

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1181

5 By: Representative Haak
6 By: Senator J. Boyd
7

For An Act To Be Entitled

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

Subtitle

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13
14 TO ESTABLISH THE COUNSELING COMPACT IN
15 ARKANSAS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code Title 17, Chapter 27, is amended to add an
21 additional subchapter to read as follows:

Subchapter 5 - Counseling Compact

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23
24 17-27-501. Text of compact.

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

Counseling Compact

SECTION 1: PURPOSE

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



1 public health and safety through the current system of State licensure.

2 This Compact is designed to achieve the following objectives:

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

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

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

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

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

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

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

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

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

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

22
23 SECTION 2. DEFINITIONS

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

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

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

1 issuance of a cease and desist action.

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

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

9 E. "Counseling Compact Commission" or "Commission" means the national
10 administrative body whose membership consists of all States that have enacted
11 the Compact.

12 F. "Current Significant Investigative Information" means:

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

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

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

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

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

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

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

36 L. "Impaired Practitioner" means an individual who has a condition(s) that

1 may impair their ability to practice as a Licensed Professional Counselor
2 without some type of intervention and may include, but are not limited to,
3 alcohol and drug dependence, mental health impairment, and neurological or
4 physical impairments.

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

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

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

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

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

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

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

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

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

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

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

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

35 Y. "Telehealth" means the application of telecommunication technology to
36 deliver Professional Counseling services remotely to assess, diagnose, and

1 treat behavioral health conditions.

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

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 6 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

8 1. License and regulate Licensed Professional Counselors;

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

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

14 a. Professional Counseling Orientation and Ethical
 15 Practice;

16 b. Social and Cultural Diversity;

17 c. Human Growth and Development;

18 d. Career Development;

19 e. Counseling and Helping Relationships;

20 f. Group Counseling and Group Work;

21 g. Diagnosis and Treatment; Assessment and Testing;

22 h. Research and Program Evaluation; and

23 i. Other areas as determined by the Commission.

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

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

28 B. A Member State shall:

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

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

34 3. Implement or utilize procedures for considering the criminal
 35 history records of applicants for an initial Privilege to Practice. These
 36 procedures shall include the submission of fingerprints or other biometric-

1 based information by applicants for the purpose of obtaining an applicant's
2 criminal history record information from the Federal Bureau of Investigation
3 and the agency responsible for retaining that State's criminal records;

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

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

13 4. Comply with the Rules of the Commission;

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

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

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

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

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

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

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

34
35 SECTION 4. PRIVILEGE TO PRACTICE

36 A. To exercise the Privilege to Practice under the terms and provisions of

1 the Compact, the Licensee shall:

2 1. Hold a license in the Home State;

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

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

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

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

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

13 7. Meet any Continuing Competence/Education requirements
14 established by the Home State;

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

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

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

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

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

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

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

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

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

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

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

11 2. All fines have been paid; and

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

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

17
18 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO
19 PRACTICE

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

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

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

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

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

1 544;

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

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

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

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

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

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

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

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

25
26 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

33
34 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

35 A. Member States shall recognize the right of a Licensed Professional
36 Counselor, licensed by a Home State in accordance with Section 3 and under

1 Rules promulgated by the Commission, to practice Professional Counseling in
2 any Member State via Telehealth under a Privilege to Practice as provided in
3 the Compact and Rules promulgated by the Commission.

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

7
8 SECTION 8. ADVERSE ACTIONS

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

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

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

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

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

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

1 Home State of any Adverse Actions.

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

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

9 F. Joint Investigations:

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

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

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

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

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

31
32 SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

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

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

36 2. Venue is proper and judicial proceedings by or against the

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

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

8 B. Membership, Voting, and Meetings

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

11 2. The delegate shall be either:

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

14 b. An administrator of the Licensing Board.

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

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

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

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

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

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

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

30 1. Establish the fiscal year of the Commission;

31 2. Establish bylaws;

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

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

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

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

4 7. Purchase and maintain insurance and bonds;

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

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

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

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

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

22 13. Establish a budget and make expenditures;

23 14. Borrow money;

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

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

30 17. Establish and elect an Executive Committee; and

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

34 D. The Executive Committee

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

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

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

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

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

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

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

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

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

18 b. Ensure Compact administration services are
19 appropriately provided, contractual or otherwise;

20 c. Prepare and recommend the budget;

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

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

24 f. Establish additional committees as necessary; and

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

26 E. Meetings of the Commission

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

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

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

36 b. The employment, compensation, discipline or other

1 matters, practices or procedures related to specific employees or other
2 matters related to the Commission's internal personnel practices and
3 procedures;

4 c. Current, threatened, or reasonably anticipated
5 litigation;

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

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

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

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

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

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

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

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

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

34 F. Financing of the Commission

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

1 activities.

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

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

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

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

23 G. Qualified Immunity, Defense, and Indemnification

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

35 2. The Commission shall defend any member, officer, executive
36 director, employee or representative of the Commission in any civil action

1 seeking to impose liability arising out of any actual or alleged act, error,
2 or omission that occurred within the scope of Commission employment, duties,
3 or responsibilities, or that the person against whom the claim is made had a
4 reasonable basis for believing occurred within the scope of Commission
5 employment, duties, or responsibilities; provided that nothing herein shall
6 be construed to prohibit that person from retaining his or her own counsel;
7 and provided further, that the actual or alleged act, error, or omission did
8 not result from that person's intentional or willful or wanton misconduct.

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

18
19 SECTION 10. DATA SYSTEM

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

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

28 1. Identifying information;

29 2. Licensure data;

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

31 4. Non-confidential information related to Alternative Program

32 participation;

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

35 6. Current Significant Investigative Information; and

36 7. Other information that may facilitate the administration of

1 this Compact, as determined by the Rules of the Commission.

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

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

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

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

14
15 SECTION 11. RULEMAKING

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

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

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

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

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

36 1. On the website of the Commission or other publicly accessible

1 platform; and

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

5 F. The Notice of Proposed Rulemaking shall include:

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

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

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

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

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

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

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

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

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

23 I. If a hearing is held on the proposed Rule or amendment, the Commission
24 shall publish the place, time, and date of the scheduled public hearing. If
25 the hearing is held via electronic means, the Commission shall publish the
26 mechanism for access to the electronic hearing.

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

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

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

36 4. Nothing in this section shall be construed as requiring a

1 separate hearing on each Rule. Rules may be grouped for the convenience of
2 the Commission at hearings required by this section.

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

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

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

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

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

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

21 3. Meet a deadline for the promulgation of an administrative

22 Rule that is established by federal law or Rule; or

23 4. Protect public health and safety.

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

36

1 SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

2 A. Oversight

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

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

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

17 B. Default, Technical Assistance, and Termination

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

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

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

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

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

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

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

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

13 H. Dispute Resolution

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

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

19 I. Enforcement

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

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

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

33
34 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND
35 ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

36 A. The Compact shall come into effect on the date on which the Compact

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

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

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

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

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

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

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

26
27 SECTION 14. CONSTRUCTION AND SEVERABILITY

28 This Compact shall be liberally construed so as to effectuate the purposes
29 thereof. The provisions of this Compact shall be severable and if any phrase,
30 clause, sentence or provision of this Compact is declared to be contrary to
31 the constitution of any Member State or of the United States or the
32 applicability thereof to any government, agency, person or circumstance is
33 held invalid, the validity of the remainder of this Compact and the
34 applicability thereof to any government, agency, person or circumstance shall
35 not be affected thereby. If this Compact shall be held contrary to the
36 constitution of any Member State, the Compact shall remain in full force and

1 effect as to the remaining Member States and in full force and effect as to
2 the Member State affected as to all severable matters.

3
4 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

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

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

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

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

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

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

20
21 17-27-502. Administration of compact – Rules.

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

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

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

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