

2 State of Arkansas

3 93rd General Assembly

4 Third Extraordinary Session, 2022

A Bill

JMB/JMB

HOUSE BILL

5
6 By: Representative Haak

7 Filed with: House Committee on Public Health, Welfare, and Labor

8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE COUNSELING COMPACT IN
11 ARKANSAS; AND FOR OTHER PURPOSES.

12 13 14 Subtitle

15 TO ESTABLISH THE COUNSELING COMPACT IN
16 ARKANSAS.

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code Title 17, Chapter 27, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 5 - Counseling Compact

24
25 17-27-501. Text of compact.

26 The Counseling Compact is enacted into law and entered into by this
27 state with all states legally joining therein and in the form substantially
28 as follows:

29 30 Counseling Compact

31 32 SECTION 1: PURPOSE

33 The purpose of this Compact is to facilitate interstate practice of Licensed
34 Professional Counselors with the goal of improving public access to
35 Professional Counseling services. The practice of Professional Counseling
36 occurs in the State where the client is located at the time of the counseling

1 services. The Compact preserves the regulatory authority of States to protect
2 public health and safety through the current system of State licensure.

3 This Compact is designed to achieve the following objectives:

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

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

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

9 D. Support spouses of relocating Active Duty Military personnel;

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

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

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

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

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

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

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24 SECTION 2. DEFINITIONS

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

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

31 B. "Adverse Action" means any administrative, civil, equitable or criminal
32 action permitted by a State's laws which is imposed by a licensing board or
33 other authority against a Licensed Professional Counselor, including actions
34 against an individual's license or Privilege to Practice such as revocation,
35 suspension, probation, monitoring of the licensee, limitation on the
36 licensee's practice, or any other Encumbrance on licensure affecting a

- 1 Licensed Professional Counselor’s authorization to practice, including
2 issuance of a cease and desist action.
- 3 C. “Alternative Program” means a non-disciplinary monitoring or practice
4 remediation process approved by a Professional Counseling Licensing Board to
5 address Impaired Practitioners.
- 6 D. “Continuing Competence/Education” means a requirement, as a condition of
7 license renewal, to provide evidence of participation in, and/or completion
8 of, educational and professional activities relevant to practice or area of
9 work.
- 10 E. “Counseling Compact Commission” or “Commission” means the national
11 administrative body whose membership consists of all States that have enacted
12 the Compact.
- 13 F. “Current Significant Investigative Information” means:
- 14 1. Investigative Information that a Licensing Board, after a
15 preliminary inquiry that includes notification and an opportunity for the
16 Licensed Professional Counselor to respond, if required by State law, has
17 reason to believe is not groundless and, if proved true, would indicate more
18 than a minor infraction; or
- 19 2. Investigative Information that indicates that the Licensed
20 Professional Counselor represents an immediate threat to public health and
21 safety regardless of whether the Licensed Professional Counselor has been
22 notified and had an opportunity to respond.
- 23 G. “Data System” means a repository of information about Licensees,
24 including, but not limited to, continuing education, examination, licensure,
25 investigative, Privilege to Practice and Adverse Action information.
- 26 H. “Encumbered License” means a license in which an Adverse Action restricts
27 the practice of licensed Professional Counseling by the Licensee and said
28 Adverse Action has been reported to the National Practitioners Data Bank
29 (NPDB).
- 30 I. “Encumbrance” means a revocation or suspension of, or any limitation on,
31 the full and unrestricted practice of Licensed Professional Counseling by a
32 Licensing Board.
- 33 J. “Executive Committee” means a group of directors elected or appointed to
34 act on behalf of, and within the powers granted to them by, the Commission.
- 35 K. “Home State” means the Member State that is the Licensee’s primary State
36 of residence.

- 1 L. “Impaired Practitioner” means an individual who has a condition(s) that
2 may impair their ability to practice as a Licensed Professional Counselor
3 without some type of intervention and may include, but are not limited to,
4 alcohol and drug dependence, mental health impairment, and neurological or
5 physical impairments.
- 6 M. “Investigative Information” means information, records, and documents
7 received or generated by a Professional Counseling Licensing Board pursuant
8 to an investigation.
- 9 N. “Jurisprudence Requirement” if required by a Member State, means the
10 assessment of an individual’s knowledge of the laws and Rules governing the
11 practice of Professional Counseling in a State.
- 12 O. “Licensed Professional Counselor” means a counselor licensed by a Member
13 State, regardless of the title used by that State, to independently assess,
14 diagnose, and treat behavioral health conditions.
- 15 P. “Licensee” means an individual who currently holds an authorization from
16 the State to practice as a Licensed Professional Counselor.
- 17 Q. “Licensing Board” means the agency of a State, or equivalent, that is
18 responsible for the licensing and regulation of Licensed Professional
19 Counselors.
- 20 R. “Member State” means a State that has enacted the Compact.
- 21 S. “Privilege to Practice” means a legal authorization, which is equivalent
22 to a license, permitting the practice of Professional Counseling in a Remote
23 State.
- 24 T. “Professional Counseling” means the assessment, diagnosis, and treatment
25 of behavioral health conditions by a Licensed Professional Counselor.
- 26 U. “Remote State” means a Member State other than the Home State, where a
27 Licensee is exercising or seeking to exercise the Privilege to Practice.
- 28 V. “Rule” means a regulation promulgated by the Commission that has the
29 force of law.
- 30 W. “Single State License” means a Licensed Professional Counselor license
31 issued by a Member State that authorizes practice only within the issuing
32 State and does not include a Privilege to Practice in any other Member State.
- 33 X. “State” means any state, commonwealth, district, or territory of the
34 United States of America that regulates the practice of Professional
35 Counseling.

1 Y. “Telehealth” means the application of telecommunication technology to
2 deliver Professional Counseling services remotely to assess, diagnose, and
3 treat behavioral health conditions.

4 Z. “Unencumbered License” means a license that authorizes a Licensed
5 Professional Counselor to engage in the full and unrestricted practice of
6 Professional Counseling.

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8 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

10 1. License and regulate Licensed Professional Counselors;

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

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

16 a. Professional Counseling Orientation and Ethical
17 Practice;

18 b. Social and Cultural Diversity;

19 c. Human Growth and Development;

20 d. Career Development;

21 e. Counseling and Helping Relationships;

22 f. Group Counseling and Group Work;

23 g. Diagnosis and Treatment; Assessment and Testing;

24 h. Research and Program Evaluation; and

25 i. Other areas as determined by the Commission.

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

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

30 B. A Member State shall:

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

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

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

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

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

16 4. Comply with the Rules of the Commission;

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

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

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

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

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

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

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

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SECTION 4. PRIVILEGE TO PRACTICE

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

- 1. Hold a license in the Home State;
- 2. Have a valid United States Social Security Number or National Practitioner Identifier;
- 3. Be eligible for a Privilege to Practice in any Member State in accordance with Section 4(D), (G) and (H);
- 4. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years;
- 5. Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote State(s);
- 6. Pay any applicable fees, including any State fee, for the Privilege to Practice;
- 7. Meet any Continuing Competence/Education requirements established by the Home State;
- 8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Privilege to Practice; and
- 9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member State within 30 days from the date the action is taken.

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

C. 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.

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

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

- 3 1. The Home State license is no longer encumbered; and
4 2. Have not had any Encumbrance or restriction against any
5 license or Privilege to Practice within the previous two (2) years.

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

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

- 12 1. The specific period of time for which the Privilege to
13 Practice was removed has ended;
14 2. All fines have been paid; and
15 3. Have not had any Encumbrance or restriction against any
16 license or Privilege to Practice within the previous two (2) years.

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

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21 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO
22 PRACTICE

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

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

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

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

1 a. a Federal Bureau of Investigation fingerprint based
2 criminal background check if not previously performed or updated pursuant to
3 applicable rules adopted by the Commission in accordance with Public Law 92-
4 544;

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

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

9 3. The former Home State shall convert the former Home State
10 license into a Privilege to Practice once the new Home State has activated
11 the new Home State license in accordance with applicable Rules adopted by the
12 Commission.

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

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

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

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

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

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29 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

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1 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

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

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

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11 SECTION 8. ADVERSE ACTIONS

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

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

17 2. Issue subpoenas for both hearings and investigations that
18 require the attendance and testimony of witnesses as well as the production
19 of evidence. Subpoenas issued by a Licensing Board in a Member State for the
20 attendance and testimony of witnesses or the production of evidence from
21 another Member State shall be enforced in the latter State by any court of
22 competent jurisdiction, according to the practice and procedure of that court
23 applicable to subpoenas issued in proceedings pending before it. The issuing
24 authority shall pay any witness fees, travel expenses, mileage, and other
25 fees required by the service statutes of the State in which the witnesses or
26 evidence are located.

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

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

34 C. The Home State shall complete any pending investigations of a Licensed
35 Professional Counselor who changes primary State of residence during the
36 course of the investigations. The Home State shall also have the authority to

1 take appropriate action(s) and shall promptly report the conclusions of the
2 investigations to the administrator of the Data System. The administrator of
3 the coordinated licensure information system shall promptly notify the new
4 Home State of any Adverse Actions.

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

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

12 F. Joint Investigations:

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

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

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

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

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

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35 SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

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

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

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

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

12 B. Membership, Voting, and Meetings

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

15 2. The delegate shall be either:

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

18 b. An administrator of the Licensing Board.

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

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

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

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

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

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

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

34 1. Establish the fiscal year of the Commission;

35 2. Establish bylaws;

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

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

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

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

8 7. Purchase and maintain insurance and bonds;

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

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

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

20 11. Lease, purchase, accept appropriate gifts or donations of,
21 or otherwise to own, hold, improve or use, any property, real, personal or
22 mixed; provided that at all times the Commission shall avoid any appearance
23 of impropriety;

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

26 13. Establish a budget and make expenditures;

27 14. Borrow money;

28 15. Appoint committees, including standing committees composed
29 of members, State regulators, State legislators or their representatives, and
30 consumer representatives, and such other interested persons as may be
31 designated in this Compact and the bylaws;

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

34 17. Establish and elect an Executive Committee; and

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

4 D. The Executive Committee

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

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

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

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

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

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

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

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

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

24 b. Ensure Compact administration services are
25 appropriately provided, contractual or otherwise;

26 c. Prepare and recommend the budget;

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

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

30 f. Establish additional committees as necessary; and

31 g. Other duties as provided in Rules or bylaws.

32 E. Meetings of the Commission

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

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

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

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

11 c. Current, threatened, or reasonably anticipated
12 litigation;

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

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

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

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

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

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

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

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

34 4. The Commission shall keep minutes that fully and clearly
35 describe all matters discussed in a meeting and shall provide a full and
36 accurate summary of actions taken, and the reasons therefore, including a

1 description of the views expressed. All documents considered in connection
2 with an action shall be identified in such minutes. All minutes and documents
3 of a closed meeting shall remain under seal, subject to release by a majority
4 vote of the Commission or order of a court of competent jurisdiction.

5 F. Financing of the Commission

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

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

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

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

23 5. The Commission shall keep accurate accounts of all receipts
24 and disbursements. The receipts and disbursements of the Commission shall be
25 subject to the audit and accounting procedures established under its bylaws.
26 However, all receipts and disbursements of funds handled by the Commission
27 shall be audited yearly by a certified or licensed public accountant, and the
28 report of the audit shall be included in and become part of the annual report
29 of the Commission.

30 G. Qualified Immunity, Defense, and Indemnification

31 1. The members, officers, executive director, employees and
32 representatives of the Commission shall be immune from suit and liability,
33 either personally or in their official capacity, for any claim for damage to
34 or loss of property or personal injury or other civil liability caused by or
35 arising out of any actual or alleged act, error or omission that occurred, or
36 that the person against whom the claim is made had a reasonable basis for

1 believing occurred within the scope of Commission employment, duties or
2 responsibilities; provided that nothing in this paragraph shall be construed
3 to protect any such person from suit and/or liability for any damage, loss,
4 injury, or liability caused by the intentional or willful or wanton
5 misconduct of that person.

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

16 3. The Commission shall indemnify and hold harmless any member,
17 officer, executive director, employee, or representative of the Commission
18 for the amount of any settlement or judgment obtained against that person
19 arising out of any actual or alleged act, error, or omission that occurred
20 within the scope of Commission employment, duties, or responsibilities, or
21 that such person had a reasonable basis for believing occurred within the
22 scope of Commission employment, duties, or responsibilities, provided that
23 the actual or alleged act, error, or omission did not result from the
24 intentional or willful or wanton misconduct of that person.

25

26 SECTION 10. DATA SYSTEM

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

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

35 1. Identifying information;

36 2. Licensure data;

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

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

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

6 6. Current Significant Investigative Information; and

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

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

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

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

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

21
22 SECTION 11. RULEMAKING

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

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

33 C. If a majority of the legislatures of the Member States rejects a Rule, by
34 enactment of a statute or resolution in the same manner used to adopt the
35 Compact within four (4) years of the date of adoption of the Rule, then such
36 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
2 meeting of the Commission.

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

7 1. On the website of the Commission or other publicly accessible
8 platform; and

9 2. On the website of each Member State Professional Counseling
10 Licensing Board or other publicly accessible platform or the publication in
11 which each State would otherwise publish proposed Rules.

12 F. The Notice of Proposed Rulemaking shall include:

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

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

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

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

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

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

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

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

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

30 I. If a hearing is held on the proposed Rule or amendment, the Commission
31 shall publish the place, time, and date of the scheduled public hearing. If
32 the hearing is held via electronic means, the Commission shall publish the
33 mechanism for access to the electronic hearing.

34 1. All persons wishing to be heard at the hearing shall notify
35 the executive director of the Commission or other designated member in

1 writing of their desire to appear and testify at the hearing not less than
2 five (5) business days before the scheduled date of the hearing.

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

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

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

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

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

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

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

- 27 1. Meet an imminent threat to public health, safety, or welfare;
28 2. Prevent a loss of Commission or Member State funds;
29 3. Meet a deadline for the promulgation of an administrative
30 Rule that is established by federal law or Rule; or
31 4. Protect public health and safety.

32 N. The Commission or an authorized committee of the Commission may direct
33 revisions to a previously adopted Rule or amendment for purposes of
34 correcting typographical errors, errors in format, errors in consistency, or
35 grammatical errors. Public notice of any revisions shall be posted on the
36 website of the Commission. The revision shall be subject to challenge by any

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

8
9 SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

10 A. Oversight

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

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

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

25 B. Default, Technical Assistance, and Termination

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

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

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

34 C. If a State in default fails to cure the default, the defaulting State may
35 be terminated from the Compact upon an affirmative vote of a majority of the
36 Member States, and all rights, privileges and benefits conferred by this

1 Compact may be terminated on the effective date of termination. A cure of the
2 default does not relieve the offending State of obligations or liabilities
3 incurred during the period of default.

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

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

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

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

21 H. Dispute Resolution

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

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

27 I. Enforcement

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

30 2. By majority vote, the Commission may initiate legal action in
31 the United States District Court for the District of Columbia or the federal
32 district where the Commission has its principal offices against a Member
33 State in default to enforce compliance with the provisions of the Compact and
34 its promulgated Rules and bylaws. The relief sought may include both
35 injunctive relief and damages. In the event judicial enforcement is

1 necessary, the prevailing member shall be awarded all costs of such
2 litigation, including reasonable attorney's fees.

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

6
7 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND
8 ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

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

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

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

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

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

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

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

35
36 SECTION 14. CONSTRUCTION AND SEVERABILITY

1 This Compact shall be liberally construed so as to effectuate the purposes
2 thereof. The provisions of this Compact shall be severable and if any phrase,
3 clause, sentence or provision of this Compact is declared to be contrary to
4 the constitution of any Member State or of the United States or the
5 applicability thereof to any government, agency, person or circumstance is
6 held invalid, the validity of the remainder of this Compact and the
7 applicability thereof to any government, agency, person or circumstance shall
8 not be affected thereby. If this Compact shall be held contrary to the
9 constitution of any Member State, the Compact shall remain in full force and
10 effect as to the remaining Member States and in full force and effect as to
11 the Member State affected as to all severable matters.

12
13 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

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

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

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

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

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

25 F. In the event any provision of the Compact exceeds the constitutional
26 limits imposed on the legislature of any Member State, the provision shall be
27 ineffective to the extent of the conflict with the constitutional provision
28 in question in that Member State.

29
30 17-27-502. Administration of compact – Rules.

31 (a) The Arkansas Board of Examiners in Counseling is the Counseling
32 Compact administrator for this state.

33 (b) The board may adopt rules that are consistent with the Counseling
34 Compact necessary to implement this subchapter.

35 (c) The board is not required to adopt the rules of the Counseling
36 Compact Commission for those rules to be effective in this state.

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Referred by Representative Ladyman
Prepared by: JMB/JMB