



2026 South Dakota Legislature

House Bill 1148

Introduced by: **Representative** Rehfeldt

1 **An Act to adopt the respiratory care interstate compact.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to chapter 36-4C:**

4 In addition to the requirements referenced in § 36-4C-9, an applicant for licensure
 5 as a respiratory care practitioner shall submit to a state and federal criminal background
 6 check. The applicant shall provide a full set of fingerprints to the board in the form and
 7 manner prescribed by the board. The board shall submit the fingerprints to the Division
 8 of Criminal Investigation for a criminal background check by the division and the Federal
 9 Bureau of Investigation. The applicant shall sign a release of information to the board,
 10 and pay any fee charged for the fingerprinting or the background check.

11 Upon completion of the background check, the division must deliver the applicant's
 12 criminal history information to the board. The board shall consider this information, in
 13 accordance with §§ 36-1C-17 to 36-1C-21, inclusive, when determining whether to issue
 14 a license to the applicant. The board may not issue a license to an applicant before
 15 receiving this information. The board may not disseminate any information obtained under
 16 this section to a person not employed by the board.

17 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 36:**

RESPIRATORY CARE INTERSTATE COMPACT

SECTION 1. TITLE AND PURPOSE

20 A. The purpose of this Compact is to facilitate the interstate Practice of Respiratory
 21 Therapy with the goal of improving public access to Respiratory Therapy services
 22 by providing Respiratory Therapists licensed in a Member State the ability to
 23 practice in other Member States. The Compact preserves the regulatory authority
 24 of States to protect public health and safety through the current system of State
 25 licensure.

1 B. This Compact is designed to achieve the following objectives:

- 2 1. Increase public access to Respiratory Therapy services by creating a
3 responsible, streamlined pathway for Licensees to practice in Member
4 States with the goal of improving outcomes for patients;
5 2. Enhance States' ability to protect the public's health and safety;
6 3. Promote the cooperation of Member States in regulating the Practice of
7 Respiratory Therapy within those Member States;
8 4. Ease administrative burdens on States by encouraging the cooperation of
9 Member States in regulating multi-state Respiratory Therapy practice;
10 5. Support relocating Active Military Members and their spouses; and
11 6. Promote mobility and address workforce shortages.

12 SECTION 2. DEFINITIONS

13 As used in this Compact, unless the context requires otherwise, the following
14 definitions shall apply:

15 A. "Active Military Member" means any person with a full-time duty status in the
16 armed forces of the United States, including members of the National Guard and
17 Reserve.

18 B. "Adverse Action" means any administrative, civil, equitable, or criminal action
19 permitted by a State's laws, which is imposed by any State authority with
20 regulatory authority over Respiratory Therapists, such as license denial, censure,
21 revocation, suspension, probation, monitoring of the Licensee, or restriction on the
22 Licensee's practice, not including participation in an Alternative Program.

23 C. "Alternative Program" means a non-disciplinary monitoring or practice remediation
24 process applicable to a Respiratory Therapist approved by any State authority with
25 regulatory authority over Respiratory Therapists. This includes, but is not limited
26 to, programs to which Licensees with substance abuse or addiction issues are
27 referred in lieu of Adverse Action.

28 D. "Charter Member States" means those Member States who were the first seven
29 states to enact the Compact into the laws of their State.

30 E. "Commission" or "Respiratory Care Interstate Compact Commission" means the
31 government instrumentality and body politic whose membership consists of all
32 Member States that have enacted the Compact.

33 F. "Commissioner" means the individual appointed by a Member State to serve as the
34 member of the Commission for that Member State.

35 G. "Compact" means the Respiratory Care Interstate Compact.

- 1 H. "Compact Privilege" means the authorization granted by a Remote State to allow
2 a Licensee from another Member State to practice as a Respiratory Therapist in the
3 Remote State under the Remote State's laws and Rules. The Practice of Respiratory
4 Therapy occurs in the Member State where the patient is located at the time of the
5 patient encounter.
- 6 I. "Criminal Background Check" means the submission by the Member State of
7 fingerprints or other biometric-based information on license applicants at the time
8 of initial licensing for the purpose of obtaining that applicant's criminal history
9 record information, as defined in 28 C.F.R. § 20.3(d) or successor provision, from
10 the Federal Bureau of Investigation and the State's criminal history record
11 repository, as defined in 28 C.F.R. § 20.3(f) or successor provision.
- 12 J. "Data System" means the Commission's repository of information about Licensees
13 as further set forth in Section 8.
- 14 K. "Domicile" means the jurisdiction which is the Licensee's principal home for legal
15 purposes.
- 16 L. "Encumbered License" means a license that a State's Respiratory Therapy
17 Licensing Authority has limited in any way.
- 18 M. "Executive Committee" means a group of directors elected or appointed to act on
19 behalf of, and within the powers granted to them by the Commission.
- 20 N. "Home State" except as set forth in Section 5, means the Member State that is the
21 Licensee's primary Domicile.
- 22 O. "Home State License" means an active license to practice Respiratory Therapy in a
23 Home State that is not an Encumbered License.
- 24 P. "Jurisprudence Requirement" means an assessment of an individual's knowledge
25 of the State laws and regulations governing the Practice of Respiratory Therapy in
26 such State.
- 27 Q. "Licensee" means an individual who currently holds an authorization from the State
28 to practice as a Respiratory Therapist.
- 29 R. "Member State" means a State that has enacted the Compact and been admitted
30 to the Commission in accordance with the provisions herein and Commission Rules.
- 31 S. "Model Compact" means the model for the Respiratory Care Interstate Compact on
32 file with The Council of State Governments or other entity as designated by the
33 Commission.
- 34 T. "Remote State" means a Member State where a Licensee is exercising or seeking
35 to exercise the Compact Privilege.

- 1 U. "Respiratory Therapist" or "Respiratory Care Practitioner" means an individual who
2 holds a credential issued by the National Board for Respiratory Care, or its
3 successor, and holds a license in a State to practice Respiratory Therapy. For
4 purposes of this Compact, any other title or status adopted by a State to replace
5 the term "Respiratory Therapist" or "Respiratory Care Practitioner" shall be deemed
6 synonymous with "Respiratory Therapist" and shall confer the same rights and
7 responsibilities to the Licensee under the provisions of this Compact at the time of
8 its enactment.
- 9 V. "Respiratory Therapy," "Respiratory Therapy Practice," "Respiratory Care," "the
10 Practice of Respiratory Care," and "the Practice of Respiratory Therapy" means the
11 care and services provided by or under the direction and supervision of a
12 Respiratory Therapist or Respiratory Care Practitioner.
- 13 W. "Respiratory Therapy Licensing Authority" means the agency, board, or other body
14 of a State that is responsible for the licensing and regulation of Respiratory
15 Therapists.
- 16 X. "Rule" means a regulation promulgated by an entity that has the force and effect
17 of law.
- 18 Y. "Scope of Practice" means the procedures, actions, and processes a Respiratory
19 Therapist licensed in a State or practicing under a Compact Privilege in a State is
20 permitted to undertake in that State and the circumstances under which the
21 Respiratory Therapist is permitted to undertake those procedures, actions, and
22 processes. Such procedures, actions, and processes, and the circumstances under
23 which they may be undertaken, may be established through means including, but
24 not limited to, statute, regulations, case law, and other processes available to the
25 State Respiratory Therapy Licensing Authority or other government agency.
- 26 Z. "Significant Investigative Information" means information, records, and documents
27 received or generated by a State Respiratory Therapy Licensing Authority pursuant
28 to an investigation for which a determination has been made that there is probable
29 cause to believe that the Licensee has violated a statute or regulation that is
30 considered more than a minor infraction for which the State Respiratory Therapy
31 Licensing Authority could pursue Adverse Action against the Licensee.
- 32 AA. "State" means any state, commonwealth, district, or territory of the United States.

SECTION 3. STATE PARTICIPATION IN THIS COMPACT

- 34 A. In order to participate in this Compact and thereafter continue as a Member State,
35 a Member State shall:

1. Enact a Compact that is not materially different from the Model Compact;
2. License Respiratory Therapists;
3. Participate in the Commission's Data System;
4. Have a mechanism in place for receiving and investigating complaints against Licensees and Compact Privilege holders;
5. Notify the Commission, in compliance with the terms of this Compact and Commission Rules, of any Adverse Action against a Licensee, a Compact Privilege holder, or a license applicant;
6. Notify the Commission, in compliance with the terms of this Compact and Commission Rules, of the existence of Significant Investigative Information;
7. Comply with the Rules of the Commission;
8. Grant the Compact Privilege to a holder of an active Home State License and otherwise meet the applicable requirements of Section 4 in a Member State; and
9. Complete a Criminal Background Check for each new Licensee at the time of initial licensure.

a. Where expressly authorized or permitted by federal law, whether such federal law is in effect prior to, at, or after the time of a Member State's enactment of this Compact, a Member State's enactment of this Compact shall hereby authorize the Member State's Respiratory Therapy Licensing Authority to perform Criminal Background Checks as defined herein. The absence of such a federal law as described in this subsection shall not prevent or preclude such authorization where it may be derived or granted through means other than the enactment of this Compact.

B. Nothing in this Compact prohibits a Member State from charging a fee for granting and renewing the Compact Privilege.

SECTION 4. COMPACT PRIVILEGE

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

1. Hold and maintain an active Home State License as a Respiratory Therapist;
2. Hold and maintain an active credential from the National Board for Respiratory Care, or its successor, that would qualify the Licensee for licensure in the Remote State in which the Licensee is seeking the privilege;

- 1 3. Have not had any Adverse Action against a license within the previous two
2 years;
- 3 4. Notify the Commission that the Licensee is seeking the Compact Privilege
4 within a Remote State(s);
- 5 5. Pay any applicable fees, including any State and Commission fees and
6 renewal fees, for the Compact Privilege;
- 7 6. Meet any Jurisprudence Requirements established by the Remote State in
8 which the Licensee is seeking a Compact Privilege;
- 9 7. Report to the Commission Adverse Action taken by any non-Member State
10 within thirty days from the date the Adverse Action is taken;
- 11 8. Report to the Commission, when applying for a Compact Privilege, the
12 address of the Licensee's Domicile and thereafter promptly report to the
13 Commission any change in the address of the Licensee's Domicile within
14 thirty days of the effective date of the change in address; and
- 15 9. Consent to accept service of process by mail at the Licensee's Domicile on
16 record with the Commission with respect to any action brought against the
17 Licensee by the Commission or a Member State, and consent to accept
18 service of a subpoena by mail at the Licensee's Domicile on record with the
19 Commission with respect to any action brought or investigation conducted
20 by the Commission or a Member State.
- 21 B. The Compact Privilege is valid until the expiration date or revocation of the Home
22 State License unless terminated pursuant to Adverse Action. The Licensee must
23 comply with all of the requirements of Subsection A, above, to maintain the
24 Compact Privilege in a Remote State. If those requirements are met, no Adverse
25 Actions are taken, and the Licensee has paid any applicable Compact Privilege
26 renewal fees, then the Licensee will maintain the Licensee's Compact Privilege.
- 27 C. A Licensee providing Respiratory Therapy in a Remote State under the Compact
28 Privilege shall function within the Scope of Practice authorized by the Remote State
29 for the type of Respiratory Therapist license the Licensee holds. Such procedures,
30 actions, processes, and the circumstances under which they may be undertaken
31 may be established through means, including, but not limited to, statute,
32 regulations, case law, and other processes available to the State Respiratory
33 Therapy Licensing Authority or other government agency.
- 34 D. If a Licensee's Compact Privilege in a Remote State is removed by the Remote
35 State, the individual shall lose or be ineligible for the Compact privilege in that

1 Remote State until the Compact Privilege is no longer limited or restricted by that
2 State.

3 E. If a Home State License is encumbered, the Licensee shall lose the Compact
4 Privilege in all Remote States until the following occur:

5 1. The Home State License is no longer encumbered; and

6 2. Two years have elapsed from the date on which the license is no longer
7 encumbered due to the Adverse Action.

8 F. Once a Licensee with a restricted or limited license meets the requirements of
9 Subsection E.1 and 2, the Licensee must also meet the requirements of Subsection
10 A to obtain a Compact Privilege in a Remote State.

11 SECTION 5. ACTIVE MILITARY MEMBERS OR THEIR SPOUSES

12 A. An Active Military Member, or the member's spouse, shall designate a Home State
13 where the individual has a current license in good standing. The individual may
14 retain the Home State designation during the period the service member is on
15 active duty.

16 B. An Active Military Member and the member's spouse shall not be required to pay
17 to the Commission for a Compact Privilege any fee that may otherwise be charged
18 by the Commission. If a Remote State chooses to charge a fee for a Compact
19 Privilege, it may choose to charge a reduced fee or no fee to an Active Military
20 Member and the member's spouse for a Compact Privilege.

21 SECTION 6. ADVERSE ACTIONS

22 A. A Member State in which a Licensee is licensed shall have authority to impose
23 Adverse Action against the license issued by that Member State.

24 B. A Member State may take Adverse Action based on Significant Investigative
25 Information of a Remote State or the Home State, so long as the Member State
26 follows its own procedures for imposing Adverse Action.

27 C. Nothing in this Compact shall override a Member State's decision that participation
28 in an Alternative Program may be used in lieu of Adverse Action and that such
29 participation shall remain non-public if required by the Member State's laws.

30 D. A Remote State shall have the authority to:

31 1. Take Adverse Actions as set forth herein against a Licensee's Compact
32 Privilege in that State;

33 2. Issue subpoenas for both hearings and investigations that require the
34 attendance and testimony of witnesses, and the production of evidence.

- 1 a. Subpoenas may be issued by a Respiratory Therapy Licensing
2 Authority in a Member State for the attendance and testimony of
3 witnesses and the production of evidence.
- 4 b. Subpoenas issued by a Respiratory Therapy Licensing Authority in a
5 Member State for the attendance and testimony of witnesses shall
6 be enforced in the latter State by any court of competent jurisdiction
7 in the latter State, according to the practice and procedure of that
8 court applicable to subpoenas issued in proceedings pending before
9 it.
- 10 c. Subpoenas issued by a Respiratory Therapy Licensing Authority in a
11 Member State for production of evidence from another Member State
12 shall be enforced in the latter State, according to the practice and
13 procedure of that court applicable to subpoenas issued in the
14 proceedings pending before it.
- 15 d. The issuing authority shall pay any witness fees, travel expenses,
16 mileage, and other fees required by the service statutes of the State
17 where the witnesses or evidence are located;
- 18 3. Unless otherwise prohibited by State law, recover from the Licensee the
19 costs of investigations and disposition of cases resulting from any Adverse
20 Action taken against that Licensee;
- 21 E. Notwithstanding subsection D.2., a Member State may not issue a subpoena to
22 gather evidence of conduct in another Member State that is lawful in such other
23 Member State for the purpose of taking Adverse Action against a Licensee's
24 Compact Privilege or application for a Compact Privilege in that Member State; and
- 25 F. Nothing in this Compact authorizes a Member State to impose discipline against a
26 Respiratory Therapist's Compact Privilege in that Member State for the individual's
27 otherwise lawful practice in another State.
- 28 G. Joint Investigations
- 29 1. In addition to the authority granted to a Member State by its respective
30 Respiratory Therapy Practice act or other applicable state law, a Member
31 State may participate with other Member States in joint investigations of
32 Licensees, provided, however, that a Member State receiving such a request
33 has no obligation to respond to any subpoena issued regarding an
34 investigation of conduct or practice that was lawful in a Member State at
35 the time it was undertaken.

- 1 7. A Commissioner shall vote in person or by such other means as provided in
2 the bylaws. The bylaws may provide for Commissioners to meet by
3 telecommunication, videoconference, or other means of communication.
- 4 8. The Commission shall meet at least once during each calendar year.
5 Additional meetings may be held as set forth in the bylaws.
- 6 C. The Commission shall have the following powers:
- 7 1. Establish and amend the fiscal year of the Commission;
8 2. Establish and amend bylaws and policies, including but not limited to, a
9 code of conduct and conflicts of interest;
- 10 3. Establish and amend Rules, which shall be binding in all Member States;
11 4. Maintain its financial records in accordance with the bylaws;
12 5. Meet and take such actions as are consistent with the provisions of this
13 Compact, the Commission's Rules, and the bylaws;
- 14 6. Initiate and conduct legal proceedings or actions in the name of the
15 Commission, provided that the standing of any Respiratory Therapy
16 Licensing Authority to sue or be sued under applicable law shall not be
17 affected;
- 18 7. Maintain and certify records and information provided to a Member State as
19 the authenticated business records of the Commission, and designate an
20 agent to do so on the Commission's behalf;
- 21 8. Purchase and maintain insurance and bonds;
22 9. Accept or contract for services of personnel, including, but not limited to,
23 employees of a Member State;
- 24 10. Conduct an annual financial review;
25 11. Hire employees, elect or appoint officers, fix compensation, define duties,
26 grant such individuals appropriate authority to carry out the purposes of the
27 Compact, and establish the Commission's personnel policies and programs
28 relating to conflicts of interest, qualifications of personnel, and other related
29 personnel matters;
- 30 12. Assess and collect fees;
31 13. Accept any and all appropriate gifts, donations, grants of money, other
32 sources of revenue, equipment, supplies, materials, and services, and
33 receive, utilize, and dispose of the same, provided that at all times:
34 a. The Commission shall avoid any appearance of impropriety; and
35 b. The Commission shall avoid any appearance of conflict of interest;

14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;
15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
16. Establish a budget and make expenditures;
17. Borrow money in a fiscally responsible manner;
18. Appoint committees, including standing committees, composed of Commissioners, State regulators, State legislators or their representatives, consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;
19. Provide and receive information from, and cooperate with, law enforcement agencies;
20. Establish and elect an Executive Committee, including a chair, vice-chair, secretary, treasurer, and such other offices as the Commission shall establish by Rule or bylaw;
21. Enter into contracts or arrangements for the management of the affairs of the Commission;
22. Determine whether a State's adopted language is materially different from the Model Compact language such that the State would not qualify for participation in the Compact; and
23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact. The powers, duties, and responsibilities of the Executive Committee shall include:
 - a. Overseeing the day-to-day activities of the administration of the Compact, including enforcement and compliance with the provisions of the Compact, its Rules and bylaws, and other such duties as deemed necessary;
 - b. Recommending to the Commission changes to the Rules or bylaws, changes to this Compact legislation, fees charged to Compact Member States, fees charged to Licensees, and other fees;
 - c. Ensuring Compact administration services are appropriately provided, including by contract;

- 1 d. Preparing and recommending the budget;
2 e. Maintaining financial records on behalf of the Commission;
3 f. Monitoring Compact compliance of Member States and providing
4 compliance reports to the Commission;
5 g. Establishing additional committees as necessary;
6 h. Exercising the powers and duties of the Commission during the
7 interim between Commission meetings, except for adopting or
8 amending Rules, adopting or amending bylaws, and exercising any
9 other powers and duties expressly reserved to the Commission by
10 Rule or bylaw; and
11 i. Performing other duties as provided in the Rules or bylaws of the
12 Commission.
- 13 2. The Executive Committee shall be composed of up to nine members, as
14 further set forth in the bylaws of the Commission:
15 a. Seven voting members who are elected by the Commission from the
16 current membership of the Commission; and
17 b. Two ex-officio, non-voting members.
- 18 3. The Commission may remove any member of the Executive Committee as
19 provided in the Commission's bylaws.
- 20 4. The Executive Committee shall meet at least annually.
21 a. Executive Committee meetings shall be open to the public, except
22 that the Executive Committee may meet in a closed, non-public
23 meeting as provided in subsection F.4 below;
24 b. The Executive Committee shall give advance notice of its meetings,
25 posted on its website and as determined to provide notice to persons
26 with an interest in the business of the Commission; and
27 c. The Executive Committee may hold a special meeting in accordance
28 with subsection F.2 below.
- 29 E. The Commission shall adopt and provide to the Member States an annual report.
30 F. Meetings of the Commission
31 1. All meetings of the Commission that are not closed pursuant to subsection
32 7.F.4 shall be open to the public. Notice of public meetings shall be posted
33 on the Commission's website at least thirty days prior to the public meeting.
34 2. Notwithstanding subsection 7.F.1, the Commission may convene an
35 emergency public meeting by providing at least twenty-four hours prior

1 notice on the Commission's website, and any other means as provided in
2 the Commission's Rules, for any of the reasons it may dispense with notice
3 of proposed rulemaking under subsection 9.G. The Commission's legal
4 counsel shall certify that one of the reasons justifying an emergency public
5 meeting has been met.

6 3. Notice of all Commission meetings shall provide the time, date, and location
7 of the meeting, and if the meeting is to be held or accessible via
8 telecommunication, video conference, or other electronic means, the notice
9 shall include the mechanism for access to the meeting.

10 4. The Commission or the Executive Committee may convene in a closed,
11 nonpublic meeting for the Commission or Executive Committee to receive
12 or solicit legal advice or to discuss:

13 a. Non-compliance of a Member State with its obligations under the
14 Compact;

15 b. The employment, compensation, discipline or other matters,
16 practices or procedures related to specific employees;

17 c. Current or threatened discipline of a Licensee or Compact Privilege
18 holder by the Commission or by a Member State's Respiratory
19 Therapy Licensing Authority;

20 d. Current, threatened, or reasonably anticipated litigation;

21 e. Negotiation of contracts for the purchase, lease, or sale of goods,
22 services, or real estate;

23 f. Accusing any person of a crime or formally censuring any person;

24 g. Trade secrets or commercial or financial information that is
25 privileged or confidential;

26 h. Information of a personal nature where disclosure would constitute
27 a clearly unwarranted invasion of personal privacy;

28 i. Investigative records compiled for law enforcement purposes;

29 j. Information related to any investigative reports prepared by or on
30 behalf of or for use of the Commission or other committee charged
31 with responsibility of investigation or determination of compliance
32 issues pursuant to the Compact;

33 k. Legal advice;

34 l. Matters specifically exempted from disclosure by federal or Member
35 State law; or

1 m. Other matters as promulgated by the Commission by Rule.

2 5. If a meeting, or portion of a meeting, is closed, the presiding officer shall
3 state that the meeting will be closed and reference each relevant exempting
4 provision, and such reference shall be recorded in the minutes.

5 6. The Commission shall keep minutes in accordance with Commission Rules
6 and bylaws. All documents considered in connection with an action shall be
7 identified in such minutes. All minutes and documents of a closed meeting
8 shall remain under seal, subject to release only by a majority vote of the
9 Commission or order of a court of competent jurisdiction.

10 G. Financing of the Commission

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

13 2. The Commission may accept any and all appropriate revenue sources as
14 provided herein.

15 3. The Commission may levy on and collect an annual assessment from each
16 Member State and impose fees on Licensees of Member States to whom it
17 grants a Compact Privilege to cover the cost of the operations and activities
18 of the Commission and its staff. The aggregate annual assessment amount
19 for Member States, if any, shall be allocated based upon a formula that the
20 Commission shall promulgate by Rule.

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

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

32 H. Qualified Immunity, Defense, and Indemnification

33 1. Nothing herein shall be construed as a limitation on the liability of any
34 Licensee for professional malpractice or misconduct, which shall be
35 governed solely by any other applicable state laws.

- 1 2. The Member States, Commissioners, officers, executive directors,
2 employees, and agents of the Commission shall be immune from suit and
3 liability, both personally and in their official capacity, for any claim for
4 damage to or loss of property or personal injury or other civil liability caused
5 by or arising out of any actual or alleged act, error, or omission that
6 occurred, or that the person against whom the claim is made had a
7 reasonable basis for believing occurred within the scope of Commission
8 employment, duties or responsibilities; provided that nothing in this
9 subsection shall be construed to protect any such person from suit or
10 liability for any damage, loss, injury, or liability caused by the intentional or
11 willful or wanton misconduct of that person. The procurement of insurance
12 of any type by the Commission shall not in any way compromise or limit the
13 immunity granted hereunder.
- 14 3. The Commission shall defend any Commissioner, officer, executive director,
15 employee, and agent of the Commission in any civil action seeking to
16 impose liability arising out of any actual or alleged act, error, or omission
17 that occurred within the scope of Commission employment, duties, or
18 responsibilities, or as determined by the Commission that the person
19 against whom the claim is made had a reasonable basis for believing
20 occurred within the scope of Commission employment, duties, or
21 responsibilities; provided that nothing herein shall be construed to prohibit
22 that person from retaining their own counsel at their own expense; and
23 provided further, that the actual or alleged act, error, or omission did not
24 result from that person's intentional or willful or wanton misconduct.
- 25 4. The Commission shall indemnify and hold harmless any Commissioner,
26 member, officer, executive director, employee, and agent of the
27 Commission for the amount of any settlement or judgment obtained against
28 that person arising out of any actual or alleged act, error, or omission that
29 occurred within the scope of Commission employment, duties, or
30 responsibilities, or that such person had a reasonable basis for believing
31 occurred within the scope of Commission employment, duties, or
32 responsibilities, provided that the actual or alleged act, error, or omission
33 did not result from the intentional or willful or wanton misconduct of that
34 person.

1 5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate
2 a Member State's state action immunity or state action affirmative defense
3 with respect to antitrust claims under the Sherman Act, Clayton Act, or any
4 other State or federal antitrust or anticompetitive law or regulation.

5 6. Nothing in this Compact shall be construed to be a waiver of sovereign
6 immunity by the Member States or by the Commission.

7 SECTION 8. DATA SYSTEM

8 A. The Commission shall provide for the development, maintenance, operation, and
9 utilization of a coordinated database and reporting system containing licensure,
10 Adverse Action, and the presence of Significant Investigative Information.

11 B. Notwithstanding any other provision of State law to the contrary, a Member State
12 shall submit a uniform data set to the Data System as required by the Rules of the
13 Commission, including but not limited to:

14 1. Identifying information;

15 2. Licensure data;

16 3. Adverse Actions against a Licensee, license applicant, or Compact Privilege
17 holder and information related thereto;

18 4. Non-confidential information related to Alternative Program participation,
19 the beginning and ending dates of such participation, and other information
20 related to such participation not made confidential under Member State law;

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

22 6. The presence of current Significant Investigative Information; and

23 7. Other information that may facilitate the administration of this Compact or
24 the protection of the public, as determined by the Rules of the Commission.

25 C. No Member State shall submit any information which constitutes criminal history
26 record information, as defined by applicable federal law, to the Data System
27 established hereunder.

28 D. The records and information provided to a Member State pursuant to this Compact
29 or through the Data System, when certified by the Commission or an agent thereof,
30 shall constitute the authenticated business records of the Commission, and shall
31 be entitled to any associated hearsay exception in any relevant judicial, quasi-
32 judicial, or administrative proceedings in a Member State.

33 E. Significant Investigative Information pertaining to a Licensee in any Member State
34 will only be available to other Member States.

1 F. It is the responsibility of the Member States to report any Adverse Action against
2 a Licensee and to monitor the database to determine whether Adverse Action has
3 been taken against a Licensee. Adverse Action information pertaining to a Licensee
4 in any Member State will be available to any other Member State.

5 G. Member States contributing information to the Data System may designate
6 information that may not be shared with the public without the express permission
7 of the contributing State.

8 H. Any information submitted to the Data System that is subsequently expunged
9 pursuant to federal law or the laws of the Member State contributing the
10 information shall be removed from the Data System.

11 SECTION 9. RULEMAKING

12 A. The Commission shall promulgate reasonable Rules in order to effectively and
13 efficiently implement and administer the purposes and provisions of the Compact.
14 A Rule shall be invalid and have no force or effect only if a court of competent
15 jurisdiction holds that the Rule is invalid because the Commission exercised its
16 rulemaking authority in a manner that is beyond the scope and purposes of the
17 Compact, or the powers granted hereunder, or based upon another applicable
18 standard of review.

19 B. For purposes of the Compact, the Rules of the Commission shall have the force of
20 law in each Member State.

21 C. The Commission shall exercise its rulemaking powers pursuant to the criteria set
22 forth in this section and the Rules adopted thereunder. Rules shall become binding
23 as of the date specified in each Rule.

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

28 E. Rules shall be adopted at a regular or special meeting of the Commission.

29 F. Prior to adoption of a proposed Rule, the Commission shall hold a public hearing
30 and allow persons to provide oral and written comments, data, facts, opinions, and
31 arguments.

32 G. Prior to adoption of a proposed Rule by the Commission, and at least thirty days in
33 advance of the meeting at which the Commission will hold a public hearing on the
34 proposed Rule, the Commission shall provide a notice of proposed rulemaking:

35 1. On the website of the Commission or other publicly accessible platform;

- 1 2. To persons who have requested notice of the Commission's notices of
2 proposed rulemaking, and
3 3. In such other way(s) as the Commission may by Rule specify.
- 4 H. The notice of proposed rulemaking shall include:
5 1. The time, date, and location of the public hearing at which the Commission
6 will hear public comments on the proposed Rule and, if different, the time,
7 date, and location of the meeting where the Commission will consider and
8 vote on the proposed Rule;
9 2. If the hearing is held via telecommunication, video conference, or other
10 electronic means, the mechanism for access to the hearing;
11 3. The text of the proposed Rule and the reason therefor;
12 4. A request for comments on the proposed Rule from any interested person;
13 and
14 5. The manner in which interested persons may submit written comments.
- 15 I. All hearings will be recorded. A copy of the recording and all written comments and
16 documents received by the Commission in response to the proposed Rule shall be
17 available to the public.
- 18 J. Nothing in this section shall be construed as requiring a separate hearing on each
19 Rule. Rules may be grouped for the convenience of the Commission at hearings
20 required by this section.
- 21 K. The Commission shall, by majority vote of all Commissioners, take final action on
22 the proposed Rule based on the rulemaking record and the full text of the Rule.
23 1. The Commission may adopt changes to the proposed Rule provided the
24 changes are consistent with the original purpose of the proposed Rule.
25 2. The Commission shall provide an explanation of the reasons for substantive
26 changes made to the proposed Rule as well as reasons for substantive
27 changes not made that were recommended by commenters.
28 3. The Commission shall determine a reasonable effective date for the Rule.
29 Except for an emergency as provided in Section 9.L, the effective date of
30 the Rule shall be no sooner than thirty days after issuing the notice that it
31 adopted or amended the Rule.
- 32 L. Upon determination that an emergency exists, the Commission may consider and
33 adopt an emergency Rule with twenty-four hours' notice, and with opportunity to
34 comment, provided that the usual rulemaking procedures provided in the Compact
35 and in this section shall be retroactively applied to the Rule as soon as reasonably

1 possible, in no event later than ninety days after the effective date of the Rule. For
2 the purposes of this provision, an emergency Rule is one that must be adopted
3 immediately in order to:

- 4 1. Meet an imminent threat to public health, safety, or welfare;
- 5 2. Prevent a loss of Commission or Member State funds;
- 6 3. Meet a deadline for the promulgation of a Rule that is established by federal
7 law or Rule; or
- 8 4. Protect public health and safety.

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

19 N. No Member State's rulemaking process or procedural requirements shall apply to
20 the Commission.
21 1. The Commission shall have no authority over any Member State's
22 rulemaking process or procedural requirements that do not pertain to the
23 Compact.

24 O. Nothing in this Compact, nor any Rule or regulation of the Commission, shall be
25 construed to limit, restrict, or in any way reduce the ability of a Member State to
26 enact and enforce laws, regulations, or other Rules related to the Practice of
27 Respiratory Therapy in that State, where those laws, regulations, or other Rules
28 are not inconsistent with the provisions of this Compact.

29 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

30 A. Oversight

- 31 1. The executive and judicial branches of State government in each Member
32 State shall enforce this Compact and take all actions necessary and
33 appropriate to implement the Compact.
- 34 2. Venue is proper and judicial proceedings by or against the Commission shall
35 be brought solely and exclusively in a court of competent jurisdiction where

1 the principal office of the Commission is located. The Commission may
2 waive venue and jurisdictional defenses to the extent it adopts or consents
3 to participate in alternative dispute resolution proceedings. Nothing herein
4 shall affect or limit the selection or propriety of venue in any action against
5 a Licensee for professional malpractice, misconduct, or any such similar
6 matter.

7 3. The Commission shall be entitled to receive service of process in any
8 proceeding regarding the enforcement or interpretation of the Compact and
9 shall have standing to intervene in such a proceeding for all purposes.
10 Failure to provide the Commission service of process shall render a
11 judgment or order void as to the Commission, this Compact, or promulgated
12 Rules.

13 B. Default, Technical Assistance, and Termination

14 1. If the Commission determines that a Member State has defaulted in the
15 performance of its obligations or responsibilities under this Compact or the
16 promulgated Rules, the Commission shall provide written notice to the
17 defaulting State. The notice of default shall describe the default, the
18 proposed means of curing the default, and any other action that the
19 Commission may take, and shall offer training and specific technical
20 assistance regarding the default.

21 2. The Commission shall provide a copy of the notice of default to the other
22 Member States.

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

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

- 1 E. A State that has been terminated is responsible for all assessments, obligations,
2 and liabilities incurred through the effective date of termination, including
3 obligations that extend beyond the effective date of termination, if necessary.
- 4 F. Upon the termination of a State's membership from this Compact, that State shall
5 immediately provide notice to all Licensees and Compact Privilege holders, of which
6 the Commission has a record, within that State of such termination. The terminated
7 State shall continue to recognize all licenses granted pursuant to this Compact for
8 a minimum of one hundred eighty days after the date of said notice of termination.
- 9 G. The Commission shall not bear any costs related to a State that is found to be in
10 default or that has been terminated from the Compact, unless agreed upon in
11 writing between the Commission and the defaulting State.
- 12 H. The defaulting State may appeal the action of the Commission by petitioning the
13 United States District Court for the District of Columbia or the federal district where
14 the Commission has its principal offices. The prevailing party shall be awarded all
15 costs of such litigation, including reasonable attorney's fees.
- 16 I. Dispute Resolution
- 17 1. Upon request by a Member State, the Commission shall attempt to resolve
18 disputes related to the Compact that arise among Member States and
19 between Member and non-Member States.
- 20 2. The Commission shall promulgate a Rule providing for both mediation and
21 binding dispute resolution for disputes, as appropriate.
- 22 J. Enforcement
- 23 1. By majority vote, as may be further provided by Rule, the Commission may
24 initiate legal action against a Member State in default in the United States
25 District Court for the District of Columbia or the federal district where the
26 Commission has its principal offices to enforce compliance with the
27 provisions of the Compact and its promulgated Rules. A Member State by
28 enactment of this Compact consents to venue and jurisdiction in such court
29 for the purposes set forth herein. The relief sought may include both
30 injunctive relief and damages. In the event judicial enforcement is
31 necessary, the prevailing party shall be awarded all costs of such litigation,
32 including reasonable attorney's fees. The remedies herein shall not be the
33 exclusive remedies of the Commission. The Commission may pursue any
34 other remedies available under federal or the defaulting Member State's
35 law.

1 2. A Member State may initiate legal action against the Commission in the
2 United States District Court for the District of Columbia or the federal district
3 where the Commission has its principal offices to enforce compliance with
4 the provisions of the Compact and its promulgated Rules. The relief sought
5 may include both injunctive relief and damages. In the event judicial
6 enforcement is necessary, the prevailing party shall be awarded all costs of
7 such litigation, including reasonable attorney's fees.

8 3. No person other than a Member State shall enforce this Compact against
9 the Commission.

10 SECTION 11. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

11 A. The Compact shall come into effect on the date on which the Compact statute is
12 enacted into law in the seventh Member State ("Effective Date").

13 1. On or after the Effective Date of the Compact, the Commission shall
14 convene and review the enactment of each of the first seven Member States
15 ("Charter Member States") to determine if the statute enacted by each such
16 Charter Member State is materially different than the Model Compact.

17 a. A Charter Member State whose enactment is found to be materially
18 different from the Model Compact shall be entitled to the default
19 process set forth in Section 10.

20 b. If any Member State is later found to be in default, or is terminated
21 or withdraws from the Compact, the Commission shall remain in
22 existence and the Compact shall remain in effect even if the number
23 of Member States should be less than seven.

24 2. Member States enacting the Compact subsequent to the seven initial
25 Charter Member States shall be subject to the process set forth herein and
26 Commission Rule to determine if their enactments are materially different
27 from the Model Compact and whether they qualify for participation in the
28 Compact.

29 3. All actions taken for the benefit of the Commission or in furtherance of the
30 purposes of the administration of the Compact prior to the effective date of
31 the Compact or the Commission coming into existence shall be considered
32 to be actions of the Commission unless specifically repudiated by the
33 Commission. The Commission shall own and have all rights to any
34 intellectual property developed on behalf or in furtherance of the

1 Commission by individuals or entities involved in organizing or establishing
2 the Commission, as may be further set forth in Rules of the Commission.

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

9 B. Any Member State may withdraw from this Compact by enacting a statute
10 repealing the same.

11 1. A Member State's withdrawal shall not take effect until one hundred eighty
12 days after enactment of the repealing statute.

13 2. Withdrawal shall not affect the continuing requirement of the withdrawing
14 State's Respiratory Therapy Licensing Authority to comply with the
15 investigative and Adverse Action reporting requirements of this Compact
16 prior to the effective date of withdrawal.

17 3. Upon the enactment of a statute withdrawing from this Compact, a State
18 shall immediately provide notice of such withdrawal to all Licensees and
19 Compact Privilege holders, of which the Commission has a record, within
20 that State. Notwithstanding any subsequent statutory enactment to the
21 contrary, such withdrawing State shall continue to recognize all licenses
22 granted pursuant to this Compact for a minimum of one hundred eighty
23 days after the date of such notice of withdrawal.

24 C. Nothing contained in this Compact shall be construed to invalidate or prevent any
25 licensure agreement or other cooperative arrangement between a Member State
26 and a non-Member State that does not conflict with the provisions of this Compact.

27 D. This Compact may be amended by the Member States. No amendment to this
28 Compact shall become effective and binding upon any Member State until it is
29 enacted into the laws of all Member States.

30 SECTION 12. CONSTRUCTION AND SEVERABILITY

31 A. This Compact and the Commission's rulemaking authority shall be liberally
32 construed so as to effectuate the purposes and the implementation and
33 administration of the Compact. Provisions of the Compact expressly authorizing or
34 requiring the promulgation of Rules shall not be construed to limit the
35 Commission's rulemaking authority solely for those purposes.

1 B. The provisions of this Compact shall be severable, and if any phrase, clause,
2 sentence, or provision of this Compact is held by a court of competent jurisdiction
3 to be contrary to the constitution of any Member State, a State seeking
4 participation in the Compact, or of the United States, or the applicability thereof to
5 any government, agency, person, or circumstance is held to be unconstitutional by
6 a court of competent jurisdiction, the validity of the remainder of this Compact and
7 the applicability thereof to any other government, agency, person, or circumstance
8 shall not be affected thereby.

9 C. Notwithstanding subsection B of this section, the Commission may deny a State's
10 participation in the Compact or, in accordance with the requirements of Section 10,
11 terminate a Member State's participation in the Compact, if it determines that a
12 constitutional requirement of a Member State is a material departure from the
13 Compact. Otherwise, if this Compact shall be held to be contrary to the constitution
14 of any Member State, the Compact shall remain in full force and effect as to the
15 remaining Member States and in full force and effect as to the Member State
16 affected as to all severable matters.

17 SECTION 13. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

18 A. Nothing herein shall prevent or inhibit the enforcement of any other law of a
19 Member State that is not inconsistent with the Compact.

20 B. Any laws, statutes, regulations, or other legal requirements in a Member State in
21 conflict with the Compact are superseded to the extent of the conflict, including
22 any subsequently enacted State laws.

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

25 D. Other than as expressly set forth herein, nothing in this Compact will impact initial
26 licensure.