

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 575

By: Stephens

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations;
creating the Janet Phillips Act of 2023; providing
short title; enacting the Counseling Compact and
authorizing Governor to enter into compact with
certain jurisdictions; setting forth form of certain
compact; providing for codification; providing for
noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Janet Phillips
Act of 2023".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1921.1 of Title 59, unless there
is created a duplication in numbering, reads as follows:

The Counseling Compact is hereby enacted into law and the
Governor shall enter into a compact on behalf of the State of

1 Oklahoma with any jurisdiction legally joined therein, in the form
2 substantially as set forth in Section 2 of this act.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1921.2 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 SECTION 1: PURPOSE

7 The purpose of this Compact is to facilitate interstate practice
8 of Licensed Professional Counselors with the goal of improving
9 public access to Professional Counseling services. The practice of
10 Professional Counseling occurs in the State where the client is
11 located at the time of the counseling services. The Compact
12 preserves the regulatory authority of States to protect public
13 health and safety through the current system of State licensure.

14 This Compact is designed to achieve the following objectives:

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

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

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

22 D. Support spouses of relocating Active Duty Military
23 personnel;

24

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

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

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

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

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

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

16 SECTION 2: DEFINITIONS

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

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

23 B. "Adverse Action" means any administrative, civil, equitable,
24 or criminal action permitted by a State's laws which is imposed by a

1 Licensing Board or other authority against a Licensed Professional
2 Counselor, including actions against an individual's license or
3 Privilege to Practice such as revocation, suspension, probation,
4 monitoring of the licensee, limitation on the licensee's practice,
5 or any other Encumbrance on licensure affecting a Licensed
6 Professional Counselor's authorization to practice, including
7 issuance of a cease and desist action.

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

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

15 E. "Counseling Compact Commission" or "Commission" means the
16 national administrative body whose membership consists of all States
17 that have enacted the Compact.

18 F. "Current Significant Investigative Information" means:

19 1. Investigative Information that a Licensing Board, after a
20 preliminary inquiry that includes notification and an opportunity
21 for the Licensed Professional Counselor to respond, if required by
22 State law, has reason to believe is not groundless and, if proved
23 true, would indicate more than a minor infraction; or
24

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

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

9 H. "Encumbered License" means a license in which an Adverse
10 Action restricts the practice of Professional Counseling by the
11 Licensee and said Adverse Action has been reported to the National
12 Practitioner Data Bank (NPDB).

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

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

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

21 L. "Impaired Practitioner" means an individual who has a
22 condition(s) that may impair his or her ability to practice as a
23 Licensed Professional Counselor without some type of intervention
24 and may include, but are not limited to, alcohol and drug

1 dependence, mental health impairment, and neurological or physical
2 impairments.

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

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

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

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

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

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

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

23

24

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

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

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

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

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

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

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

22 SECTION 3: STATE PARTICIPATION IN THE COMPACT

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

24 1. License and regulate Licensed Professional Counselors;

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

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

7 a. Professional Counseling Orientation and Ethical
8 Practice;

9 b. Social and Cultural Diversity;

10 c. Human Growth and Development;

11 d. Career Development;

12 e. Counseling and Helping Relationships;

13 f. Group Counseling and Group Work;

14 g. Diagnosis and Treatment; Assessment and Testing;

15 h. Research and Program Evaluation; and

16 i. Other areas as determined by the Commission;

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

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

21 B. A Member State shall:

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

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

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

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

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

23 4. Comply with the Rules of the Commission;
24

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

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

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

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

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

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

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

1 SECTION 4: PRIVILEGE TO PRACTICE

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

4 1. Hold a license in the Home State;

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

7 3. Be eligible for a Privilege to Practice in any Member State
8 in accordance with Section 4D, G, and H;

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

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

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

15 7. Meet any Continuing Competence/Education requirements
16 established by the Home State;

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

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

23 B. The Privilege to Practice is valid until the expiration date
24 of the Home State license. The Licensee must comply with the

1 requirements of Section 4A to maintain the Privilege to Practice in
2 the Remote State.

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

6 D. A Licensee providing Professional Counseling services in a
7 Remote State is subject to that State's regulatory authority. A
8 Remote State may, in accordance with due process and that State's
9 laws, remove a Licensee's Privilege to Practice in the Remote State
10 for a specific period of time, impose fines, and/or take any other
11 necessary actions to protect the health and safety of its citizens.
12 The Licensee may be ineligible for a Privilege to Practice in any
13 Member State until the specific time for removal has passed and all
14 fines are paid.

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

- 18 1. The Home State license is no longer encumbered; and
- 19 2. The Licensee has not had any Encumbrance or restriction
20 against any license or Privilege to Practice within the previous two
21 (2) years.

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

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

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

6 2. All fines have been paid; and

7 3. The Licensee has not had any Encumbrance or restriction
8 against any license or Privilege to Practice within the previous two
9 (2) years.

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

13 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A
14 PRIVILEGE TO PRACTICE

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

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

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

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

- 6 a. a Federal Bureau of Investigation fingerprint based
7 criminal background check if not previously performed
8 or updated pursuant to applicable rules adopted by the
9 Commission in accordance with Public Law 92-544;
- 10 b. other criminal background check as required by the new
11 Home State; and
- 12 c. completion of any requisite Jurisprudence Requirements
13 of the new Home State.

14 3. The former Home State shall convert the former Home State
15 license into a Privilege to Practice once the new Home State has
16 activated the new Home State license in accordance with applicable
17 Rules adopted by the Commission.

18 4. Notwithstanding any other provision of this Compact, if the
19 Licensed Professional Counselor cannot meet the criteria in Section
20 4, the new Home State may apply its requirements for issuing a new
21 Single State License.

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

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

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

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

12 SECTION 6: ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

13 Active Duty Military personnel, or their spouse, shall designate
14 a Home State where the individual has a current license in good
15 standing. The individual may retain the Home State designation
16 during the period the service member is on active duty. Subsequent
17 to designating a Home State, the individual shall only change his or
18 her Home State through application for licensure in the new State,
19 or through the process outlined in Section 5.

20 SECTION 7: COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

21 A. Member States shall recognize the right of a Licensed
22 Professional Counselor, licensed by a Home State in accordance with
23 Section 3 and under Rules promulgated by the Commission, to practice
24 Professional Counseling in any Member State via Telehealth under a

1 Privilege to Practice as provided in the Compact and Rules
2 promulgated by the Commission.

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

6 SECTION 8: ADVERSE ACTIONS

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

- 10 1. Take Adverse Action against a Licensed Professional
11 Counselor's Privilege to Practice within that Member State; and
- 12 2. Issue subpoenas for both hearings and investigations that
13 require the attendance and testimony of witnesses as well as the
14 production of evidence. Subpoenas issued by a Licensing Board in a
15 Member State for the attendance and testimony of witnesses or the
16 production of evidence from another Member State shall be enforced
17 in the latter State by any court of competent jurisdiction,
18 according to the practice and procedure of that court applicable to
19 subpoenas issued in proceedings pending before it. The issuing
20 authority shall pay any witness fees, travel expenses, mileage, and
21 other fees required by the service statutes of the State in which
22 the witnesses or evidence are located.

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

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

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

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

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

24 F. Joint Investigations.

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

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

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

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

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

24 SECTION 9: ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

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

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

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

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

12 B. Membership, Voting, and Meetings.

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

15 2. The delegate shall be either:

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

19 b. An administrator of the Licensing Board.

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

23 4. The Member State Licensing Board shall fill any vacancy
24 occurring on the Commission within sixty (60) days.

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

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

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

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

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

14 1. Establish the fiscal year of the Commission;

15 2. Establish bylaws;

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

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

20 5. Promulgate Rules which shall be binding to the extent and in
21 the manner provided for in the Compact;

22 6. Bring and prosecute legal proceedings or actions in the name
23 of the Commission, provided that the standing of any State Licensing
24 Board to sue or be sued under applicable law shall not be affected;

1 7. Purchase and maintain insurance and bonds;

2 8. Borrow, accept, or contract for services of personnel,
3 including, but not limited to, employees of a Member State;

4 9. Hire employees, elect or appoint officers, fix compensation,
5 define duties, grant such individuals appropriate authority to carry
6 out the purposes of the Compact, and establish the Commission's
7 personnel policies and programs relating to conflicts of interest,
8 qualifications of personnel, and other related personnel matters;

9 10. Accept any and all appropriate donations and grants of
10 money, equipment, supplies, materials, and services, and to receive,
11 utilize, and dispose of the same; provided that at all times the
12 Commission shall avoid any appearance of impropriety and/or conflict
13 of interest;

14 11. Lease, purchase, accept appropriate gifts or donations of,
15 or otherwise own, hold, improve, or use, any property, real,
16 personal, or mixed; provided that at all times the Commission shall
17 avoid any appearance of impropriety;

18 12. Sell, convey, mortgage, pledge, lease, exchange, abandon,
19 or otherwise dispose of any property real, personal, or mixed;

20 13. Establish a budget and make expenditures;

21 14. Borrow money;

22 15. Appoint committees, including standing committees composed
23 of members, State regulators, State legislators or their
24

representatives, consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

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

17. Establish and elect an Executive Committee; and

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

D. The Executive Committee.

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

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

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

b. Up to four ex-officio, nonvoting members from four recognized national professional counselor organizations.

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

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

4. The Executive Committee shall meet at least annually.

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

- 3 a. Recommend to the entire Commission changes to the
4 Rules or bylaws, changes to this Compact legislation,
5 fees paid by Compact Member States such as annual
6 dues, and any Commission Compact fee charged to
7 Licensees for the Privilege to Practice;
- 8 b. Ensure Compact administration services are
9 appropriately provided, contractual or otherwise;
- 10 c. Prepare and recommend the budget;
- 11 d. Maintain financial records on behalf of the
12 Commission;
- 13 e. Monitor Compact compliance of Member States and
14 provide compliance reports to the Commission;
- 15 f. Establish additional committees as necessary; and
- 16 g. Other duties as provided in Rules or bylaws.

17 E. Meetings of the Commission.

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

21 2. The Commission or the Executive Committee or other
22 committees of the Commission may convene in a closed, non-public
23 meeting if the Commission or Executive Committee or other committees
24 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.

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

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

14 5. The Commission shall keep accurate accounts of all receipts
15 and disbursements. The receipts and disbursements of the Commission
16 shall be subject to the audit and accounting procedures established
17 under its bylaws. However, all receipts and disbursements of funds
18 handled by the Commission shall be audited yearly by a certified or
19 licensed public accountant, and the report of the audit shall be
20 included in and become part of the annual report of the Commission.

21 G. Qualified Immunity, Defense, and Indemnification.

22 1. The members, officers, executive director, employees, and
23 representatives of the Commission shall be immune from suit and
24 liability, either personally or in their official capacity, for any

1 claim for damage to or loss of property or personal injury or other
2 civil liability caused by or arising out of any actual or alleged
3 act, error, or omission that occurred, or that the person against
4 whom the claim is made had a reasonable basis for believing occurred
5 within the scope of Commission employment, duties, or
6 responsibilities; provided that nothing in this paragraph shall be
7 construed to protect any such person from suit and/or liability for
8 any damage, loss, injury, or liability caused by the intentional or
9 willful or wanton misconduct of that person.

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

22 3. The Commission shall indemnify and hold harmless any member,
23 officer, executive director, employee, or representative of the
24 Commission for the amount of any settlement or judgment obtained

1 against that person arising out of any actual or alleged act, error,
2 or omission that occurred within the scope of Commission employment,
3 duties, or responsibilities, or that such person had a reasonable
4 basis for believing occurred within the scope of Commission
5 employment, duties, or responsibilities, provided that the actual or
6 alleged act, error, or omission did not result from the intentional
7 or willful or wanton misconduct of that person.

8 SECTION 10: 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 Investigative Information on all licensed individuals in Member
13 States.

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

- 18 1. Identifying information;
- 19 2. Licensure data;
- 20 3. Adverse Actions against a license or Privilege to Practice;
- 21 4. Non-confidential information related to Alternative Program
22 participation;
- 23 5. Any denial of application for licensure, and the reason(s)
24 for such denial;

1 6. Current Significant Investigative Information; and

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

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

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

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

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

17 SECTION 11: RULEMAKING

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

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

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

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

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

16 1. On the website of the Commission or other publicly
17 accessible platform; and

18 2. On the website of each Member State Professional Counseling
19 Licensing Board or other publicly accessible platform or the
20 publication in which each State would otherwise publish proposed
21 Rules.

22 F. The Notice of Proposed Rulemaking shall include:

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

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

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

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

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

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

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

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

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

17 I. If a hearing is held on the proposed Rule or amendment, the
18 Commission shall publish the place, time, and date of the scheduled
19 public hearing. If the hearing is held via electronic means, the
20 Commission shall publish the mechanism for access to the electronic
21 hearing.

22 1. All persons wishing to be heard at the hearing shall notify
23 the executive director of the Commission or other designated member
24 in writing of their desire to appear and testify at the hearing not

1 less than five (5) business days before the scheduled date of the
2 hearing.

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

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

8 4. Nothing in this Section shall be construed as requiring a
9 separate hearing on each Rule. Rules may be grouped for the
10 convenience of the Commission at hearings required by this Section.

11 J. Following the scheduled hearing date, or by the close of
12 business on the scheduled hearing date if the hearing was not held,
13 the Commission shall consider all written and oral comments
14 received.

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

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

22 M. Upon determination that an emergency exists, the Commission
23 may consider and adopt an emergency Rule without prior notice,
24 opportunity for comment, or hearing, provided that the usual

1 Rulemaking procedures provided in the Compact and in this Section
2 shall be retroactively applied to the Rule as soon as reasonably
3 possible, in no event later than ninety (90) days after the
4 effective date of the Rule. For the purposes of this provision, an
5 emergency Rule is one that must be adopted immediately in order to:

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

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

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

11 4. Protect public health and safety.

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

1 SECTION 12: OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

2 A. Oversight.

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

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

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

17 B. Default, Technical Assistance, and Termination.

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

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

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

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

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

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

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

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

6 H. Dispute Resolution.

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

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

13 I. Enforcement.

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

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

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

4 SECTION 13: DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT
5 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

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

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

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

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

23 2. Withdrawal shall not affect the continuing requirement of
24 the withdrawing State's Professional Counseling Licensing Board to

1 comply with the investigative and Adverse Action reporting
2 requirements of this act prior to the effective date of withdrawal.

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

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

12 SECTION 14: CONSTRUCTION AND SEVERABILITY

13 This Compact shall be liberally construed so as to effectuate
14 the purposes thereof. The provisions of this Compact shall be
15 severable and if any phrase, clause, sentence, or provision of this
16 Compact is declared to be contrary to the Constitution of any Member
17 State or of the United States or the applicability thereof to any
18 government, agency, person, or circumstance is held invalid, the
19 validity of the remainder of this Compact and the applicability
20 thereof to any government, agency, person or circumstance shall not
21 be affected thereby. If this Compact shall be held contrary to the
22 Constitution of any Member State, the Compact shall remain in full
23 force and effect as to the remaining Member States and in full force
24

1 and effect as to the Member State affected as to all severable
2 matters.

3 SECTION 15: BINDING EFFECT OF COMPACT AND OTHER LAWS

4 A. A Licensee providing Professional Counseling services in a
5 Remote State under the Privilege to Practice shall adhere to the
6 laws and regulations, including scope of practice, of the Remote
7 State.

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

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

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

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

17 F. In the event any provision of the Compact exceeds the
18 constitutional limits imposed on the legislature of any Member
19 State, the provision shall be ineffective to the extent of the
20 conflict with the constitutional provision in question in that
21 Member State.

22 SECTION 4. This act shall become effective November 1, 2023.

23

24 59-1-1704 DC 2/23/2023 11:20:28 AM