



2024 South Dakota Legislature

House Bill 1012

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED

Introduced by: **Representative** Rehfeldt and **Senator** Tobin at the request of the Committee on Sustainable Models for Long Term Care

1 **An Act to adopt the interstate counseling licensure compact and revise educational**
 2 **requirements to comply with the compact.**

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

4 **Section 1. That § 36-32-64 be AMENDED:**

5 **36-32-64.** An applicant for a license as a professional counselor shall file an
 6 application, in the manner prescribed by the board, together with the application fee
 7 prescribed by the board in accordance with § 36-32-92. The board may issue a license as
 8 a professional counselor to an applicant who pays the license fee and demonstrates that:

9 (1) The applicant has received a master's or a doctoral degree, consisting of at least
 10 ~~forty-eight~~;

11 (a) Forty-eight credit hours in counseling from an accredited counseling
 12 program recognized by the board, if the applicant began the program before
 13 July 1, 2024; or

14 (b) Sixty credit hours in counseling from an accredited counseling program
 15 recognized by the board, if the applicant began the program on or after July
 16 1, 2024;

17 (2) The applicant has passed the National Counselor Examination administered by the
 18 National Board for Certified Counselors;

19 (3) Within the four years preceding the application, the applicant completed two
 20 thousand hours of postgraduate supervision, in a manner prescribed by the board,
 21 in counseling under a plan of supervision approved by the board;

22 (4) The applicant has no pending disciplinary proceeding or unresolved disciplinary
 23 complaint;

24 (5) The applicant is of good moral character; and

25 (6) The applicant is not in violation of any provision of this chapter or any rule
 26 promulgated under this chapter.

1 The board may refuse to grant a license to an applicant who fails to meet the
2 requirements of this section.

3 Notwithstanding the provisions of subdivision (3), the board may grant a license,
4 to an applicant who does not complete the required postgraduate supervision within four
5 years of the application upon the applicant's show of good cause for exceeding the time
6 limit.

7 Notwithstanding the provisions of subdivision (5), the board may grant a license
8 to an applicant who has been convicted of or pled guilty to a felony, to any crime involving
9 or relating to the practice of counseling, or to any crime involving dishonesty or moral
10 turpitude, if the board determines that the applicant does not constitute a risk to public
11 safety.

12 An applicant may appeal the denial of a license in accordance with chapter 1-26.

13 **Section 2. That chapter 36-32 be amended with a NEW SECTION:**

14 Notwithstanding subsection 36-32-64(1)(b), the board may issue a license as a
15 professional counselor to an applicant who has received a master's or a doctoral degree,
16 consisting of less than sixty credit hours but no less than forty-eight credit hours in
17 counseling, from an accredited counseling program recognized by the board, if the
18 applicant otherwise satisfies the requirements for licensure in § 36-32-64.

19 An applicant who is issued a license as a professional counselor under this section
20 is not eligible to participate in the counseling licensure compact adopted by section 7 of
21 this Act.

22 **Section 3. That § 36-32-65 be AMENDED:**

23 **36-32-65.** An applicant for a license as a professional counselor--mental health
24 shall file an application, in the manner prescribed by the board, together with the
25 application fee prescribed by the board in accordance with § 36-32-92. The board may
26 issue a license as a professional counselor--mental health to an applicant who pays the
27 license fee and demonstrates that:

28 (1) The applicant has obtained licensure as a professional counselor under § 36-32-
29 64;

30 (2) The applicant has received a master's or a doctoral degree, consisting of at least
31 ~~forty-eight~~;

32 (a) Forty-eight credit hours in counseling, ~~with an emphasis on mental health~~
33 counseling, if the applicant began the program before July 1, 2024; or

1 ~~(5)~~(6) The applicant has no pending disciplinary proceeding or unresolved disciplinary
2 complaint;

3 ~~(6)~~(7) The applicant is of good moral character; and

4 ~~(7)~~(8) The applicant is not in violation of any provision of this chapter or any rule
5 promulgated under this chapter.

6 The board may refuse to grant a license to an applicant who fails to meet the
7 requirements of this section.

8 Notwithstanding the provisions of subdivision~~(4)~~(5), the board may grant a license
9 to an applicant who does not complete the required postgraduate supervision within four
10 years of the application upon the applicant's show of good cause for exceeding the time
11 limit.

12 Notwithstanding the provisions of subdivision~~(6)~~(7), the board may grant a license
13 to an applicant who has been convicted of or pled guilty to a felony, to any crime involving
14 or relating to the practice of counseling, or to any crime involving dishonesty or moral
15 turpitude if the board determines that the applicant does not constitute a risk to public
16 safety.

17 An applicant may appeal the denial of a license in accordance with chapter 1-26.

18 **Section 4. That chapter 36-32 be amended with a NEW SECTION:**

19 Notwithstanding subsection 36-32-65(2)(b), the board may issue a license as a
20 professional counselor--mental health to an applicant who has received a master's or a
21 doctoral degree, consisting of less than sixty credit hours but no less than forty-eight
22 credit hours in counseling, if the applicant otherwise satisfies the requirements for
23 licensure in § 36-32-65.

24 An applicant who is issued a license as a professional counselor--mental health
25 under this section is not eligible to participate in the counseling licensure compact adopted
26 by section 7 of this Act.

27 **Section 5. That a NEW SECTION be added to chapter 36-32:**

28 The board shall implement procedures for the completion of a state and federal
29 fingerprint-based criminal background check for a licensee seeking to participate in the
30 counseling licensure compact adopted by section 7 of this Act. The licensee must pay any
31 fee for the cost of fingerprinting or conducting the background check.

32 **Section 6. That a NEW SECTION be added to title 36:**

SECTION 2: DEFINITIONS

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

- A. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.
- B. "Adverse Action" means any administrative, civil, equitable or criminal action permitted by a State's laws which is imposed by a licensing board or other authority against a Licensed Professional Counselor, including actions against an individual's license or Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other Encumbrance on licensure affecting a Licensed Professional Counselor's authorization to practice, including issuance of a cease and desist action.
- C. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.
- D. "Continuing Competence/Education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.
- E. "Counseling Compact Commission" or "Commission" means the national administrative body whose membership consists of all States that have enacted the Compact.
- F. "Current Significant Investigative Information" means:
1. Investigative Information that a Licensing Board, after a preliminary inquiry that includes notification and an opportunity for the Licensed Professional Counselor to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction;
 - or
 2. Investigative Information that indicates that the Licensed Professional Counselor represents an immediate threat to public health and safety regardless of whether the Licensed Professional Counselor has been notified and had an opportunity to respond.
- G. "Data System" means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

- 1 H. "Encumbered License" means a license in which an Adverse Action restricts the
2 practice of licensed Professional Counseling by the Licensee and said Adverse
3 Action has been reported to the National Practitioners Data Bank (NPDB).
- 4 I. "Encumbrance" means a revocation or suspension of, or any limitation on, the full
5 and unrestricted practice of Licensed Professional Counseling by a Licensing Board.
- 6 J. "Executive Committee" means a group of directors elected or appointed to act on
7 behalf of, and within the powers granted to them by, the Commission.
- 8 K. "Home State" means the Member State that is the Licensee's primary State of
9 residence.
- 10 L. "Impaired Practitioner" means an individual who has a condition(s) that may impair
11 their ability to practice as a Licensed Professional Counselor without some type of
12 intervention and may include, but are not limited to, alcohol and drug dependence,
13 mental health impairment, and neurological or physical impairments.
- 14 M. "Investigative Information" means information, records, and documents received
15 or generated by a Professional Counseling Licensing Board pursuant to an
16 investigation.
- 17 N. "Jurisprudence Requirement" if required by a Member State, means the
18 assessment of an individual's knowledge of the laws and Rules governing the
19 practice of Professional Counseling in a State.
- 20 O. "Licensed Professional Counselor" means a counselor licensed by a Member State,
21 regardless of the title used by that State, to independently assess, diagnose, and
22 treat behavioral health conditions.
- 23 P. "Licensee" means an individual who currently holds an authorization from the State
24 to practice as a Licensed Professional Counselor.
- 25 Q. "Licensing Board" means the agency of a State, or equivalent, that is responsible
26 for the licensing and regulation of Licensed Professional Counselors.
- 27 R. "Member State" means a State that has enacted the Compact.
- 28 S. "Privilege to Practice" means a legal authorization, which is equivalent to a license,
29 permitting the practice of Professional Counseling in a Remote State.
- 30 T. "Professional Counseling" means the assessment, diagnosis, and treatment of
31 behavioral health conditions by a Licensed Professional Counselor.
- 32 U. "Remote State" means a Member State other than the Home State, where a
33 Licensee is exercising or seeking to exercise the Privilege to Practice.
- 34 V. "Rule" means a regulation promulgated by the Commission that has the force of
35 law.

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

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

6 Y. "Telehealth" means the application of telecommunication technology to deliver
 7 Professional Counseling services remotely to assess, diagnose, and treat behavioral
 8 health conditions.

9 Z. "Unencumbered License" means a license that authorizes a Licensed Professional
 10 Counselor to engage in the full and unrestricted practice of Professional Counseling.

11 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

13 1. License and regulate Licensed Professional Counselors;

14 2. Require Licensees to pass a nationally recognized exam approved by the
 15 Commission;

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

19 a. Professional Counseling Orientation and Ethical Practice;

20 b. Social and Cultural Diversity;

21 c. Human Growth and Development;

22 d. Career Development;

23 e. Counseling and Helping Relationships;

24 f. Group Counseling and Group Work;

25 g. Diagnosis and Treatment; Assessment and Testing;

26 h. Research and Program Evaluation; and

27 i. Other areas as determined by the Commission.

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

30 5. Have a mechanism in place for receiving and investigating complaints about
 31 Licensees.

32 B. A Member State shall:

33 1. Participate fully in the Commission's Data System, including using the
 34 Commission's unique identifier as defined in Rules;

- 1 2. Notify the Commission, in compliance with the terms of the Compact and
2 Rules, of any Adverse Action or the availability of Investigative Information
3 regarding a Licensee;
- 4 3. Implement or utilize procedures for considering the criminal history records
5 of applicants for an initial Privilege to Practice. These procedures shall
6 include the submission of fingerprints or other biometric-based information
7 by applicants for the purpose of obtaining an applicant's criminal history
8 record information from the Federal Bureau of Investigation and the agency
9 responsible for retaining that State's criminal records;
- 10 a. A member state must fully implement a criminal background check
11 requirement, within a time frame established by rule, by receiving
12 the results of the Federal Bureau of Investigation record search and
13 shall use the results in making licensure decisions;
- 14 b. Communication between a Member State, the Commission and
15 among Member States regarding the verification of eligibility for
16 licensure through the Compact shall not include any information
17 received from the Federal Bureau of Investigation relating to a
18 federal criminal records check performed by a Member State under
19 Public Law 92-544.
- 20 4. Comply with the Rules of the Commission;
- 21 5. Require an applicant to obtain or retain a license in the Home State and
22 meet the Home State's qualifications for licensure or renewal of licensure,
23 as well as all other applicable State laws;
- 24 6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered
25 License in another Member State in accordance with the terms of the
26 Compact and Rules; and
- 27 7. Provide for the attendance of the State's commissioner to the Counseling
28 Compact Commission meetings.
- 29 C. Member States may charge a fee for granting the Privilege to Practice.
- 30 D. Individuals not residing in a Member State shall continue to be able to apply for a
31 Member State's Single State License as provided under the laws of each Member
32 State. However, the Single State License granted to these individuals shall not be
33 recognized as granting a Privilege to Practice Professional Counseling in any other
34 Member State.

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

3 F. A license issued to a Licensed Professional Counselor by a Home State to a resident
4 in that State shall be recognized by each Member State as authorizing a Licensed
5 Professional Counselor to practice Professional Counseling, under a Privilege to
6 Practice, in each Member State.

7 SECTION 4. PRIVILEGE TO PRACTICE

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

10 1. Hold a license in the Home State;

11 2. Have a valid United States Social Security Number or National Practitioner
12 Identifier;

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

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

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

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

20 7. Meet any Continuing Competence/Education requirements established by
21 the Home State;

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

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

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

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

32 D. A Licensee providing Professional Counseling services in a Remote State is subject
33 to that State's regulatory authority. A Remote State may, in accordance with due
34 process and that State's laws, remove a Licensee's Privilege to Practice in the
35 Remote State for a specific period of time, impose fines, and/or take any other

necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

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

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

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

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

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

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

2. All fines have been paid; and

3. The Licensee has not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

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

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

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

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

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

2. Upon receipt of an application for obtaining a new Home State license by virtue of a Privilege to Practice, the new Home State shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in

1 Section 4 via the Data System, without need for primary source verification
 2 except for:

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

7 b. Other criminal background check as required by the new Home
 8 State; and

9 c. Completion of any requisite Jurisprudence Requirements of the new
 10 Home State.

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

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

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

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

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

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

29 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

35 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

- 1 A. Member States shall recognize the right of a Licensed Professional Counselor,
2 licensed by a Home State in accordance with Section 3 and under Rules
3 promulgated by the Commission, to practice Professional Counseling in any
4 Member State via Telehealth under a Privilege to Practice as provided in the
5 Compact and Rules promulgated by the Commission.
- 6 B. A Licensee providing Professional Counseling services in a Remote State under the
7 Privilege to Practice shall adhere to the laws and regulations of the Remote State.

8 SECTION 8. ADVERSE ACTIONS

- 9 A. In addition to the other powers conferred by State law, a Remote State shall have
10 the authority, in accordance with existing State due process law, to:
- 11 1. Take Adverse Action against a Licensed Professional Counselor's Privilege
12 to Practice within that Member State, and
- 13 2. Issue subpoenas for both hearings and investigations that require the
14 attendance and testimony of witnesses as well as the production of
15 evidence. Subpoenas issued by a Licensing Board in a Member State for the
16 attendance and testimony of witnesses or the production of evidence from
17 another Member State shall be enforced in the latter State by any court of
18 competent jurisdiction, according to the practice and procedure of that court
19 applicable to subpoenas issued in proceedings pending before it. The issuing
20 authority shall pay any witness fees, travel expenses, mileage, and other
21 fees required by the service statutes of the State in which the witnesses or
22 evidence are located.
- 23 3. Only the Home State shall have the power to take Adverse Action against a
24 Licensed Professional Counselor's license issued by the Home State.
- 25 B. For purposes of taking Adverse Action, the Home State shall give the same priority
26 and effect to reported conduct received from a Member State as it would if the
27 conduct had occurred within the Home State. In so doing, the Home State shall
28 apply its own State laws to determine appropriate action.
- 29 C. The Home State shall complete any pending investigations of a Licensed
30 Professional Counselor who changes primary State of residence during the course
31 of the investigations. The Home State shall also have the authority to take
32 appropriate action(s) and shall promptly report the conclusions of the
33 investigations to the administrator of the Data System. The administrator of the
34 coordinated licensure information system shall promptly notify the new Home State
35 of any Adverse Actions.

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

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

8 F. Joint Investigations:

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

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

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

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

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

28 SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

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

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

32 2. Venue is proper and judicial proceedings by or against the Commission shall
33 be brought solely and exclusively in a court of competent jurisdiction where
34 the principal office of the Commission is located. The Commission may

1 waive venue and jurisdictional defenses to the extent it adopts or consents
2 to participate in alternative dispute resolution proceedings.

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

5 B. Membership, Voting, and Meetings

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

8 2. The delegate shall be either:

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

11 b. An administrator of the Licensing Board.

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

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

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

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

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

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

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

27 1. Establish the fiscal year of the Commission;

28 2. Establish bylaws;

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

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

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

- 1 6. Bring and prosecute legal proceedings or actions in the name of the
2 Commission, provided that the standing of any State Licensing Board to sue
3 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, including, but not
6 limited to, employees of a Member State;
- 7 9. Hire employees, elect or appoint officers, fix compensation, define duties,
8 grant such individuals appropriate authority to carry out the purposes of the
9 Compact, and establish the Commission's personnel policies and programs
10 relating to conflicts of interest, qualifications of personnel, and other related
11 personnel matters;
- 12 10. Accept any and all appropriate donations and grants of money, equipment,
13 supplies, materials, and services, and to receive, utilize, and dispose of the
14 same; provided that at all times the Commission shall avoid any appearance
15 of impropriety and/or conflict of interest;
- 16 11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to
17 own, hold, improve or use, any property, real, personal or mixed; provided
18 that at all times the Commission shall avoid any appearance of impropriety;
- 19 12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise
20 dispose of any property real, personal, or mixed;
- 21 13. Establish a budget and make expenditures;
- 22 14. Borrow money;
- 23 15. Appoint committees, including standing committees composed of members,
24 State regulators, State legislators or their representatives, and consumer
25 representatives, and such other interested persons as may be designated
26 in this Compact and the bylaws;
- 27 16. Provide and receive information from, and cooperate with, law enforcement
28 agencies;
- 29 17. Establish and elect an Executive Committee; and
- 30 18. Perform such other functions as may be necessary or appropriate to achieve
31 the purposes of this Compact consistent with the State regulation of
32 Professional Counseling licensure and practice.

33 D. The Executive Committee

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

- 1 2. The Executive Committee shall be composed of up to eleven (11) members:
2 a. Seven voting members who are elected by the Commission from the
3 current membership of the Commission; and
4 b. Up to four (4) ex-officio, nonvoting members from four (4)
5 recognized national professional counselor organizations.
6 c. The ex-officio members will be selected by their respective
7 organizations.
8 3. The Commission may remove any member of the Executive Committee as
9 provided in bylaws.
10 4. The Executive Committee shall meet at least annually.
11 5. The Executive Committee shall have the following duties and
12 responsibilities:
13 a. Recommend to the entire Commission changes to the Rules or
14 bylaws, changes to this Compact legislation, fees paid by Compact
15 Member States such as annual dues, and any Commission Compact
16 fee charged to Licensees for the Privilege to Practice;
17 b. Ensure Compact administration services are appropriately provided,
18 contractual or otherwise;
19 c. Prepare and recommend the budget;
20 d. Maintain financial records on behalf of the Commission;
21 e. Monitor Compact compliance of Member States and provide
22 compliance reports to the Commission;
23 f. Establish additional committees as necessary; and
24 g. Other duties as provided in Rules or bylaws.
25 E. Meetings of the Commission
26 1. All meetings shall be open to the public, and public notice of meetings shall
27 be given in the same manner as required under the Rulemaking provisions
28 in Section 11.
29 2. The Commission or the Executive Committee or other committees of the
30 Commission may convene in a closed, non-public meeting if the Commission
31 or Executive Committee or other committees of the Commission must
32 discuss:
33 a. Non-compliance of a Member State with its obligations under the
34 Compact;

- 1 b. The employment, compensation, discipline or other matters,
2 practices or procedures related to specific employees or other
3 matters related to the Commission's internal personnel practices and
4 procedures;
- 5 c. Current, threatened, or reasonably anticipated litigation;
- 6 d. Negotiation of contracts for the purchase, lease, or sale of goods,
7 services, or real estate;
- 8 e. Accusing any person of a crime or formally censuring any person;
- 9 f. Disclosure of trade secrets or commercial or financial information
10 that is privileged or confidential;
- 11 g. Disclosure of information of a personal nature where disclosure
12 would constitute a clearly unwarranted invasion of personal privacy;
- 13 h. Disclosure of investigative records compiled for law enforcement
14 purposes;
- 15 i. Disclosure of information related to any investigative reports
16 prepared by or on behalf of or for use of the Commission or other
17 committee charged with responsibility of investigation or
18 determination of compliance issues pursuant to the Compact; or
- 19 j. Matters specifically exempted from disclosure by federal or Member
20 State statute.

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

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

32 F. Financing of the Commission

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

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

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

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

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

23 G. Qualified Immunity, Defense, and Indemnification

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

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

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

18 SECTION 10. DATA SYSTEM

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

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

26 1. Identifying information;

27 2. Licensure data;

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

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

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

31 6. Current Significant Investigative Information; and

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

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

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

5 E. 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 F. Any information submitted to the Data System that is subsequently required to be
9 expunged by the laws of the Member State contributing the information shall be
10 removed from the Data System.

11 SECTION 11. RULEMAKING

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

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

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

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

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

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

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

35 F. The Notice of Proposed Rulemaking shall include:

- 1 1. The proposed time, date, and location of the meeting in which the Rule will
- 2 be considered and voted upon;
- 3 2. The text of the proposed Rule or amendment and the reason for the
- 4 proposed Rule;
- 5 3. A request for comments on the proposed Rule from any interested person;
- 6 and
- 7 4. The manner in which interested persons may submit notice to the
- 8 Commission of their intention to attend the public hearing and any written
- 9 comments.
- 10 G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit
- 11 written data, facts, opinions, and arguments, which shall be made available to the
- 12 public.
- 13 H. The Commission shall grant an opportunity for a public hearing before it adopts a
- 14 Rule or amendment if a hearing is requested by:
- 15 1. At least twenty-five (25) persons;
- 16 2. A State or federal governmental subdivision or agency; or
- 17 3. An association having at least twenty-five (25) members.
- 18 I. If a hearing is held on the proposed Rule or amendment, the Commission shall
- 19 publish the place, time, and date of the scheduled public hearing. If the hearing is
- 20 held via electronic means, the Commission shall publish the mechanism for access
- 21 to the electronic hearing.
- 22 1. All persons wishing to be heard at the hearing shall notify the executive
- 23 director of the Commission or other designated member in writing of their
- 24 desire to appear and testify at the hearing not less than five (5) business
- 25 days before the scheduled date of the hearing.
- 26 2. Hearings shall be conducted in a manner providing each person who wishes
- 27 to comment a fair and reasonable opportunity to comment orally or in
- 28 writing.
- 29 3. All hearings will be recorded. A copy of the recording will be made available
- 30 on request.
- 31 4. Nothing in this section shall be construed as requiring a separate hearing
- 32 on each Rule. Rules may be grouped for the convenience of the Commission
- 33 at hearings required by this section.

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

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

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

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

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

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

19 3. Meet a deadline for the promulgation of an administrative Rule that is
20 established by federal law or Rule; or

21 4. Protect public health and safety.

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

33 SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

34 A. Oversight

- 1 1. The executive, legislative, and judicial branches of State government in
2 each Member State shall enforce this Compact and take all actions
3 necessary and appropriate to effectuate the Compact's purposes and intent.
4 The provisions of this Compact and the Rules promulgated hereunder shall
5 have standing as statutory law.
- 6 2. All courts shall take judicial notice of the Compact and the Rules in any
7 judicial or administrative proceeding in a Member State pertaining to the
8 subject matter of this Compact which may affect the powers,
9 responsibilities, or actions of the Commission.
- 10 3. The Commission shall be entitled to receive service of process in any such
11 proceeding and shall have standing to intervene in such a proceeding for all
12 purposes. Failure to provide service of process to the Commission shall
13 render a judgment or order void as to the Commission, this Compact, or
14 promulgated Rules.
- 15 B. Default, Technical Assistance, and Termination
- 16 1. If the Commission determines that a Member State has defaulted in the
17 performance of its obligations or responsibilities under this Compact or the
18 promulgated Rules, the Commission shall:
- 19 a. Provide written notice to the defaulting State and other Member
20 States of the nature of the default, the proposed means of curing
21 the default and/or any other action to be taken by the Commission;
22 and
- 23 b. Provide remedial training and specific technical assistance regarding
24 the default.
- 25 C. If a State in default fails to cure the default, the defaulting State may be terminated
26 from the Compact upon an affirmative vote of a majority of the Member States,
27 and all rights, privileges and benefits conferred by this Compact may be terminated
28 on the effective date of termination. A cure of the default does not relieve the
29 offending State of obligations or liabilities incurred during the period of default.
- 30 D. Termination of membership in the Compact shall be imposed only after all other
31 means of securing compliance have been exhausted. Notice of intent to suspend
32 or terminate shall be given by the Commission to the governor, the majority and
33 minority leaders of the defaulting State's legislature, and each of the Member
34 States.

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.

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

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

11 H. Dispute Resolution

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

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

17 I. Enforcement

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

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

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

31 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT

32 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

33 A. The Compact shall come into effect on the date on which the Compact statute is
 34 enacted into law in the tenth Member State. The provisions, which become effective
 35 at that time, shall be limited to the powers granted to the Commission relating to

1 assembly and the promulgation of Rules. Thereafter, the Commission shall meet
2 and exercise Rulemaking powers necessary to the implementation and
3 administration of the Compact.

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

9 C. 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 six (6) months after
12 enactment of the repealing statute.

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

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

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

24 SECTION 14. CONSTRUCTION AND SEVERABILITY

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

34 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

- 1 A. A Licensee providing Professional Counseling services in a Remote State under the
2 Privilege to Practice shall adhere to the laws and regulations, including scope of
3 practice, of the Remote State.
- 4 B. Nothing herein prevents the enforcement of any other law of a Member State that
5 is not inconsistent with the Compact.
- 6 C. Any laws in a Member State in conflict with the Compact are superseded to the
7 extent of the conflict.
- 8 D. Any lawful actions of the Commission, including all Rules and bylaws properly
9 promulgated by the Commission, are binding upon the Member States.
- 10 E. All permissible agreements between the Commission and the Member States are
11 binding in accordance with their terms.
- 12 F. In the event any provision of the Compact exceeds the constitutional limits imposed
13 on the legislature of any Member State, the provision shall be ineffective to the
14 extent of the conflict with the constitutional provision in question in that Member
15 State.