

STATE OF NEW YORK

7710

2023-2024 Regular Sessions

IN SENATE

October 18, 2023

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to adopting the Interstate Massage Compact

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 7808
2 to read as follows:

3 § 7808. Interstate massage compact. The Interstate massage compact is
4 hereby entered into and enacted into law with all jurisdictions legally
5 joining therein, in the form substantially as follows:

INTERSTATE MASSAGE COMPACT

ARTICLE 1 - PURPOSE

6
7
8 The purpose of this Compact is to reduce the burdens on State govern-
9 ments and to facilitate the interstate practice and regulation of
10 Massage Therapy with the goal of improving public access to, and the
11 safety of, Massage Therapy Services. Through this Compact, the Member
12 States seek to establish a regulatory framework which provides for a new
13 multistate licensing program. Through this additional licensing pathway,
14 the Member States seek to provide increased value and mobility to
15 licensed massage therapists in the Member States, while ensuring the
16 provision of safe, competent, and reliable services to the public.

17 This Compact is designed to achieve the following objectives, and the
18 Member States hereby ratify the same intentions by subscribing hereto:

19 A. Increase public access to Massage Therapy Services by providing for
20 a multistate licensing pathway;

21 B. Enhance the Member States' ability to protect the public's health
22 and safety;

23 C. Enhance the Member States' ability to prevent human trafficking and
24 licensure fraud;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 D. Encourage the cooperation of Member States in regulating the multi-
2 state Practice of Massage Therapy;

3 E. Support relocating military members and their spouses;

4 F. Facilitate and enhance the exchange of licensure, investigative,
5 and disciplinary information between the Member States;

6 G. Create an Interstate Commission that will exist to implement and
7 administer the Compact;

8 H. Allow a Member State to hold a Licensee accountable, even where
9 that Licensee holds a Multistate License;

10 I. Create a streamlined pathway for Licensees to practice in Member
11 States, thus increasing the mobility of duly licensed massage thera-
12 pists; and

13 J. Serve the needs of licensed massage therapists and the public
14 receiving their services, however

15 K. Nothing in this compact is intended to prevent a state from enforc-
16 ing its own laws regarding the practice of massage therapy.

17 ARTICLE 2 - DEFINITIONS

18 As used in this Compact, except as otherwise provided and subject to
19 clarification by the Rules of the Commission, the following definitions
20 shall govern the terms herein:

21 A. "Active Military Member" - any person with full-time duty status in
22 the armed forces of the United States, including members of the National
23 Guard and Reserve.

24 B. "Adverse Action" - any administrative, civil, equitable, or crimi-
25 nal action permitted by a Member State's laws which is imposed by a
26 Licensing Authority or other regulatory body against a Licensee, includ-
27 ing actions against an individual's Authorization to Practice such as
28 revocation, suspension, probation, surrender in lieu of discipline,
29 monitoring of the Licensee, limitation of the Licensee's practice, or
30 any other Encumbrance on licensure affecting an individual's ability to
31 practice Massage Therapy, including the issuance of a cease and desist
32 order.

33 C. "Alternative Program" - a non-disciplinary monitoring or prosecuto-
34 rial diversion program approved by a Member State's Licensing Authority.

35 D. "Authorization to Practice"- a legal authorization by a Remote
36 State pursuant to a Multistate License permitting the Practice of
37 Massage Therapy in that Remote State, which shall be subject to the
38 enforcement jurisdiction of the Licensing Authority in that Remote
39 State.

40 E. "Background Check" - the submission of an applicant's criminal
41 history record information, as further defined in 28 C.F.R. § 20.3(d),
42 as amended from the Federal Bureau of Investigation and the agency
43 responsible for retaining State criminal records in the applicant's Home
44 State.

45 F. "Charter Member States" - Member States who have enacted legis-
46 lation to adopt this Compact where such legislation predates the effec-
47 tive date of this Compact as defined in Article 12.

48 G. "Commission" - the government agency whose membership consists of
49 all States that have enacted this Compact, which is known as the Inter-
50 state Massage Compact Commission, as defined in Article 8, and which
51 shall operate as an instrumentality of the Member States.

52 H. "Continuing Competence" - a requirement, as a condition of license
53 renewal, to provide evidence of participation in, and completion of,
54 educational or professional activities that maintain, improve, or
55 enhance Massage Therapy fitness to practice.

1 I. "Current Significant Investigative Information" - Investigative
2 Information that a Licensing Authority, after an inquiry or investi-
3 gation that complies with a Member State's due process requirements, has
4 reason to believe is not groundless and, if proved true, would indicate
5 a violation of that State's laws regarding the Practice of Massage Ther-
6 apy.

7 J. "Data System" - a repository of information about Licensees who
8 hold Multistate Licenses, which may include but is not limited to
9 license status, Investigative Information, and Adverse Actions.

10 K. "Disqualifying Event" - any event which shall disqualify an indi-
11 vidual from holding a Multistate License under this Compact, which the
12 Commission may by Rule specify.

13 L. "Encumbrance" - a revocation or suspension of, or any limitation or
14 condition on, the full and unrestricted Practice of Massage Therapy by a
15 Licensing Authority.

16 M. "Executive Committee" - a group of delegates elected or appointed
17 to act on behalf of, and within the powers granted to them by, the
18 Commission.

19 N. "Home State" - means the Member State which is a Licensee's primary
20 state of residence where the Licensee holds an active Single-State
21 License.

22 O. "Investigative Information" - information, records, or documents
23 received or generated by a Licensing Authority pursuant to an investi-
24 gation or other inquiry.

25 P. "Licensing Authority" - a State's regulatory body responsible for
26 issuing Massage Therapy licenses or otherwise overseeing the Practice of
27 Massage Therapy in that State.

28 Q. "Licensee" - an individual who currently holds a license from a
29 Member State to fully practice Massage Therapy, whose license is not a
30 student, provisional, temporary, inactive, or other similar status.

31 R. "Massage Therapy", "Massage Therapy Services", and the "Practice of
32 Massage Therapy" - the care and services provided by a Licensee as set
33 forth in the Member State's statutes and regulations in the State where
34 the services are being provided.

35 S. "Member State" - any State that has adopted this Compact.

36 T. "Multistate License" - a license that consists of Authorizations to
37 Practice Massage Therapy in all Remote States pursuant to this Compact,
38 which shall be subject to the enforcement jurisdiction of the Licensing
39 Authority in a Licensee's Home State.

40 U. "National Licensing Examination" - A national examination developed
41 by a national association of Massage Therapy regulatory boards, as
42 defined by Commission Rule, that is derived from a practice analysis and
43 is consistent with generally accepted psychometric principles of fair-
44 ness, validity and reliability, and is administered under secure and
45 confidential examination protocols.

46 V. "Remote State" - any Member State, other than the Licensee's Home
47 State.

48 W. "Rule" - any opinion or regulation promulgated by the Commission
49 under this Compact, which shall have the force of law.

50 X. "Single-State License" - a current, valid authorization issued by a
51 Member State's Licensing Authority allowing an individual to fully prac-
52 tice Massage Therapy, that is not a restricted, student, provisional,
53 temporary, or inactive practice authorization and authorizes practice
54 only within the issuing State.

55 Y. "State" - a state, territory, possession of the United States, or
56 the District of Columbia.

1 ARTICLE 3 - MEMBER STATE REQUIREMENTS

2 A. To be eligible to join this Compact, and to maintain eligibility as
3 a Member State, a State must:

4 1. License and regulate the Practice of Massage Therapy;

5 2. Have a mechanism or entity in place to receive and investigate
6 complaints from the public, regulatory or law enforcement agencies, or
7 the Commission about Licensees practicing in that State;

8 3. Accept passage of a National Licensing Examination as a criterion
9 for Massage Therapy licensure in that State;

10 4. Require that Licensees satisfy educational requirements prior to
11 being licensed to provide Massage Therapy Services to the public in that
12 State;

13 5. Implement procedures for requiring the Background Check of appli-
14 cants for a Multistate License, and for the reporting of any Disqualify-
15 ing Events, including but not limited to obtaining and submitting, for
16 each Licensee holding a Multistate License and each applicant for a
17 Multistate License, fingerprint or other biometric-based information to
18 the Federal Bureau of Investigation for Background Checks; receiving the
19 results of the Federal Bureau of Investigation record search on Back-
20 ground Checks and considering the results of such a Background Check in
21 making licensure decisions;

22 6. Have Continuing Competence requirements as a condition for license
23 renewal;

24 7. Participate in the Data System, including through the use of unique
25 identifying numbers as described herein;

26 8. Notify the Commission and other Member States, in compliance with
27 the terms of the Compact and Rules of the Commission, of any discipli-
28 nary action taken by the State against a Licensee practicing under a
29 Multistate License in that State, or of the existence of Investigative
30 Information or Current Significant Investigative Information regarding a
31 Licensee practicing in that State pursuant to a Multistate License;

32 9. Comply with the Rules of the Commission;

33 10. Accept Licensees with valid Multistate Licenses from other Member
34 States as established herein;

35 B. Individuals not residing in a Member State shall continue to be
36 able to apply for a Member State's Single-State License as provided
37 under the laws of each Member State. However, the Single-State License
38 granted to those individuals shall not be recognized as granting a
39 Multistate License for Massage Therapy in any other Member State;

40 C. Nothing in this Compact shall affect the requirements established
41 by a Member State for the issuance of a Single-State License; and

42 D. A Multistate License issued to a Licensee shall be recognized by
43 each Remote State as an Authorization to Practice Massage Therapy in
44 each Remote State.

45 ARTICLE 4 - MULTISTATE LICENSE REQUIREMENTS

46 A. To qualify for a Multistate License under this Compact, and to
47 maintain eligibility for such a license, an applicant must:

48 1. Hold an active Single-State License to practice Massage Therapy in
49 the applicant's Home State;

50 2. Have completed at least six hundred and twenty-five (625) clock
51 hours of Massage Therapy education or the substantial equivalent which
52 the Commission may approve by Rule.

53 3. Have passed a National Licensing Examination or the substantial
54 equivalent which the Commission may approve by Rule.

55 4. Submit to a Background Check;

1 5. Have not been convicted or found guilty, or have entered into an
2 agreed disposition, of a felony offense under applicable State or feder-
3 al criminal law, within five (5) years prior to the date of their appli-
4 cation, where such a time period shall not include any time served for
5 the offense, and provided that the applicant has completed any and all
6 requirements arising as a result of any such offense;

7 6. Have not been convicted or found guilty, or have entered into an
8 agreed disposition, of a misdemeanor offense related to the Practice of
9 Massage Therapy under applicable State or federal criminal law, within
10 two (2) years prior to the date of their application where such a time
11 period shall not include any time served for the offense, and provided
12 that the applicant has completed any and all requirements arising as a
13 result of any such offense;

14 7. Have not been convicted or found guilty, or have entered into an
15 agreed disposition, of any offense, whether a misdemeanor or a felony,
16 under State or federal law, at any time, relating to any of the follow-
17 ing:

18 a. Kidnapping;

19 b. Human trafficking;

20 c. Human smuggling;

21 d. Sexual battery, sexual assault, or any related offenses; or

22 e. Any other category of offense which the Commission may by Rule
23 designate.

24 8. Have not previously held a Massage Therapy license which was
25 revoked by, or surrendered in lieu of discipline to an applicable
26 Licensing Authority;

27 9. Have no history of any Adverse Action on any occupational or
28 professional license within two (2) years prior to the date of their
29 application; and

30 10. Pay all required fees.

31 B. A Multistate License granted pursuant to this Compact may be effec-
32 tive for a definite period of time concurrent with the renewal of the
33 Home State license.

34 C. A Licensee practicing in a Member State is subject to all scope of
35 practice laws governing Massage Therapy Services in that State.

36 D. The Practice of Massage Therapy under a Multistate License granted
37 pursuant to this Compact will subject the Licensee to the jurisdiction
38 of the Licensing Authority, the courts, and the laws of the Member State
39 in which the Massage Therapy Services are provided.

40 ARTICLE 5 - AUTHORITY OF INTERSTATE MASSAGE COMPACT COMMISSION AND
41 MEMBER STATE LICENSING AUTHORITIES

42 A. Nothing in this Compact, nor any Rule of the Commission, shall be
43 construed to limit, restrict, or in any way reduce the ability of a
44 Member State to enact and enforce laws, regulations, or other rules
45 related to the Practice of Massage Therapy in that State, where those
46 laws, regulations, or other rules are not inconsistent with the
47 provisions of this Compact.

48 B. Nothing in this Compact, nor any Rule of the Commission, shall be
49 construed to limit, restrict, or in any way reduce the ability of a
50 Member State to take Adverse Action against a Licensee's Single-State
51 License to practice Massage Therapy in that State.

52 C. Nothing in this Compact, nor any Rule of the Commission, shall be
53 construed to limit, restrict, or in any way reduce the ability of a
54 Remote State to take Adverse Action against a Licensee's Authorization
55 to Practice in that State.

1 D. Nothing in this Compact, nor any Rule of the Commission, shall be
2 construed to limit, restrict, or in any way reduce the ability of a
3 Licensee's Home State to take Adverse Action against a Licensee's Multi-
4 state License based upon information provided by a Remote State.

5 E. Insofar as practical, a Member State's Licensing Authority shall
6 cooperate with the Commission and with each entity exercising independ-
7 ent regulatory authority over the Practice of Massage Therapy according
8 to the provisions of this Compact.

9 ARTICLE 6 - ADVERSE ACTIONS

10 A. A Licensee's Home State shall have exclusive power to impose an
11 Adverse Action against a Licensee's Multistate License issued by the
12 Home State.

13 B. A Home State may take Adverse Action on a Multistate License based
14 on the Investigative Information, Current Significant Investigative
15 Information, or Adverse Action of a Remote State.

16 C. A Home State shall retain authority to complete any pending inves-
17 tigations of a Licensee practicing under a Multistate License who chang-
18 es their Home State during the course of such an investigation. The
19 Licensing Authority shall also be empowered to report the results of
20 such an investigation to the Commission through the Data System as
21 described herein.

22 D. Any Member State may investigate actual or alleged violations of
23 the scope of practice laws in any other Member State for a massage ther-
24 apist who holds a Multistate License.

25 E. A Remote State shall have the authority to:

26 1. Take Adverse Actions against a Licensee's Authorization to Prac-
27 tice;

28 2. Issue cease and desist orders or impose an Encumbrance on a
29 Licensee's Authorization to Practice in that State.

30 3. Issue subpoenas for both hearings and investigations that require
31 the attendance and testimony of witnesses, as well as the production of
32 evidence. Subpoenas issued by a Licensing Authority in a Member State
33 for the attendance and testimony of witnesses or the production of
34 evidence from another Member State shall be enforced in the latter State
35 by any court of competent jurisdiction, according to the practice and
36 procedure of that court applicable to subpoenas issued in proceedings
37 before it. The issuing Licensing Authority shall pay any witness fees,
38 travel expenses, mileage, and other fees required by the service stat-
39 utes of the State in which the witnesses or evidence are located.

40 4. If otherwise permitted by State law, recover from the affected
41 Licensee the costs of investigations and disposition of cases resulting
42 from any Adverse Action taken against that Licensee.

43 5. Take Adverse Action against the Licensee's Authorization to Prac-
44 tice in that State based on the factual findings of another Member
45 State.

46 F. If an Adverse Action is taken by the Home State against a
47 Licensee's Multistate License or Single-State License to practice in the
48 Home State, the Licensee's Authorization to Practice in all other Member
49 States shall be deactivated until all Encumbrances have been removed
50 from such license. All Home State disciplinary orders that impose an
51 Adverse Action against a Licensee shall include a statement that the
52 Massage Therapist's Authorization to Practice is deactivated in all
53 Member States during the pendency of the order.

54 G. If Adverse Action is taken by a Remote State against a Licensee's
55 Authorization to Practice, that Adverse Action applies to all Authori-
56 zations to Practice in all Remote States. A Licensee whose Authorization

1 to Practice in a Remote State is removed for a specified period of time
2 is not eligible to apply for a new Multistate License in any other State
3 until the specific time for removal of the Authorization to Practice has
4 passed and all encumbrance requirements are satisfied.

5 H. Nothing in this Compact shall override a Member State's authority
6 to accept a Licensee's participation in an Alternative Program in lieu
7 of Adverse Action. A Licensee's Multistate License shall be suspended
8 for the duration of the Licensee's participation in any Alternative
9 Program.

10 I. Joint Investigations

11 1. In addition to the authority granted to a Member State by its
12 respective scope of practice laws or other applicable State law, a
13 Member State may participate with other Member States in joint investi-
14 gations of Licensees.

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

18 ARTICLE 7 - ACTIVE MILITARY MEMBER AND THEIR SPOUSES

19 Active Military Member, or their spouses, shall designate a Home State
20 where the individual has a current license to practice Massage Therapy
21 in good standing. The individual may retain their Home State designation
22 during any period of service when that individual or their spouse is on
23 active duty assignment.

24 ARTICLE 8 - ESTABLISHMENT AND OPERATION OF INTERSTATE MASSAGE COMPACT
25 COMMISSION

26 A. The Compact Member States hereby create and establish a joint
27 government agency whose membership consists of all Member States that
28 have enacted the Compact known as the Interstate Massage Compact Commis-
29 sion. The Commission is an instrumentality of the Compact States acting
30 jointly and not an instrumentality of any one State. The Commission
31 shall come into existence on or after the effective date of the Compact
32 as set forth in Article 12.

33 B. Membership, Voting, and Meetings

34 1. Each Member State shall have and be limited to one (1) delegate
35 selected by that Member State's State Licensing Authority.

36 2. The delegate shall be the primary administrative officer of the
37 State Licensing Authority or their designee.

38 3. The Commission shall by Rule or bylaw establish a term of office
39 for delegates and may by Rule or bylaw establish term limits.

40 4. The Commission may recommend removal or suspension of any delegate
41 from office.

42 5. A Member State's State Licensing Authority shall fill any vacancy
43 of its delegate occurring on the Commission within 60 days of the vacan-
44 cy.

45 6. Each delegate shall be entitled to one vote on all matters that are
46 voted on by the Commission.

47 7. The Commission shall meet at least once during each calendar year.
48 Additional meetings may be held as set forth in the bylaws. The Commis-
49 sion may meet by telecommunication, video conference or other similar
50 electronic means.

51 C. The Commission shall have the following powers:

52 1. Establish the fiscal year of the Commission;

53 2. Establish code of conduct and conflict of interest policies;

54 3. Adopt Rules and bylaws;

55 4. Maintain its financial records in accordance with the bylaws;

1 5. Meet and take such actions as are consistent with the provisions of
2 this Compact, the Commission's Rules, and the bylaws;

3 6. Initiate and conclude legal proceedings or actions in the name of
4 the Commission, provided that the standing of any State Licensing
5 Authority to sue or be sued under applicable law shall not be affected;

6 7. Maintain and certify records and information provided to a Member
7 State as the authenticated business records of the Commission, and
8 designate an agent to do so on the Commission's behalf;

9 8. Purchase and maintain insurance and bonds;

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

12 10. Conduct an annual financial review;

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

18 12. Assess and collect fees;

19 13. Accept any and all appropriate gifts, donations, grants of money,
20 other sources of revenue, equipment, supplies, materials, and services,
21 and receive, utilize, and dispose of the same; provided that at all
22 times the Commission shall avoid any appearance of impropriety or
23 conflict of interest;

24 14. Lease, purchase, retain, own, hold, improve, or use any property,
25 real, personal, or mixed, or any undivided interest therein;

26 15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or
27 otherwise dispose of any property real, personal, or mixed;

28 16. Establish a budget and make expenditures;

29 17. Borrow money;

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

34 19. Accept and transmit complaints from the public, regulatory or law
35 enforcement agencies, or the Commission, to the relevant Member State(s)
36 regarding potential misconduct of Licensees;

37 20. Elect a Chair, Vice Chair, Secretary and Treasurer and such other
38 officers of the Commission as provided in the Commission's bylaws;

39 21. Establish and elect an Executive Committee, including a chair and
40 a vice chair;

41 22. Adopt and provide to the Member States an annual report.

42 23. Determine whether a State's adopted language is materially differ-
43 ent from the model Compact language such that the State would not quali-
44 fy for participation in the Compact; and

45 24. Perform such other functions as may be necessary or appropriate to
46 achieve the purposes of this Compact.

47 D. The Executive Committee

48 1. The Executive Committee shall have the power to act on behalf of
49 the Commission according to the terms of this Compact. The powers,
50 duties, and responsibilities of the Executive Committee shall include:

51 a. Overseeing the day-to-day activities of the administration of the
52 Compact including compliance with the provisions of the Compact, the
53 Commission's Rules and bylaws, and other such duties as deemed neces-
54 sary;

1 b. Recommending to the Commission changes to the Rules or bylaws,
2 changes to this Compact legislation, fees charged to Compact Member
3 States, fees charged to Licensees, and other fees;

4 c. Ensuring Compact administration services are appropriately
5 provided, including by contract;

6 d. Preparing and recommending the budget;

7 e. Maintaining financial records on behalf of the Commission;

8 f. Monitoring Compact compliance of Member States and providing
9 compliance reports to the Commission;

10 g. Establishing additional committees as necessary;

11 h. Exercise the powers and duties of the Commission during the interim
12 between Commission meetings, except for adopting or amending Rules,
13 adopting or amending bylaws, and exercising any other powers and duties
14 expressly reserved to the Commission by Rule or bylaw; and

15 i. Other duties as provided in the Rules or bylaws of the Commission.

16 2. The Executive Committee shall be composed of seven voting members
17 and up to two ex-officio members as follows:

18 a. The chair and vice chair of the Commission and any other members of
19 the Commission who serve on the Executive Committee shall be voting
20 members of the Executive Committee; and

21 b. Other than the chair, vice-chair, secretary and treasurer, the
22 Commission shall elect three voting members from the current membership
23 of the Commission.

24 c. The Commission may elect ex-officio, nonvoting members as necessary
25 as follows:

26 i. One ex-officio member who is a representative of the national asso-
27 ciation of State Massage Therapy regulatory boards

28 ii. One ex-officio member as specified in the Commission's bylaws.

29 3. The Commission may remove any member of the Executive Committee as
30 provided in the Commission's bylaws.

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

32 a. Executive Committee meetings shall be open to the public, except
33 that the Executive Committee may meet in a closed, non-public session of
34 a public meeting when dealing with any of the matters covered under
35 subsection F.4.

36 b. The Executive Committee shall give five business days advance
37 notice of its public meetings, posted on its website and as determined
38 to provide notice to persons with an interest in the public matters the
39 Executive Committee intends to address at those meetings.

40 5. The Executive Committee may hold an emergency meeting when acting
41 for the Commission to:

42 a. Meet an imminent threat to public health, safety, or welfare;

43 b. Prevent a loss of Commission or Participating State funds; or

44 c. Protect public health and safety.

45 E. The Commission shall adopt and provide to the Member States an
46 annual report.

47 F. Meetings of the Commission

48 1. All meetings of the Commission that are not closed pursuant to this
49 subsection shall be open to the public. Notice of public meetings shall
50 be posted on the Commission's website at least thirty (30) days prior to
51 the public meeting.

52 2. Notwithstanding subsection F.1 of this Article, the Commission may
53 convene an emergency public meeting by providing at least twenty-four
54 (24) hours prior notice on the Commission's website, and any other means
55 as provided in the Commission's Rules, for any of the reasons it may
56 dispense with notice of proposed rulemaking under Article 10.L. The

1 Commission's legal counsel shall certify the that one of the reasons
2 justifying an emergency public meeting has been met.

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

7 4. The Commission may convene in a closed, non-public meeting for the
8 Commission to discuss:

9 a. Non-compliance of a Member State with its obligations under the
10 Compact;

11 b. The employment, compensation, discipline or other matters, prac-
12 tices or procedures related to specific employees or other matters
13 related to the Commission's internal personnel practices and procedures;

14 c. Current or threatened discipline of a Licensee by the Commission or
15 by a Member State's Licensing Authority;

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

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

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

20 g. Trade secrets or commercial or financial information that is privi-
21 leged or confidential;

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

24 i. Investigative records compiled for law enforcement purposes;

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

29 k. Legal advice;

30 l. Matters specifically exempted from disclosure to the public by
31 federal or Member State law; or

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

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

37 6. The Commission shall keep minutes that fully and clearly describe
38 all matters discussed in a meeting and shall provide a full and accurate
39 summary of actions taken, and the reasons therefore, including a
40 description of the views expressed. All documents considered in
41 connection with an action shall be identified in such minutes. All
42 minutes and documents of a closed meeting shall remain under seal,
43 subject to release only by a majority vote of the Commission or order of
44 a court of competent jurisdiction.

45 G. Financing of the Commission

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

49 2. The Commission may accept any and all appropriate sources of reven-
50 ue, donations, and grants of money, equipment, supplies, materials, and
51 services.

52 3. The Commission may levy on and collect an annual assessment from
53 each Member State and impose fees on Licensees of Member States to whom
54 it grants a Multistate License to cover the cost of the operations and
55 activities of the Commission and its staff, which must be in a total
56 amount sufficient to cover its annual budget as approved each year for

1 which revenue is not provided by other sources. The aggregate annual
2 assessment amount for Member States shall be allocated based upon a
3 formula that the Commission shall promulgate by Rule.

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

8 5. The Commission shall keep accurate accounts of all receipts and
9 disbursements. The receipts and disbursements of the Commission shall be
10 subject to the financial review and accounting procedures established
11 under its bylaws. All receipts and disbursements of funds handled by the
12 Commission shall be subject to an annual financial review by a certified
13 or licensed public accountant, and the report of the financial review
14 shall be included in and become part of the annual report of the Commis-
15 sion.

16 H. Qualified Immunity, Defense, and Indemnification

17 1. The members, officers, executive director, employees and represen-
18 tatives of the Commission shall be immune from suit and liability, both
19 personally and in their official capacity, for any claim for damage to
20 or loss of property or personal injury or other civil liability caused
21 by or arising out of any actual or alleged act, error, or omission that
22 occurred, or that the person against whom the claim is made had a
23 reasonable basis for believing occurred within the scope of Commission
24 employment, duties or responsibilities; provided that nothing in this
25 paragraph shall be construed to protect any such person from suit or
26 liability for any damage, loss, injury, or liability caused by the
27 intentional or willful or wanton misconduct of that person. The
28 procurement of insurance of any type by the Commission shall not in any
29 way compromise or limit the immunity granted hereunder.

30 2. The Commission shall defend any member, officer, executive direc-
31 tor, employee, and representative of the Commission in any civil action
32 seeking to impose liability arising out of any actual or alleged act,
33 error, or omission that occurred within the scope of Commission employ-
34 ment, duties, or responsibilities, or as determined by the Commission
35 that the person against whom the claim is made had a reasonable basis
36 for believing occurred within the scope of Commission employment,
37 duties, or responsibilities; provided that nothing herein shall be
38 construed to prohibit that person from retaining their own counsel at
39 their own expense; and provided further, that the actual or alleged act,
40 error, or omission did not result from that person's intentional or
41 willful or wanton misconduct.

42 3. The Commission shall indemnify and hold harmless any member, offi-
43 cer, executive director, employee, and representative of the Commission
44 for the amount of any settlement or judgment obtained against that
45 person arising out of any actual or alleged act, error, or omission that
46 occurred within the scope of Commission employment, duties, or responsi-
47 bilities, or that such person had a reasonable basis for believing
48 occurred within the scope of Commission employment, duties, or responsi-
49 bilities, provided that the actual or alleged act, error, or omission
50 did not result from the intentional or willful or wanton misconduct of
51 that person.

52 4. Nothing herein shall be construed as a limitation on the liability
53 of any Licensee for professional malpractice or misconduct, which shall
54 be governed solely by any other applicable State laws.

55 5. Nothing in this Compact shall be interpreted to waive or otherwise
56 abrogate a Member State's State action immunity or State action affirma-

1 tive defense with respect to antitrust claims under the Sherman Act,
2 Clayton Act, or any other State or federal antitrust or anticompetitive
3 law or regulation.

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

6 ARTICLE 9 - DATA SYSTEM

7 A. The Commission shall provide for the development, maintenance,
8 operation, and utilization of a coordinated database and reporting
9 system.

10 B. The Commission shall assign each applicant for a Multistate License
11 a unique identifier, as determined by the Rules of the Commission.

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

16 1. Identifying information;

17 2. Licensure data;

18 3. Adverse Actions against a license and information related thereto;

19 4. Non-confidential information related to Alternative Program partic-
20 ipation, the beginning and ending dates of such participation, and other
21 information related to such participation;

22 5. Any denial of application for licensure, and the reason(s) for such
23 denial (excluding the reporting of any criminal history record informa-
24 tion where prohibited by law);

25 6. The existence of Investigative Information;

26 7. The existence presence of Current Significant Investigative Infor-
27 mation; and

28 8. Other information that may facilitate the administration of this
29 Compact or the protection of the public, as determined by the Rules of
30 the Commission.

31 D. The records and information provided to a Member State pursuant to
32 this Compact or through the Data System, when certified by the Commis-
33 sion or an agent thereof, shall constitute the authenticated business
34 records of the Commission, and shall be entitled to any associated hear-
35 say exception in any relevant judicial, quasi-judicial or administrative
36 proceedings in a Member State.

37 E. The existence of Current Significant Investigative Information and
38 the existence of Investigative Information pertaining to a Licensee in
39 any Member State will only be available to other Member States.

40 F. It is the responsibility of the Member States to report any Adverse
41 Action against a Licensee who holds a Multistate License and to monitor
42 the database to determine whether Adverse Action has been taken against
43 such a Licensee or License applicant. Adverse Action information
44 pertaining to a Licensee or License applicant in any Member State will
45 be available to any other Member State.

46 G. Member States contributing information to the Data System may
47 designate information that may not be shared with the public without the
48 express permission of the contributing State.

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

52 ARTICLE 10 - RULEMAKING

53 A. The Commission shall promulgate reasonable Rules in order to effec-
54 tively and efficiently implement and administer the purposes and
55 provisions of the Compact. A Rule shall be invalid and have no force or
56 effect only if a court of competent jurisdiction holds that the Rule is

1 invalid because the Commission exercised its rulemaking authority in a
2 manner that is beyond the scope and purposes of the Compact, or the
3 powers granted hereunder, or based upon another applicable standard of
4 review.

5 B. The Rules of the Commission shall have the force of law in each
6 Member State, provided however that where the Rules of the Commission
7 conflict with the laws of the Member State that establish the Member
8 State's scope of practice as held by a court of competent jurisdiction,
9 the Rules of the Commission shall be ineffective in that State to the
10 extent of the conflict.

11 C. The Commission shall exercise its Rulemaking powers pursuant to the
12 criteria set forth in this article and the Rules adopted thereunder.
13 Rules shall become binding as of the date specified by the Commission
14 for each Rule.

15 D. If a majority of the legislatures of the Member States rejects a
16 Rule or portion of a Rule, by enactment of a statute or resolution in
17 the same manner used to adopt the Compact within four (4) years of the
18 date of adoption of the Rule, then such Rule shall have no further force
19 and effect in any Member State or to any State applying to participate
20 in the Compact.

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

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

26 G. Prior to adoption of a proposed Rule by the Commission, and at
27 least thirty (30) days in advance of the meeting at which the Commission
28 will hold a public hearing on the proposed Rule, the Commission shall
29 provide a Notice of Proposed Rulemaking:

30 1. On the website of the Commission or other publicly accessible plat-
31 form;

32 2. To persons who have requested notice of the Commission's notices of
33 proposed rulemaking, and

34 3. In such other way(s) as the Commission may by Rule specify.

35 H. The Notice of Proposed Rulemaking shall include:

36 1. The time, date, and location of the public hearing at which the
37 Commission will hear public comments on the proposed Rule and, if
38 different, the time, date, and location of the meeting where the Commis-
39 sion will consider and vote on the proposed Rule;

40 2. If the hearing is held via telecommunication, video conference, or
41 other electronic means, the Commission shall include the mechanism for
42 access to the hearing in the Notice of Proposed Rulemaking;

43 3. The text of the proposed Rule and the reason therefor;

44 4. A request for comments on the proposed Rule from any interested
45 person; and

46 5. The manner in which interested persons may submit written comments.

47 I. All hearings will be recorded. A copy of the recording and all
48 written comments and documents received by the Commission in response to
49 the proposed Rule shall be available to the public.

50 J. Nothing in this article shall be construed as requiring a separate
51 hearing on each Rule. Rules may be grouped for the convenience of the
52 Commission at hearings required by this article.

53 K. The Commission shall, by majority vote of all Commissioners, take
54 final action on the proposed Rule based on the Rulemaking record.

55 1. The Commission may adopt changes to the proposed Rule provided the
56 changes do not enlarge the original purpose of the proposed Rule.

2. The Commission shall provide an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

3. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in subsection L, the effective date of the Rule shall be no sooner than thirty (30) days after the Commission issuing the notice that it adopted or amended the Rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule with 24 hours notice, provided that the usual Rulemaking procedures provided in the Compact and in this article shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately to:

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

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

3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or

4. Protect public health and safety.

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

N. No Member State's rulemaking requirements shall apply under this Compact.

ARTICLE 11 - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to implement the Compact.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a Licensee for professional malpractice, misconduct or any such similar matter.

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

B. Default, Technical Assistance, and Termination

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

1 notice to the defaulting State. The notice of default shall describe the
2 default, the proposed means of curing the default, and any other action
3 that the Commission may take, and shall offer training and specific
4 technical assistance regarding the default.

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

7 C. If a State in default fails to cure the default, the defaulting
8 State may be terminated from the Compact upon an affirmative vote of a
9 majority of the delegates of the Member States, and all rights, privi-
10 leges and benefits conferred on that State by this Compact may be termi-
11 nated on the effective date of termination. A cure of the default does
12 not relieve the offending State of obligations or liabilities incurred
13 during the period of default.

14 D. Termination of membership in the Compact shall be imposed only
15 after all other means of securing compliance have been exhausted. Notice
16 of intent to suspend or terminate shall be given by the Commission to
17 the governor, the majority and minority leaders of the defaulting
18 State's legislature, the defaulting State's State Licensing Authority
19 and each of the Member States' State Licensing Authority.

20 E. A State that has been terminated is responsible for all assess-
21 ments, obligations, and liabilities incurred through the effective date
22 of termination, including obligations that extend beyond the effective
23 date of termination.

24 F. Upon the termination of a State's membership from this Compact,
25 that State shall immediately provide notice to all Licensees who hold a
26 Multistate License within that State of such termination. The terminated
27 State shall continue to recognize all licenses granted pursuant to this
28 Compact for a minimum of one hundred eighty (180) days after the date of
29 said notice of termination.

30 G. The Commission shall not bear any costs related to a State that is
31 found to be in default or that has been terminated from the Compact,
32 unless agreed upon in writing between the Commission and the defaulting
33 State.

34 H. The defaulting State may appeal the action of the Commission by
35 petitioning the U.S. District Court for the District of Columbia or the
36 federal district where the Commission has its principal offices. The
37 prevailing party shall be awarded all costs of such litigation, includ-
38 ing reasonable attorney's fees.

39 I. Dispute Resolution

40 1. Upon request by a Member State, the Commission shall attempt to
41 resolve disputes related to the Compact that arise among Member States
42 and between Member and non-Member States.

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

45 J. Enforcement

46 1. The Commission, in the reasonable exercise of its discretion, shall
47 enforce the provisions of this Compact and the Commission's Rules.

48 2. By majority vote as provided by Commission Rule, the Commission may
49 initiate legal action against a Member State in default in the United
50 States District Court for the District of Columbia or the federal
51 district where the Commission has its principal offices to enforce
52 compliance with the provisions of the Compact and its promulgated Rules.
53 The relief sought may include both injunctive relief and damages. In the
54 event judicial enforcement is necessary, the prevailing party shall be
55 awarded all costs of such litigation, including reasonable attorney's
56 fees. The remedies herein shall not be the exclusive remedies of the

1 Commission. The Commission may pursue any other remedies available under
2 federal or the defaulting Member State's law.

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

11 4. No individual or entity other than a Member State may enforce this
12 Compact against the Commission.

13 ARTICLE 12 - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

14 A. The Compact shall come into effect on the date on which the Compact
15 statute is enacted into law in the seventh Member State.

16 1. On or after the effective date of the Compact, the Commission shall
17 convene and review the enactment of each of the Charter Member States to
18 determine if the statute enacted by each such Charter Member State is
19 materially different than the model Compact statute.

20 a. A Charter Member State whose enactment is found to be materially
21 different from the model Compact statute shall be entitled to the
22 default process set forth in Article 11.

23 b. If any Member State is later found to be in default, or is termi-
24 nated or withdraws from the Compact, the Commission shall remain in
25 existence and the Compact shall remain in effect even if the number of
26 Member States should be less than seven (7).

27 2. Member States enacting the Compact subsequent to the Charter Member
28 States shall be subject to the process set forth in Article 8.C.23 to
29 determine if their enactments are materially different from the model
30 Compact statute and whether they qualify for participation in the
31 Compact.

32 3. All actions taken for the benefit of the Commission or in further-
33 ance of the purposes of the administration of the Compact prior to the
34 effective date of the Compact or the Commission coming into existence
35 shall be considered to be actions of the Commission unless specifically
36 repudiated by the Commission.

37 4. Any State that joins the Compact shall be subject to the Commis-
38 sion's Rules and bylaws as they exist on the date on which the Compact
39 becomes law in that State. Any Rule that has been previously adopted by
40 the Commission shall have the full force and effect of law on the day
41 the Compact becomes law in that State.

42 B. Any Member State may withdraw from this Compact by enacting a stat-
43 ute repealing that State's enactment of the Compact.

44 1. A Member State's withdrawal shall not take effect until one hundred
45 eighty (180) days after enactment of the repealing statute.

46 2. Withdrawal shall not affect the continuing requirement of the with-
47 drawing State's Licensing Authority to comply with the investigative and
48 Adverse Action reporting requirements of this Compact prior to the
49 effective date of withdrawal.

50 3. Upon the enactment of a statute withdrawing from this Compact, a
51 State shall immediately provide notice of such withdrawal to all Licen-
52 sees within that State. Notwithstanding any subsequent statutory enact-
53 ment to the contrary, such withdrawing State shall continue to recognize
54 all licenses granted pursuant to this Compact for a minimum of 180 days
55 after the date of such notice of withdrawal.

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

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

8 ARTICLE 13.- CONSTRUCTION AND SEVERABILITY

9 A. This Compact and the Commission's rulemaking authority shall be
10 liberally construed so as to effectuate the purposes, and the implemen-
11 tation and administration of the Compact. Provisions of the Compact
12 expressly authorizing or requiring the promulgation of Rules shall not
13 be construed to limit the Commission's rulemaking authority solely for
14 those purposes.

15 B. The provisions of this Compact shall be severable and if any
16 phrase, clause, sentence or provision of this Compact is held by a court
17 of competent jurisdiction to be contrary to the constitution of any
18 Member State, a State seeking participation in the Compact, or of the
19 United States, or the applicability thereof to any government, agency,
20 person or circumstance is held to be unconstitutional by a court of
21 competent jurisdiction, the validity of the remainder of this Compact
22 and the applicability thereof to any other government, agency, person or
23 circumstance shall not be affected thereby.

24 C. Notwithstanding subsection B of this article, the Commission may
25 deny a State's participation in the Compact or, in accordance with the
26 requirements of Article 11.B, terminate a Member State's participation
27 in the Compact, if it determines that a constitutional requirement of a
28 Member State is a material departure from the Compact. Otherwise, if
29 this Compact shall be held to be contrary to the constitution of any
30 Member State, the Compact shall remain in full force and effect as to
31 the remaining Member States and in full force and effect as to the
32 Member State affected as to all severable matters.

33 ARTICLE 14. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

34 Nothing herein shall prevent or inhibit the enforcement of any other
35 law of a Member State that is not inconsistent with the Compact. Any
36 laws, statutes, regulations, or other legal requirements in a Member
37 State in conflict with the Compact are superseded to the extent of the
38 conflict. All permissible agreements between the Commission and the
39 Member States are binding in accordance with their terms.

40 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
41 sion, section or part of this act shall be adjudged by any court of
42 competent jurisdiction to be invalid, such judgment shall not affect,
43 impair, or invalidate the remainder thereof, but shall be confined in
44 its operation to the clause, sentence, paragraph, subdivision, section
45 or part thereof directly involved in the controversy in which such judg-
46 ment shall have been rendered. It is hereby declared to be the intent of
47 the legislature that this act would have been enacted even if such
48 invalid provisions had not been included herein.

49 § 3. This act shall take effect immediately; provided, however, that
50 section one of this act shall take effect as specifically set forth in
51 such section.