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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- COUNSELING COMPACT

Introduced By: Senators DiMario, Lawson, Acosta, Pearson, LaMountain, Miller,
Valverde, Lauria, Murray, and Euer

Date Introduced: February 16, 2023

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings, purpose and intent.

2 (1) The purpose and intent of this chapter is to facilitate interstate practice of licensed
3 professional counselors with the goal of improving public access to professional counseling
4 services. The practice of professional counseling occurs in the state where the client is located at
5 the time of the counseling services. The compact preserves the regulatory authority of states to
6 protect public health and safety through the current system of state licensure.

7 (2) This compact is designed to achieve the following objectives:

8 (i) Increase public access to professional counseling services by providing for the mutual
9 recognition of other member state licenses;

10 (ii) Enhance the states' ability to protect the public's health and safety;

11 (iii) Encourage the cooperation of member states in regulating multistate practice for
12 licensed professional counselors;

13 (iv) Support spouses of relocating active duty military personnel;

14 (v) Enhance the exchange of licensure, investigative, and disciplinary information among
15 member states;

16 (vi) Allow for the use of telehealth technology to facilitate increased access to professional
17 counseling services;

18 (vii) Support the uniformity of professional counseling licensure requirements throughout
19 the states to promote public safety and public health benefits;

1 (viii) Invest all member states with the authority to hold a licensed professional counselor
2 accountable for meeting all state practice laws in the state in which the client is located at the time
3 care is rendered through the mutual recognition of member state licenses;

4 (ix) Eliminate the necessity for licenses in multiple states; and

5 (x) Provide opportunities for interstate practice by licensed professional counselors who
6 meet uniform licensure requirements.

7 SECTION 2. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
8 is hereby amended by adding thereto the following chapter:

9 CHAPTER 39.2

10 COUNSELING COMPACT

11 **5-39.2-1. Short title.**

12 This chapter shall be known and may be cited as the "Counseling Compact".

13 **5-39.2-2. Definitions.**

14 For purposes of this compact, the following terms shall have the following meanings:

15 (1) "Active duty military" means full-time duty status in the active uniformed service of
16 the United States, including members of the National Guard and Reserve on active duty orders
17 pursuant to 10 U.S. C. chapters 12301(d) and 12302.

18 (2) "Adverse action" means any administrative, civil, equitable or criminal action permitted
19 by Rhode Island law which is imposed by a licensing board or other authority against a licensed
20 professional counselor, including actions against an individual's license or privilege to practice such
21 as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's
22 practice, or any other encumbrance on licensure affecting a licensed professional counselor's
23 authorization to practice, including issuance of a cease and desist action.

24 (3) "Alternative program" means a non-disciplinary monitoring or practice remediation
25 process approved by a professional counseling licensing board to address impaired practitioners.

26 (4) "Continuing competence or continuing education" means a requirement, as a condition
27 of license renewal, to provide evidence of participation in, and/or completion of, educational and
28 professional activities relevant to practice or area of work.

29 (5) "Counseling compact commission" or "commission" means the national administrative
30 body whose membership consists of all states that have enacted the compact.

31 (6) "Current significant investigative information" means:

32 (i) Investigative information that a licensing board, after a preliminary inquiry that includes
33 notification and an opportunity for the licensed professional counselor to respond, if required by
34 Rhode Island law, has reason to believe is not groundless and, if proved true, would indicate more

- 1 than a minor infraction; or
- 2 (ii) Investigative information that indicates that the licensed professional counselor
3 represents an immediate threat to public health and safety regardless of whether the licensed
4 professional counselor has been notified and had an opportunity to respond.
- 5 (7) "Data system" means a repository of information about licensees, including, but not
6 limited to, continuing education, examination, licensure, investigative, privilege to practice and
7 adverse action information.
- 8 (8) "Encumbered license" means a license in which an adverse action restricts the practice
9 of licensed professional counseling by the licensee and said adverse action has been reported to the
10 National Practitioners Data Bank (NPDB).
- 11 (9) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and
12 unrestricted practice of licensed professional counseling by a licensing board.
- 13 (10) "Executive committee" means a group of directors elected or appointed to act on
14 behalf of, and within the powers granted to them by, the commission.
- 15 (11) "Home state" means the member state that is the licensee's primary state of residence.
- 16 (12) "Impaired practitioner" means an individual who has a condition(s) that may impair
17 their ability to practice as a licensed professional counselor without some type of intervention and
18 may include, but are not limited to, alcohol and drug dependence, mental health impairment, and
19 neurological or physical impairments.
- 20 (13) "Investigative information" means information, records, and documents received or
21 generated by a professional counseling licensing board pursuant to an investigation.
- 22 (14) "Jurisprudence requirement" means the assessment of an individual's knowledge of
23 the laws and rules governing the practice of professional counseling in a state.
- 24 (15) "Licensed professional counselor" means a counselor licensed by a member state,
25 regardless of the title used by that state, to independently assess, diagnose, and treat behavioral
26 health conditions.
- 27 (16) "Licensee" means an individual who currently holds an authorization from the state to
28 practice as a licensed professional counselor.
- 29 (17) "Licensing board" means the agency of a state, or equivalent, that is responsible for
30 the licensing and regulation of licensed professional counselors.
- 31 (18) "Member state" means a state that has enacted the compact.
- 32 (19) "Privilege to practice" means a legal authorization, which is equivalent to a license,
33 permitting the practice of professional counseling in a remote state.
- 34 (20) "Professional counseling" means the assessment, diagnosis, and treatment of

1 behavioral health conditions by a licensed professional counselor.

2 (21) "Remote state" means a member state other than the home state, where a licensee is
3 exercising or seeking to exercise the privilege to practice.

4 (22) "Rule" means a regulation promulgated by the commission that has the force of law.

5 (23) "Single state license" means a licensed professional counselor license issued by a
6 member state that authorizes practice only within the issuing state and does not include a privilege
7 to practice in any other member state.

8 (24) "State" means any state, commonwealth, district, or territory of the United States of
9 America that regulates the practice of professional counseling.

10 (25) "Telehealth" means the application of telecommunication technology to deliver
11 professional counseling services remotely to assess, diagnose, and treat behavioral health
12 conditions.

13 (26) "Unencumbered license" means a license that authorizes a licensed professional
14 counselor to engage in the full and unrestricted practice of professional counseling.

15 **5-39.2-3. State participation in the compact.**

16 (a) To participate in the compact, a state must currently:

17 (1) License and regulate licensed professional counselors;

18 (2) Require licensees to pass a nationally recognized exam approved by the commission;

19 (3) Require licensees to have a sixty (60) semester-hour, or ninety (90) quarter-hour,
20 master's degree in counseling or, sixty (60) semester-hours, or ninety (90) quarter-hours, of
21 graduate course work including the following topic areas:

22 (i) Professional counseling orientation and ethical practice;

23 (ii) Social and cultural diversity;

24 (iii) Human growth and development;

25 (iv) Career development;

26 (v) Counseling and helping relationships;

27 (vi) Group counseling and group work;

28 (vii) Diagnosis and treatment; assessment and testing;

29 (viii) Research and program evaluation; and

30 (ix) Other areas as determined by the commission.

31 (4) Require licensees to complete a supervised postgraduate professional experience as
32 defined by the commission; and

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

34 (b) A member state shall:

1 (1) Participate fully in the commission's data system, including using the commission's
2 unique identifier as defined in rules;

3 (2) Notify the commission, in compliance with the terms of the compact and rules, of any
4 adverse action or the availability of investigative information regarding a licensee;

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

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

13 (ii) Communication between a member state, the commission and among member states
14 regarding the verification of eligibility for licensure through the compact shall not include any
15 information received from the Federal Bureau of Investigation relating to a federal criminal records
16 check performed by a member state under federal Pub. L. 92-544.

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

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

20 (6) Grant the privilege to practice to a licensee holding a valid unencumbered license in
21 another member state in accordance with the terms of the compact and rules; and

22 (7) Provide for the attendance of the state's commissioner to the counseling compact
23 commission meetings.

24 (c) Member states may charge a fee for granting the privilege to practice.

25 (d) Individuals not residing in a member state shall continue to be able to apply for a
26 member state's single state license as provided under the laws of each member state. However, the
27 single state license granted to these individuals shall not be recognized as granting a privilege to
28 practice professional counseling in any other member state.

29 (e) Nothing in this compact shall affect the requirements established by a member state for
30 the issuance of a single state license.

31 (f) A license issued to a licensed professional counselor by a home state to a resident in
32 that state shall be recognized by each member state as authorizing a licensed professional counselor
33 to practice professional counseling, under a privilege to practice, in each member state.

34 **5-39.2-4. Privilege to practice.**

1 (a) To exercise the privilege to practice under the terms and provisions of the compact, the
2 licensee shall:

3 (1) Hold a license in the home state;
4 (2) Have a valid United States social security number or national practitioner identifier;
5 (3) Be eligible for a privilege to practice in any member state in accordance with
6 subsections (d), (g) and (h) of this section;
7 (4) Have not had any encumbrance or restriction against any license or privilege to practice
8 within the previous two (2) years;
9 (5) Notify the commission that the licensee is seeking the privilege to practice within a
10 remote state(s);
11 (6) Pay any applicable fees, including any state fee, for the privilege to practice;
12 (7) Meet any continuing competence or continuing education requirements established by
13 the home state;
14 (8) Meet any jurisprudence requirements established by the remote state(s) in which the
15 licensee is seeking a privilege to practice; and
16 (9) Report to the commission any adverse action, encumbrance, or restriction on license
17 taken by any non-member state within thirty (30) days from the date the action is taken.

18 (b) The privilege to practice is valid until the expiration date of the home state license. The
19 licensee shall comply with the requirements of subsection (a) of this section to maintain the
20 privilege to practice in the remote state.

21 (c) A licensee providing professional counseling in a remote state under the privilege to
22 practice shall adhere to the laws and regulations of the remote state.

23 (d) A licensee providing professional counseling services in a remote state is subject to that
24 state's regulatory authority. A remote state may, in accordance with due process and that state's
25 laws, remove a licensee's privilege to practice in the remote state for a specific period of time,
26 impose fines, and/or take any other necessary actions to protect the health and safety of its citizens.
27 The licensee may be ineligible for a privilege to practice in any member state until the specific time
28 for removal has passed and all fines are paid.

29 (e) If a home state license is encumbered, the licensee shall lose the privilege to practice in
30 any remote state until the following occur:

31 (1) The home state license is no longer encumbered; and
32 (2) Have not had any encumbrance or restriction against any license or privilege to practice
33 within the previous two (2) years.

34 (f) Once an encumbered license in the home state is restored to good standing, the licensee

1 must meet the requirements of subsection (a) of this section to obtain a privilege to practice in any
2 remote state.

3 (g) If a licensee's privilege to practice in any remote state is removed, the individual may
4 lose the privilege to practice in all other remote states until the following occur:

5 (1) The specific period of time for which the privilege to practice was removed has ended;

6 (2) All fines have been paid; and

7 (3) Have not had any encumbrance or restriction against any license or privilege to practice
8 within the previous two (2) years.

9 (h) Once the requirements of subsection (g) of this section have been met, the licensee shall
10 meet the requirements in subsection (a) of this section to obtain a privilege to practice in a remote
11 state.

12 **5-39.2-5. Obtaining a new home state license based on a privilege to practice.**

13 (a) A licensed professional counselor may hold a home state license, which allows for a
14 privilege to practice in other member states, in only one member state at a time.

15 (b) If a licensed professional counselor changes primary state of residence by moving
16 between two (2) member states:

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

20 (2) Upon receipt of an application for obtaining a new home state license by virtue of a
21 privilege to practice, the new home state shall verify that the licensed professional counselor meets
22 the pertinent criteria outlined in § 5-39.2-4, via the data system, without need for primary source
23 verification except for:

24 (i) A Federal Bureau of Investigation fingerprint based criminal background check if not
25 previously performed or updated pursuant to applicable rules adopted by the commission in
26 accordance with federal Pub. L. 92-544;

27 (ii) Other criminal background check as required by the new home state; and

28 (iii) Completion of any requisite jurisprudence requirements of the new home state.

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

32 (4) Notwithstanding any other provision of this compact, if the licensed professional
33 counselor cannot meet the criteria in § 5-39.2-4, the new home state may apply its requirements for
34 issuing a new single state license.

1 (5) The licensed professional counselor shall pay all applicable fees to the new home state
2 in order to be issued a new home state license.

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

6 (d) Nothing in this compact shall interfere with a licensee's ability to hold a single state
7 license in multiple states; however 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 established by a member state for
10 the issuance of a single state license.

11 **5-39.2-6. Active duty military personnel or their spouses.**

12 Active duty military personnel, or their spouse, shall designate a home state where the
13 individual has a current license in good standing. The individual may retain the home state
14 designation during the period the service member is on active duty. Subsequent to designating a
15 home state, the individual shall only change their home state through application for licensure in
16 the new state, or pursuant to the provisions in § 5-39.2-5.

17 **5-39.2-7. Compact privilege to practice telehealth.**

18 (a) Member states shall recognize the right of a licensed professional counselor, licensed
19 by a home state in accordance with § 5-39.2-3 and under rules promulgated by the commission, to
20 practice professional counseling in any member state via telehealth under a privilege to practice as
21 provided in the compact and rules promulgated by the commission.

22 (b) A licensee providing professional counseling services in a remote state under the
23 privilege to practice shall adhere to the laws and regulations of the remote state.

24 **5-39.2-8. Adverse actions.**

25 (a) In addition to the other powers conferred by state law, a remote state shall have the
26 authority, in accordance with existing state due process law, to:

27 (1) Take adverse action against a licensed professional counselor's privilege to practice
28 within that member state, and

29 (2) Issue subpoenas for both hearings and investigations that require the attendance and
30 testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board
31 in a member state for the attendance and testimony of witnesses or the production of evidence from
32 another member state shall be enforced in the latter state by any court of competent jurisdiction,
33 according to the practice and procedure of that court applicable to subpoenas issued in proceedings
34 pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and

1 other fees required by the service statutes of the state in which the witnesses or evidence are located.

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

4 (b) For purposes of taking adverse action, the home state shall give the same priority and
5 effect to reported conduct received from a member state as it would if the conduct had occurred
6 within the home state. In so doing, the home state shall apply its own state laws to determine
7 appropriate action.

8 (c) The home state shall complete any pending investigations of a licensed professional
9 counselor who changes primary state of residence during the course of the investigations. The home
10 state shall also have the authority to take appropriate action and shall promptly report the
11 conclusions of the investigations to the administrator of the data system. The administrator of the
12 coordinated licensure information system shall promptly notify the new home state of any adverse
13 actions.

14 (d) A member state, if otherwise permitted by state law, may recover from the affected
15 licensed professional counselor the costs of investigations and dispositions of cases resulting from
16 any adverse action taken against that licensed professional counselor.

17 (e) A member state may take adverse action based on the factual findings of the remote
18 state; provided that the member state follows its own procedures for taking the adverse action.

19 (f) Joint investigations:

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

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

25 (g) If adverse action is taken by the home state against the license of a licensed professional
26 counselor, the licensed professional counselor's privilege to practice in all other member states shall
27 be deactivated until all encumbrances have been removed from the state license. All home state
28 disciplinary orders that impose adverse action against the license of a licensed professional
29 counselor shall include a statement that the licensed professional counselor's privilege to practice
30 is deactivated in all member states during the pendency of the order.

31 (h) If a member state takes adverse action, it shall promptly notify the administrator of the
32 data system. The administrator of the data system shall promptly notify the home state of any
33 adverse actions by remote states.

34 (i) Nothing in this compact shall override a member state's decision that participation in an

1 alternative program may be used in lieu of adverse action.

2 **5-39.2-9. Establishment of counseling compact commission.**

3 (a) The compact member states hereby create and establish a joint public agency known as
4 the counseling compact commission:

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

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

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

11 (b) Membership, voting, and meetings.

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

14 (2) The delegate shall be either:

15 (i) A current member of the licensing board at the time of appointment, who is a licensed
16 professional counselor or public member; or

17 (ii) An administrator of the licensing board.

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

20 (4) The member state licensing board shall fill any vacancy occurring on the commission
21 within sixty (60) days.

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

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

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

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

32 (c) The commission shall have the following powers and duties:

33 (1) Establish the fiscal year of the commission;

34 (2) Establish bylaws;

- 1 (3) Maintain its financial records in accordance with the bylaws;
- 2 (4) Meet and take such actions as are consistent with the provisions of this compact and
3 the bylaws;
- 4 (5) Promulgate rules which shall be binding to the extent and in the manner provided for
5 in the compact;
- 6 (6) Bring and prosecute legal proceedings or actions in the name of the commission;
7 provided that the standing of any state licensing board to sue or be sued under applicable law shall
8 not be affected;
- 9 (7) Purchase and maintain insurance and bonds;
- 10 (8) Borrow, accept, or contract for services of personnel, including, but not limited to,
11 employees of a member state;
- 12 (9) Hire employees, elect or appoint officers, fix compensation, define duties, grant such
13 individuals appropriate authority to carry out the purposes of the compact, and establish the
14 commission's personnel policies and programs relating to conflicts of interest, qualifications of
15 personnel, and other related personnel matters;
- 16 (10) Accept any and all appropriate donations and grants of money, equipment, supplies,
17 materials, and services, and to receive, utilize, and dispose of the same; provided that, at all times
18 the commission shall avoid any appearance of impropriety and/or conflict of interest;
- 19 (11) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,
20 improve or use, any property, real, personal or mixed; provided that, at all times the commission
21 shall avoid any appearance of impropriety;
- 22 (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
23 property real, personal, or mixed;
- 24 (13) Establish a budget and make expenditures;
- 25 (14) Borrow money;
- 26 (15) Appoint committees, including standing committees composed of members, state
27 regulators, state legislators or their representatives, and consumer representatives, and such other
28 interested persons as may be designated in this compact and the bylaws;
- 29 (16) Provide and receive information from, and cooperate with, law enforcement agencies;
- 30 (17) Establish and elect an executive committee; and
- 31 (18) Perform such other functions as may be necessary or appropriate to achieve the
32 purposes of this compact consistent with the state regulation of professional counseling licensure
33 and practice.
- 34 (d) The executive committee:

- 1 (1) The executive committee shall have the power to act on behalf of the commission
2 according to the terms of this compact.
- 3 (2) The executive committee shall be composed of up to eleven (11) members:
- 4 (i) Seven (7) voting members who are selected by the commission from the current
5 membership of the commission; and
- 6 (ii) Up to four (4) exofficio, nonvoting members from four (4) recognized national
7 professional counselor organizations.
- 8 (iii) The exofficio members will be selected by their respective organizations.
- 9 (3) The commission may remove any member of the executive committee as provided in
10 the bylaws.
- 11 (4) The executive committee shall meet at least annually.
- 12 (5) The executive committee shall have the following duties and responsibilities:
- 13 (i) Recommend to the entire commission changes to the rules or bylaws, changes to this
14 compact legislation, fees paid by compact member states such as annual dues, and any commission
15 compact fee charged to licensees for the privilege to practice;
- 16 (ii) Ensure compact administration services are appropriately provided, contractual or
17 otherwise;
- 18 (iii) Prepare and recommend the budget;
- 19 (iv) Maintain financial records on behalf of the commission;
- 20 (v) Monitor compact compliance of member states and provide compliance reports to the
21 commission;
- 22 (vi) Establish additional committees as necessary; and
- 23 (vii) Other duties as provided in rules or bylaws.
- 24 (e) Meetings of the commission.
- 25 (1) All meetings shall be open to the public, and public notice of meetings shall be given
26 in the same manner as required under the rulemaking provisions in § 5-39.2-11.
- 27 (2) The commission or the executive committee or other committees of the commission
28 may convene in a closed, non-public meeting if the commission or executive committee or other
29 committees of the commission intend to discuss:
- 30 (i) Non-compliance of a member state with its obligations under the compact;
- 31 (ii) The employment, compensation, discipline or other matters, practices or procedures
32 related to specific employees or other matters related to the commission's internal personnel
33 practices and procedures;
- 34 (iii) Current, threatened, or reasonably anticipated litigation;

1 (iv) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
2 estate;

3 (v) Make a report to law enforcement and authorizes accusing any person of a suspected
4 crime or formally censuring any person;

5 (vi) Disclosure of trade secrets or commercial or financial information that is privileged or
6 confidential;

7 (vii) Disclosure of information of a personal nature where disclosure would constitute a
8 clearly unwarranted invasion of personal privacy;

9 (viii) Disclosure of investigative records compiled for law enforcement purposes;

10 (ix) Disclosure of information related to any investigative reports prepared by or on behalf
11 of or for use of the commission or other committee charged with responsibility of investigation or
12 determination of compliance issues pursuant to the compact; or

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

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

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

23 (f) Financing of the commission.

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

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

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

34 (4) The commission shall not incur obligations of any kind prior to securing the funds

1 adequate to meet the same; nor shall the commission pledge the credit of any of the member states,
2 except by and with the authority of the member state.

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

8 (g) Qualified immunity, defense, and indemnification.

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

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

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

32 **5-39.2-10. Data system.**

33 (a) The commission shall provide for the development, maintenance, operation, and
34 utilization of a coordinated database and reporting system containing licensure, adverse action, and

1 investigative information on all licensed individuals in member states.

2 (b) Notwithstanding any other provision of state law to the contrary, a member state shall
3 submit a uniform data set to the data system on all individuals to whom this compact is applicable
4 as required by the rules of the commission, including:

5 (i) Identifying information;

6 (ii) Licensure data;

7 (iii) Adverse actions against a license or privilege to practice;

8 (iv) Non-confidential information related to alternative program participation;

9 (v) Any denial of application for licensure, and the reason(s) for such denial;

10 (vi) Current significant investigative information; and

11 (vii) Other information that may facilitate the administration of this compact, as determined
12 by the rules of the commission.

13 (c) Investigative information pertaining to a licensee in any member state will only be
14 available to other member states.

15 (d) The commission shall promptly notify all member states of any adverse action taken
16 against a licensee or an individual applying for a license. Adverse action information pertaining to
17 a licensee in any member state will be available to any other member state.

18 (e) Member states contributing information to the data system may designate information
19 that may not be shared with the public without the express permission of the contributing state.

20 (f) Any information submitted to the data system that is subsequently required to be
21 expunged by the laws of the member state contributing the information shall be removed from the
22 data system.

23 **5-39.2-11. Rulemaking.**

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

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

32 (c) If a majority of the legislatures of the member states rejects a rule, by enactment of a
33 statute or resolution in the same manner used to adopt the compact within four (4) years of the date
34 of adoption of the rule, then such rule shall have no further force and effect in any member state.

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

3 (e) Prior to promulgation and adoption of a final rule or rules by the commission, and at
4 least thirty (30) days in advance of the meeting at which the rule or rules will be considered and
5 voted upon, the commission shall file a notice of proposed rulemaking:

6 (1) On the website of the commission or other publicly accessible platform; and

7 (2) On the website of each member state professional counseling licensing board or other
8 publicly accessible platform or the publication in which each state would otherwise publish
9 proposed rules.

10 (f) The notice of proposed rulemaking shall include:

11 (1) The proposed time, date, and location of the meeting in which the rule will be
12 considered and voted upon;

13 (2) The text of the proposed rule or amendment and the reason for the proposed rule;

14 (3) A request for comments on the proposed rule from any interested person; and

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

17 (g) Prior to adoption of a proposed rule, the commission shall allow persons to submit
18 written data, facts, opinions, and arguments, which shall be made available to the public.

19 (h) The commission shall grant an opportunity for a public hearing before it adopts a rule
20 or amendment if a hearing is requested by:

21 (1) At least twenty-five (25) persons;

22 (2) A state or federal governmental subdivision or agency; or

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

24 (i) If a hearing is held on the proposed rule or amendment, the commission shall publish
25 the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means,
26 the commission shall publish the mechanism for access to the electronic hearing.

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

30 (2) Hearings shall be conducted in a manner providing each person who elects to comment
31 with a fair and reasonable opportunity to comment orally or in writing.

32 (3) All hearings will be recorded. A copy of the recording will be made available on
33 request.

34 (4) Nothing in this section shall be construed as requiring a separate hearing on each rule.

1 Rules may be grouped for the convenience of the commission at hearings required by this section.

2 (j) Following the scheduled hearing date, or by the close of business on the scheduled
3 hearing date if the hearing was not held, the commission shall consider all written and oral
4 comments received.

5 (k) If no written notice of intent to attend the public hearing by interested parties is
6 received, the commission may proceed with promulgation of the proposed rule without a public
7 hearing.

8 (l) The commission shall, by majority vote of all members, take final action on the proposed
9 rule and shall determine the effective date of the rule, if any, based on the rulemaking record and
10 the full text of the rule.

11 (m) Upon determination that an emergency exists, the commission may consider and adopt
12 an emergency rule without prior notice, opportunity for comment, or hearing; provided that, the
13 usual rulemaking procedures provided in the compact and in this section shall be retroactively
14 applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the
15 effective date of the rule. For the purposes of this provision, an emergency rule is one that must be
16 adopted immediately in order to:

17 (i) Meet an imminent threat to public health, safety, or welfare;

18 (ii) Prevent a loss of commission or member state funds;

19 (iii) Meet a deadline for the promulgation of an administrative rule that is established by
20 federal law or rule; or

21 (iv) Protect public health and safety.

22 (n) The commission or an authorized committee of the commission may direct revisions to
23 a previously adopted rule or amendment for purposes of correcting typographical errors, errors in
24 format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted
25 on the website of the commission. The revision shall be subject to challenge by any person for a
26 period of thirty (30) days after posting. The revision may be challenged only on grounds that the
27 revision results in a material change to a rule. A challenge shall be made in writing and delivered
28 to the chair of the commission prior to the end of the notice period. If no challenge is made, the
29 revision will take effect without further action. If the revision is challenged, the revision may not
30 take effect without the approval of the commission.

31 **5-39.2-12. Oversight, dispute resolution and enforcement.**

32 (a) Oversight.

33 (1) The executive, legislative, and judicial branches of state government in each member
34 state shall enforce this compact and take all actions necessary and appropriate to effectuate the

1 compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder
2 shall have standing as statutory law.

3 (2) All courts shall take judicial notice of the compact and the rules in any judicial or
4 administrative proceeding in a member state pertaining to the subject matter of this compact which
5 may affect the powers, responsibilities, or actions of the commission.

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

10 (b) Default, technical assistance, and termination.

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

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

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

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

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

27 (e) A state that has been terminated is responsible for all assessments, obligations, and
28 liabilities incurred through the effective date of termination, including obligations that extend
29 beyond the effective date of termination.

30 (f) The commission shall not bear any costs related to a state that is found to be in default
31 or that has been terminated from the compact, unless agreed upon in writing between the
32 commission and the defaulting state.

33 (g) The defaulting state may appeal the action of the commission by petitioning the U.S.
34 District Court for the District of Columbia or the federal district where the commission has its

1 principal offices. The prevailing member shall be awarded all costs of such litigation, including
2 reasonable attorneys' fees.

3 (h) Dispute Resolution.

4 (1) Upon request by a member state, the commission shall attempt to resolve disputes
5 related to the compact that arise among member states and between member and non-member
6 states.

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

9 (i) Enforcement.

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

12 (2) By majority vote, the commission may initiate legal action in the United States District
13 Court for the District of Columbia or the federal district where the commission has its principal
14 offices against a member state in default to enforce compliance with the provisions of the compact
15 and its promulgated rules and bylaws. The relief sought may include both injunctive relief and
16 damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded
17 all costs of such litigation, including reasonable attorneys' fees.

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

20 **5-39.2-13. Date of implementation of the counseling compact commission and**
21 **associated rules, withdrawal and amendment.**

22 (a) The compact shall come into effect on the date on which the compact statute is enacted
23 into law in the tenth member state. The provisions, which become effective at that time, shall be
24 limited to the powers granted to the commission relating to assembly and the promulgation of rules.
25 Thereafter, the commission shall meet and exercise rulemaking powers necessary for the
26 implementation and administration of the compact.

27 (b) Any state that joins the compact subsequent to the commission's initial adoption of the
28 rules shall be subject to the rules as they exist on the date on which the compact becomes law in
29 that state. Any rule that has been previously adopted by the commission shall have the full force
30 and effect of law on the day the compact becomes law in that state.

31 (c) Any member state may withdraw from this compact by enacting a statute repealing the
32 same.

33 (i) A member state's withdrawal shall not take effect until six (6) months after enactment
34 of the repealing statute.

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

4 (d) Nothing contained in this compact shall be construed to invalidate or prevent any
5 professional counseling licensure agreement or other cooperative arrangement between a member
6 state and a non-member state that does not conflict with the provisions of this compact.

7 (e) This compact may be amended by the member states. No amendment to this compact
8 shall become effective and binding upon any member state until it is enacted into the laws of all
9 member states.

10 **5-39.2-14. Construction and severability.**

11 This compact shall be liberally construed in order to effectuate the purposes thereof. The
12 provisions of this compact shall be severable and if any phrase, clause, sentence or provision of
13 this compact is declared to be contrary to the constitution of any member state or of the United
14 States or the applicability thereof to any government, agency, person or circumstance is held
15 invalid, the validity of the remainder of this compact and the applicability thereof to any
16 government, agency, person or circumstance shall not be affected thereby. If this compact shall be
17 held contrary to the constitution of any member state, the compact shall remain in full force and
18 effect as to the remaining member states and in full force and effect as to the member state affected
19 as to all severable matters.

20 **5-39.2-15. Binding effect of compact and other laws.**

21 (a) A licensee providing professional counseling services in a remote state under the
22 privilege to practice shall adhere to the laws and regulations, including scope of practice, of the
23 remote state.

24 (b) Nothing herein prevents the enforcement of any other law of a member state that is not
25 inconsistent with the compact.

26 (c) Any laws in a member state in conflict with the compact are superseded to the extent
27 of the conflict.

28 (d) Any lawful actions of the commission, including all rules and bylaws properly
29 promulgated by the commission, are binding upon the member states.

30 (e) All permissible agreements between the commission and the member states are binding
31 in accordance with their terms.

32 (f) In the event any provision of the compact exceeds the constitutional limits imposed on
33 the legislature of any member state, the provision shall be ineffective to the extent of the conflict
34 with the constitutional provision in question in that member state. The act also provides for the

1 establishment of a commission which may promulgate rules, hire employees, purchase real estate
2 and fix their composition among other powers. The commission may levy on and collect an annual
3 assessment from each member state. The aggregate annual assessment amount shall be allocated
4 based upon a formula to be determined by the commission, which shall promulgate a rule binding
5 upon all member states. By majority vote, the commission may initiate legal action in the United
6 States District Court for the District of Columbia or the federal district court where the commission
7 has its principal office against a member state in default to enforce compliance with the provisions
8 of the compact and its promulgated rules and by laws.

9 SECTION 3. This act shall take effect upon passage by at least ten (10) states willing to
10 join as members of the compact.

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LC001071
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- COUNSELING COMPACT

1 This act would adopt a counseling compact for the interstate practice of licensed
2 professional counselors with the goal of improving public access to professional counseling
3 services, by providing for the mutual recognition of other member state licenses. This act would
4 further provide for the uniformity of professional counseling license requirements throughout the
5 United States to promote public safety and public health benefits and eliminate the necessity to
6 maintain licenses to practice in multiple states. The act would also provide for the establishment of
7 a commission which may promulgate rules, hire employees, and fix their compensation and
8 purchase real estate among other powers. The commission may levy on and collect an annual
9 assessment from each member state. The aggregate annual assessment amount would be allocated
10 based upon a formula to be determined by the commission, which would promulgate a rule binding
11 upon all member states. By majority vote, the commission may initiate legal action in the United
12 States District Court for the District of Columbia or the federal district court where the commission
13 has its principal office against a member state in default to enforce compliance with the provisions
14 of the compact and its promulgated rules and by laws.

15 This act would take effect upon passage by at least ten (10) states willing to join as
16 members of the compact.

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