notify
272 the current and new Home State in accordance with applicable Rules adopted by the
273 Commission.

274 2. Upon receipt of an application for obtaining a new Home State license by virtue of a
275 Privilege to Practice, the new Home State shall verify that the Licensed Professional
276 Counselor meets the pertinent criteria outlined in Section 4 via the Data System, without
277 need for primary source verification except for:

278 a. a Federal Bureau of Investigation fingerprint based criminal background check if not
279 previously performed or updated pursuant to applicable rules adopted by the
280 Commission in accordance with Public Law 92-544;

281 b. other criminal background check as required by the new Home State; and

282 c. completion of any requisite Jurisprudence Requirements of the new Home State.

283 3. The former Home State shall convert the former Home State license into a Privilege
284 to Practice once the new Home State has activated the new Home State license in
285 accordance with applicable Rules adopted by the Commission.

286 4. Notwithstanding any other provision of this Compact, if the Licensed Professional
287 Counselor cannot meet the criteria in Section 4, the new Home State may apply its
288 requirements for issuing a new Single State License.

289 5. The Licensed Professional Counselor shall pay all applicable fees to the new Home
290 State in order to be issued a new Home State license.

291 C. If a Licensed Professional Counselor changes Primary State of Residence by moving
292 from a Member State to a non-Member State, or from a non-Member State to a Member
293 State, the State criteria shall apply for issuance of a Single State License in the new State.

294 D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State
295 License in multiple States, however for the purposes of this Compact, a Licensee shall have
296 only one Home State license.

297 E. Nothing in this Compact shall affect the requirements established by a Member State
298 for the issuance of a Single State License.

299 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

300 Active Duty Military personnel, or their spouse, shall designate a Home State where the
301 individual has a current license in good standing. The individual may retain the Home State
302 designation during the period the service member is on active duty. Subsequent to
303 designating a Home State, the individual shall only change their Home State through
304 application for licensure in the new State, or through the process outlined in Section 5.

305 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

306 A. Member States shall recognize the right of a Licensed Professional Counselor, licensed
307 by a Home State in accordance with Section 3 and under Rules promulgated by the
308 Commission, to practice Professional Counseling in any Member State via Telehealth
309 under a Privilege to Practice as provided in the Compact and Rules promulgated by the
310 Commission.

311 B. A Licensee providing Professional Counseling services in a Remote State under the
312 Privilege to Practice shall adhere to the laws and regulations of the Remote State.

313 SECTION 8. ADVERSE ACTIONS

314 A. In addition to the other powers conferred by State law, a Remote State shall have the
315 authority, in accordance with existing State due process law, to:

316 1. Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice
317 within that Member State, and

318 2. Issue subpoenas for both hearings and investigations that require the attendance and
319 testimony of witnesses as well as the production of evidence. Subpoenas issued by a
320 Licensing Board in a Member State for the attendance and testimony of witnesses or the

production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Only the Home State shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home State.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Licensed Professional Counselor who changes primary State of residence during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

E. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Professional Counseling practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member States during the pendency of the order.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint public agency known as the Counseling Compact Commission:

1. The Commission is an instrumentality of the Compact States.

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

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

373 B. Membership, Voting, and Meetings

374 1. Each Member State shall have and be limited to one (1) delegate selected by that
375 Member State's Licensing Board.

376 2. The delegate shall be either:

377 a. A current member of the Licensing Board at the time of appointment, who is a
378 Licensed Professional Counselor or public member; or

379 b. An administrator of the Licensing Board.

380 3. Any delegate may be removed or suspended from office as provided by the law of the
381 State from which the delegate is appointed.

382 4. The Member State Licensing Board shall fill any vacancy occurring on the
383 Commission within 60 days.

384 5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of
385 Rules and creation of bylaws and shall otherwise have an opportunity to participate in the
386 business and affairs of the Commission.

387 6. A delegate shall vote in person or by such other means as provided in the bylaws. The
388 bylaws may provide for delegates' participation in meetings by telephone or other means
389 of communication.

390 7. The Commission shall meet at least once during each calendar year. Additional
391 meetings shall be held as set forth in the bylaws.

392 8. The Commission shall by Rule establish a term of office for delegates and may by
393 Rule establish term limits.

394 C. The Commission shall have the following powers and duties:

395 1. Establish the fiscal year of the Commission;

396 2. Establish bylaws;

397 3. Maintain its financial records in accordance with the bylaws;

398 4. Meet and take such actions as are consistent with the provisions of this Compact and
399 the bylaws;

- 400 5. Promulgate Rules which shall be binding to the extent and in the manner provided for
401 in the Compact;
- 402 6. Bring and prosecute legal proceedings or actions in the name of the Commission,
403 provided that the standing of any State Licensing Board to sue or be sued under
404 applicable law shall not be affected;
- 405 7. Purchase and maintain insurance and bonds;
- 406 8. Borrow, accept, or contract for services of personnel, including, but not limited to,
407 employees of a Member State;
- 408 9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
409 individuals appropriate authority to carry out the purposes of the Compact, and establish
410 the Commission's personnel policies and programs relating to conflicts of interest,
411 qualifications of personnel, and other related personnel matters;
- 412 10. Accept any and all appropriate donations and grants of money, equipment, supplies,
413 materials, and services, and to receive, utilize, and dispose of the same; provided that at
414 all times the Commission shall avoid any appearance of impropriety and/or conflict of
415 interest;
- 416 11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,
417 improve or use, any property, real, personal or mixed; provided that at all times the
418 Commission shall avoid any appearance of impropriety;
- 419 12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
420 property real, personal, or mixed;
- 421 13. Establish a budget and make expenditures;
- 422 14. Borrow money;
- 423 15. Appoint committees, including standing committees composed of members, State
424 regulators, State legislators or their representatives, and consumer representatives, and
425 such other interested persons as may be designated in this Compact and the bylaws;

426 16. Provide and receive information from, and cooperate with, law enforcement
427 agencies;

428 17. Establish and elect an Executive Committee; and

429 18. Perform such other functions as may be necessary or appropriate to achieve the
430 purposes of this Compact consistent with the State regulation of Professional Counseling
431 licensure and practice.

432 D. The Executive Committee

433 1. The Executive Committee shall have the power to act on behalf of the Commission
434 according to the terms of this Compact.

435 2. The Executive Committee shall be composed of up to eleven (11) members:

436 a. Seven voting members who are elected by the Commission from the current
437 membership of the Commission; and

438 b. Up to four (4) ex-officio, nonvoting members from four (4) recognized national
439 professional counselor organizations.

440 c. The ex-officio members will be selected by their respective organizations.

441 3. The Commission may remove any member of the Executive Committee as provided
442 in bylaws.

443 4. The Executive Committee shall meet at least annually.

444 5. The Executive Committee shall have the following duties and responsibilities:

445 a. Recommend to the entire Commission changes to the Rules or bylaws, changes to
446 this Compact legislation, fees paid by Compact Member States such as annual dues, and
447 any Commission Compact fee charged to Licensees for the Privilege to Practice;

448 b. Ensure Compact administration services are appropriately provided, contractual or
449 otherwise;

450 c. Prepare and recommend the budget;

451 d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

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

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and

disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

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

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within

the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Privilege to Practice;

4. Non-confidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

559 F. Any information submitted to the Data System that is subsequently required to be
560 expunged by the laws of the Member State contributing the information shall be removed
561 from the Data System.

562 SECTION 11. RULEMAKING

563 A. The Commission shall promulgate reasonable Rules in order to effectively and
564 efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the
565 event the Commission exercises its Rulemaking authority in a manner that is beyond the
566 scope of the purposes of the Compact, or the powers granted hereunder, then such an action
567 by the Commission shall be invalid and have no force or effect.

568 B. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth
569 in this Section and the Rules adopted thereunder. Rules and amendments shall become
570 binding as of the date specified in each Rule or amendment.

571 C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of
572 a statute or resolution in the same manner used to adopt the Compact within four (4) years
573 of the date of adoption of the Rule, then such Rule shall have no further force and effect
574 in any Member State.

575 D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of
576 the Commission.

577 E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at
578 least thirty (30) days in advance of the meeting at which the Rule will be considered and
579 voted upon, the Commission shall file a Notice of Proposed Rulemaking:

- 580 1. On the website of the Commission or other publicly accessible platform; and
581 2. On the website of each Member State Professional Counseling Licensing Board or
582 other publicly accessible platform or the publication in which each State would otherwise
583 publish proposed Rules.

584 F. The Notice of Proposed Rulemaking shall include:

585 1. The proposed time, date, and location of the meeting in which the Rule will be
586 considered and voted upon;

587 2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

588 3. A request for comments on the proposed Rule from any interested person; and

589 4. The manner in which interested persons may submit notice to the Commission of their
590 intention to attend the public hearing and any written comments.

591 G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit
592 written data, facts, opinions, and arguments, which shall be made available to the public.

593 H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule
594 or amendment if a hearing is requested by:

595 1. At least twenty-five (25) persons;

596 2. A State or federal governmental subdivision or agency; or

597 3. An association having at least twenty-five (25) members.

598 I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish
599 the place, time, and date of the scheduled public hearing. If the hearing is held via
600 electronic means, the Commission shall publish the mechanism for access to the electronic
601 hearing.

602 1. All persons wishing to be heard at the hearing shall notify the executive director of the
603 Commission or other designated member in writing of their desire to appear and testify
604 at the hearing not less than five (5) business days before the scheduled date of the
605 hearing.

606 2. Hearings shall be conducted in a manner providing each person who wishes to
607 comment a fair and reasonable opportunity to comment orally or in writing.

608 3. All hearings will be recorded. A copy of the recording will be made available on
609 request.

610 4. Nothing in this section shall be construed as requiring a separate hearing on each Rule.
611 Rules may be grouped for the convenience of the Commission at hearings required by
612 this section.

613 J. Following the scheduled hearing date, or by the close of business on the scheduled
614 hearing date if the hearing was not held, the Commission shall consider all written and oral
615 comments received.

616 K. If no written notice of intent to attend the public hearing by interested parties is
617 received, the Commission may proceed with promulgation of the proposed Rule without
618 a public hearing.

619 L. The Commission shall, by majority vote of all members, take final action on the
620 proposed Rule and shall determine the effective date of the Rule, if any, based on the
621 Rulemaking record and the full text of the Rule.

622 M. Upon determination that an emergency exists, the Commission may consider and adopt
623 an emergency Rule without prior notice, opportunity for comment, or hearing, provided
624 that the usual Rulemaking procedures provided in the Compact and in this section shall be
625 retroactively applied to the Rule as soon as reasonably possible, in no event later than
626 ninety (90) days after the effective date of the Rule. For the purposes of this provision, an
627 emergency Rule is one that must be adopted immediately in order to:

628 1. Meet an imminent threat to public health, safety, or welfare;

629 2. Prevent a loss of Commission or Member State funds;

630 3. Meet a deadline for the promulgation of an administrative Rule that is established by
631 federal law or Rule; or

632 4. Protect public health and safety.

633 N. The Commission or an authorized committee of the Commission may direct revisions
634 to a previously adopted Rule or amendment for purposes of correcting typographical errors,
635 errors in format, errors in consistency, or grammatical errors. Public notice of any
636 revisions shall be posted on the website of the Commission. The revision shall be subject

to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

G. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

H. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

715 1. A Member State's withdrawal shall not take effect until six (6) months after enactment
716 of the repealing statute.

717 2. Withdrawal shall not affect the continuing requirement of the withdrawing State's
718 Professional Counseling Licensing Board to comply with the investigative and Adverse
719 Action reporting requirements of this act prior to the effective date of withdrawal.

720 D. Nothing contained in this Compact shall be construed to invalidate or prevent any
721 Professional Counseling licensure agreement or other cooperative arrangement between
722 a Member State and a non-Member State that does not conflict with the provisions of this
723 Compact.

724 E. This Compact may be amended by the Member States. No amendment to this Compact
725 shall become effective and binding upon any Member State until it is enacted into the laws
726 of all Member States.

727 SECTION 14. CONSTRUCTION AND SEVERABILITY

728 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
729 provisions of this Compact shall be severable and if any phrase, clause, sentence or provision
730 of this Compact is declared to be contrary to the constitution of any Member State or of the
731 United States or the applicability thereof to any government, agency, person or circumstance
732 is held invalid, the validity of the remainder of this Compact and the applicability thereof to
733 any government, agency, person or circumstance shall not be affected thereby. If this
734 Compact shall be held contrary to the constitution of any Member State, the Compact shall
735 remain in full force and effect as to the remaining Member States and in full force and effect
736 as to the Member State affected as to all severable matters.

737 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

738 A. A Licensee providing Professional Counseling services in a Remote State under the
739 Privilege to Practice shall adhere to the laws and regulations, including scope of practice,
740 of the Remote State.

741 B. Nothing herein prevents the enforcement of any other law of a Member State that is not
742 inconsistent with the Compact.

743 C. Any laws in a Member State in conflict with the Compact are superseded to the extent
744 of the conflict.

745 D. Any lawful actions of the Commission, including all Rules and bylaws properly
746 promulgated by the Commission, are binding upon the Member States.

747 E. All permissible agreements between the Commission and the Member States are
748 binding in accordance with their terms.

749 F. In the event any provision of the Compact exceeds the constitutional limits imposed on
750 the legislature of any Member State, the provision shall be ineffective to the extent of the
751 conflict with the constitutional provision in question in that Member State.'"

752 **SECTION 4.**

753 All laws and parts of laws in conflict with this Act are repealed.