

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2187
(Senators Cleary, Hogan, K. Roers)
(Representatives Porter, D. Ruby, Weisz)

AN ACT to create and enact chapter 43-47.1 of the North Dakota Century Code, relating to adoption of the counseling compact; and to amend and reenact subsection 2 of section 43-47-06 of the North Dakota Century Code, relating to licensure of counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-47-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Provided personal and professional recommendations that meet the requirements adopted by the board and satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor or licensed psychologist, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
 - d. Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
 - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.

SECTION 2. Chapter 43-47.1 of the North Dakota Century Code is created and enacted as follows:

43-47.1-01. Counseling compact.

ARTICLE I - PURPOSE

1. 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.
2. 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.

3. This compact is designed to:
 - 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.

ARTICLE II - DEFINITIONS

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

1. "Active duty military" means full-time duty status in the active uniformed service of the United States of America, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.
2. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.
4. "Continuing competence and education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.
5. "Counseling compact commission" or "commission" means the national administrative body which membership consists of all states that have enacted the compact.
6. "Current significant investigative information" means:
 - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if

required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

- b. Investigative information that indicates the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.
7. "Data system" means a repository of information about licensees, including continuing education, examination, licensure, investigative, privilege to practice, and adverse action information.
8. "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and the adverse action has been reported to the national practitioner data bank.
9. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.
10. "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
11. "Home state" means the member state that is the licensee's primary state of residence.
12. "Impaired practitioner" means an individual who has a condition that may impair the individual's ability to practice as a licensed professional counselor without some type of intervention and may include alcohol and drug dependence, mental health impairment, and neurological or physical impairments.
13. "Investigative information" means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation.
14. "Jurisprudence requirement", if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.
15. "Licensed professional counselor" means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.
16. "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.
17. "Licensing board" means the agency of a state, or equivalent, responsible for the licensing and regulation of licensed professional counselors.
18. "Member state" means a state that has enacted the compact.
19. "Privilege to practice" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.
20. "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.
21. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.
22. "Rule" means a regulation promulgated by the commission which has the force of law.

23. "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.
24. "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling.
25. "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.
26. "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

ARTICLE III - STATE PARTICIPATION IN THE COMPACT

1. To participate in the compact, a state currently:
 - a. Shall license and regulate licensed professional counselors;
 - b. Shall require licensees to pass a nationally recognized exam approved by the commission;
 - c. Shall require licensees to have a sixty semester-hour, or ninety quarter-hour, master's degree in counseling or sixty semester-hours, or ninety quarter-hours, of graduate course work, including the following topic areas:
 - (1) Professional counseling orientation and ethical practice;
 - (2) Social and cultural diversity;
 - (3) Human growth and development;
 - (4) Career development;
 - (5) Counseling and helping relationships;
 - (6) Group counseling and group work;
 - (7) Diagnosis and treatment; assessment and testing;
 - (8) Research and program evaluation; and
 - (9) Other areas as determined by the commission;
 - d. Shall require licensees to complete a supervised postgraduate professional experience as defined by the commission; and
 - e. Must have a mechanism in place for receiving and investigating complaints about licensees.
2. A member state shall:
 - a. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;
 - b. 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;
 - c. Implement or use procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must 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;

- (1) A member state shall implement fully 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.
- (2) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may 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 No. 92-544.

- d. Comply with the rules of the commission;
- e. 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;
- f. 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
- g. Provide for the attendance of the state's commissioner at the counseling compact commission meetings.

3. Member states may charge a fee for granting the privilege to practice.

4. 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 may not be recognized as granting a privilege to practice professional counseling in any other member state.

5. This compact does not affect the requirements established by a member state for the issuance of a single state license.

6. A license issued to a licensed professional counselor by a home state to a resident in that state must 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.

ARTICLE IV - PRIVILEGE TO PRACTICE

1. To exercise the privilege to practice under the terms and provisions of the compact, the licensee:

- a. Shall hold a license in the home state;
- b. Must have a valid United States social security number or national practitioner identifier;
- c. Must be eligible for a privilege to practice in any member state in accordance with subsections 4, 7, and 8;
- d. May not have had any encumbrance or restriction against any license or privilege to practice within the previous two years;
- e. Shall notify the commission that the licensee is seeking the privilege to practice within a remote state;

- f. Shall pay any applicable fees, including any state fee, for the privilege to practice;
 - g. Shall meet any continuing competence and education requirements established by the home state;
 - h. Shall meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice; and
 - i. Shall report to the commission any adverse action, encumbrance, or restriction on license taken by any nonmember state within thirty days from the date the action is taken.
2. The privilege to practice is valid until the expiration date of the home state license. The licensee shall comply with the requirements of subsection 1 to maintain the privilege to practice in the remote state.
 3. A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.
 4. A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. In accordance with due process and that state's laws, a remote state may remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, and 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.
 5. If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until the following occur:
 - a. The home state license is no longer encumbered; and
 - b. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
 6. Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection 1 to obtain a privilege to practice in any remote state.
 7. 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:
 - a. The specific period of time for which the privilege to practice was removed has ended;
 - b. All fines have been paid; and
 - c. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
 8. Once the requirements of subsection 7 have been met, the licensee shall meet the requirements in subsection 1 to obtain a privilege to practice in a remote state.

ARTICLE V - OBTAINING A NEW HOME STATE LICENSE

BASED ON A PRIVILEGE TO PRACTICE

1. 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.
2. If a licensed professional counselor changes primary state of residence by moving between two member states:

- a. The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.
 - b. Upon receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in article IV via the data system, without need for primary source verification except for:
 - (1) A federal bureau of investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law No. 92-544;
 - (2) A criminal background check as required by the new home state; and
 - (3) Completion of any requisite jurisprudence requirements of the new home state.
 - c. The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.
 - d. Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in article IV, the new home state may apply its requirements for issuing a new single state license.
 - e. The licensed professional counselor shall pay all applicable fees to the new home state to be issued a new home state license.
3. If a licensed professional counselor changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria must apply for issuance of a single state license in the new state.
 4. This compact may not interfere with a licensee's ability to hold a single state license in multiple states; however, for the purposes of this compact, a licensee must have only one home state license.
 5. This compact may not affect the requirements established by a member state for the issuance of a single state license.

ARTICLE VI - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall change only the individual's home state through application for licensure in the new state, or through the process outlined in article V.

ARTICLE VII - COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

1. Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with article III and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.
2. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

ARTICLE VIII - ADVERSE ACTIONS

1. In addition to the other powers conferred by state law, a remote state must have the authority, in accordance with existing state due process law, to:
 - a. Take adverse action against a licensed professional counselor's privilege to practice within that member state; and
 - b. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must 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 the court. 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.
2. Only the home state has the power to take adverse action against a licensed professional counselor's license issued by the home state.
3. 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 the home state would if the conduct had occurred within the home state. In so doing, the home state shall apply its state laws to determine appropriate action.
4. 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 also has the authority to take appropriate action and promptly shall report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any adverse actions.
5. 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.
6. A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its procedures for taking the adverse action.
7. Joint investigations:
 - a. 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.
 - b. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.
8. 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 must 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 must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.
9. If a member state takes adverse action, the member state promptly shall notify the administrator of the data system. The administrator of the data system promptly shall notify the home state of any adverse actions by remote states.

10. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

ARTICLE IX - ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

1. The compact member states hereby create and establish a joint public agency known as the counseling compact commission.
 - a. The commission is an instrumentality of the compact states.
 - b. Venue is proper and judicial proceedings by or against the commission must 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 the commission adopts or consents to participate in alternative dispute resolution proceedings.
 - c. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
 - a. Each member state must have and be limited to one delegate selected by that member state's licensing board.
 - b. The delegate must be either:
 - (1) A current member of the licensing board at the time of appointment, who is a licensed professional counselor or public member; or
 - (2) An administrator of the licensing board.
 - c. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
 - d. The member state licensing board shall fill any vacancy occurring on the commission within sixty days.
 - e. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise must have an opportunity to participate in the business and affairs of the commission.
 - f. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
 - g. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
 - h. The commission shall establish by rule a term of office for delegates and may by rule establish term limits.
3. The commission has the following powers and duties to:
 - a. Establish the fiscal year of the commission;
 - b. Establish bylaws;
 - c. Maintain its financial records in accordance with the bylaws;
 - d. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

- e. Promulgate rules that are binding to the extent and in the manner provided for in the compact;
 - f. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law must not be affected;
 - g. Purchase and maintain insurance and bonds;
 - h. Borrow, accept, or contract for services of personnel, including employees of a member state;
 - i. Hire employees, elect or appoint officers, fix compensation, define duties, grant the individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - j. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest, or both;
 - k. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;
 - l. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
 - m. Establish a budget and make expenditures;
 - n. Borrow money;
 - o. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
 - p. Provide and receive information from, and cooperate with, law enforcement agencies;
 - q. Establish and elect an executive committee; and
 - r. 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.
4. The executive committee.
- a. The executive committee has the power to act on behalf of the commission according to the terms of this compact.
 - b. The executive committee is composed of up to eleven members, including:
 - (1) Seven voting members who are elected by the commission from the current membership of the commission; and
 - (2) 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.

- d. The commission may remove any member of the executive committee as provided in bylaws.
 - e. The executive committee shall meet at least annually.
 - f. The executive committee has the following duties and responsibilities to:
 - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice;
 - (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
 - (3) Prepare and recommend the budget;
 - (4) Maintain financial records on behalf of the commission;
 - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
 - (6) Establish additional committees as necessary; and
 - (7) Execute other duties as provided in rules or bylaws.
5. Meetings of the commission.
- a. All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article XI.
 - b. The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:
 - (1) Noncompliance of a member state with its obligations under the compact;
 - (2) 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;
 - (3) Current, threatened, or reasonably anticipated litigation;
 - (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
 - (5) Accusing any person of a crime or formally censuring any person;
 - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
 - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (8) Disclosure of investigative records compiled for law enforcement purposes;
 - (9) 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

(10) Matters specifically exempted from disclosure by federal or member state statute.

- c. If a meeting, or portion of a meeting, is closed pursuant to this subsection, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.
- d. 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 must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

6. Financing of the commission.

- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
- b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
- c. The commission may levy 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 must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
- d. The commission may not incur obligations of any kind before securing the funds adequate to meet the obligations, nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
- e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must 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 must be included in and become part of the annual report of the commission.

7. Qualified immunity, defense, and indemnification.

- a. The members, officers, executive director, employees, and representatives of the commission are 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 which 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 subdivision may be construed to protect any such person from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
- b. 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 which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be

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

- c. 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, willful, or wanton misconduct of that person.

ARTICLE X - DATA SYSTEM

1. 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.
2. 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:
 - a. Identifying information;
 - b. Licensure data;
 - c. Adverse actions against a license or privilege to practice;
 - d. Nonconfidential information related to alternative program participation;
 - e. Any denial of application for licensure, and the reason for such denial;
 - f. Current significant investigative information; and
 - g. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. Investigative information pertaining to a licensee in any member state will only be available to other member states.
4. The commission promptly shall 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.
5. 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.
6. Any information submitted to the data system which is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

ARTICLE XI - RULEMAKING

1. The commission shall promulgate reasonable rules to effectively and efficiently achieve the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner beyond the scope of the purposes of the compact, or the powers granted under this compact, then such an action by the commission is invalid and has no force or effect.

2. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments become binding as of the date specified in each rule or amendment.
3. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, the rule has no further force and effect in any member state.
4. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
5. Before promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - a. On the website of the commission or other publicly accessible platform; and
 - b. On the website of each member state's professional counseling licensing board, other publicly accessible platform, or the publication in which each state would otherwise publish proposed rules.
6. The notice of proposed rulemaking must include:
 - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment and the reason for the proposed rule;
 - c. A request for comments on the proposed rule from any interested person; and
 - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
7. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
8. The commission shall grant an opportunity for a public hearing before the commission adopts a rule or amendment if a hearing is requested by:
 - a. At least twenty-five persons;
 - b. A state or federal governmental subdivision or agency; or
 - c. An association having at least twenty-five members.
9. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.
 - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
 - b. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing.
 - c. All hearings will be recorded. A copy of the recording will be made available on request.

- d. This article may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this article.
10. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
12. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
13. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this article must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately to:
 - a. Meet an imminent threat to public health, safety, or welfare;
 - b. Prevent a loss of commission or member state funds;
 - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - d. Protect public health and safety.
14. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before 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.

ARTICLE XII - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1. Oversight.
 - a. 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 under this compact have standing as statutory law.
 - b. 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.
 - c. The commission must be entitled to receive service of process in the proceeding and must have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

2. If the commission determines 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 or any other action to be taken by the commission, or any combination of these requirements; and
 - b. Provide remedial training and specific technical assistance regarding the default.
3. 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.
4. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must 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.
5. 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.
6. The commission may not pay 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.
7. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.
8. Dispute resolution.
 - a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.
 - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
9. Enforcement.
 - a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
 - b. 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 must be awarded all costs of the litigation, including reasonable attorney's fees.
 - c. The remedies provided under the compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII - DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT

COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

1. The compact becomes effective 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, are 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 implement and administer the compact.
2. Any state that joins the compact subsequent to the commission's initial adoption of the rules must be subject to the rules existing on the date on which the compact becomes law in that state. Any rule previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the compact.
 - a. A member state's withdrawal may not take effect until six months after enactment of the repealing statute.
 - b. Withdrawal does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.
4. This compact may not be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. An amendment to this compact may not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

ARTICLE XIV - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact must be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States of America or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any member state, the compact must remain in full force and effect as to the remaining member states and as to the member state affected as to all severable matters.

ARTICLE XV - BINDING EFFECT OF COMPACT AND OTHER LAWS

1. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.
2. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.
3. Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.
4. Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding upon the member states.

5. All permissible agreements between the commission and the member states are binding in accordance with the terms of the agreements.
6. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2187.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 87 Nays 5 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State