

1 AN ACT relating to the Licensed Professional Counseling Compact.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS 335.500 TO 335.599 IS CREATED
4 TO READ AS FOLLOWS:

5 **SECTION 1. PURPOSE**

6 **The purpose of this Compact is to facilitate interstate practice of Licensed Professional**
7 **Counselors with the goal of improving public access to Professional Counseling**
8 **services. The practice of Professional Counseling occurs in the State where the client is**
9 **located at the time of the counseling services. The Compact preserves the regulatory**
10 **authority of States to protect public health and safety through the current system of**
11 **State licensure.**

12 **This Compact is designed to achieve the following objectives:**

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

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

16 **C. Encourage the cooperation of Member States in regulating multistate practice for**
17 **Licensed Professional Counselors;**

18 **D. Support spouses of relocating Active Duty Military personnel;**

19 **E. Enhance the exchange of licensure, investigative, and disciplinary information**
20 **among Member States;**

21 **F. Allow for the use of Telehealth technology to facilitate increased access to**
22 **Professional Counseling services;**

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

25 **H. Invest all Member States with the authority to hold a Licensed Professional**
26 **Counselor accountable for meeting all State practice laws in the State in which**
27 **the client is located at the time care is rendered through the mutual recognition**

1 of Member State licenses;

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

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

5 **SECTION 2. DEFINITIONS**

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

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

11 B. "Adverse Action" means any administrative, civil, equitable, or criminal action
12 permitted by a State's laws which is imposed by a licensing board or other
13 authority against a Licensed Professional Counselor, including actions against
14 an individual's license or Privilege to Practice such as revocation, suspension,
15 probation, monitoring of the licensee, limitation on the licensee's practice, or any
16 other Encumbrance on licensure affecting a Licensed Professional Counselor's
17 authorization to practice, including issuance of a cease and desist action;

18 C. "Alternative Program" means a non-disciplinary monitoring or practice
19 remediation process approved by a Professional Counseling Licensing Board to
20 address Impaired Practitioners;

21 D. "Continuing Competence/Education" means a requirement, as a condition of
22 license renewal, to provide evidence of participation in, and/or completion of,
23 educational and professional activities relevant to practice or area of work;

24 E. "Counseling Compact Commission" or "Commission" means the national
25 administrative body whose membership consists of all States that have enacted
26 the Compact;

27 F. "Current Significant Investigative Information" means:

- 1 1. Investigative Information that a Licensing Board, after a preliminary
2 inquiry that includes notification and an opportunity for the Licensed
3 Professional Counselor to respond, if required by State law, has reason to
4 believe is not groundless and, if proved true, would indicate more than a
5 minor infraction; or
- 6 2. Investigative Information that indicates that the Licensed Professional
7 Counselor represents an immediate threat to public health and safety
8 regardless of whether the Licensed Professional Counselor has been
9 notified and had an opportunity to respond;
- 10 G. "Data System" means a repository of information about licensees, including but
11 not limited to continuing education, examination, licensure, investigative,
12 Privilege to Practice, and Adverse Action information;
- 13 H. "Encumbered License" means a license in which an Adverse Action restricts the
14 practice of licensed Professional Counseling by the Licensee and said Adverse
15 Action has been reported to the National Practitioners Data Bank (NPDB);
- 16 I. "Encumbrance" means a revocation or suspension of, or any limitation on, the
17 full and unrestricted practice of Licensed Professional Counseling by a Licensing
18 Board;
- 19 J. "Executive Committee" means a group of directors elected or appointed to act on
20 behalf of, and within the powers granted to them by, the Commission;
- 21 K. "Home State" means the Member State that is the Licensee's primary State of
22 residence;
- 23 L. "Impaired Practitioner" means an individual who has a condition(s) that may
24 impair their ability to practice as a Licensed Professional Counselor without
25 some type of intervention and may include, but are not limited to, alcohol and
26 drug dependence, mental health impairment, and neurological or physical
27 impairments;

- 1 *M. "Investigative Information" means information, records, and documents*
2 *received or generated by a Professional Counseling Licensing Board pursuant to*
3 *an investigation;*
- 4 *N. "Jurisprudence Requirement" if required by a Member State, means the*
5 *assessment of an individual's knowledge of the laws and Rules governing the*
6 *practice of Professional Counseling in a State;*
- 7 *O. "Licensed Professional Counselor" means a counselor licensed by a Member*
8 *State regardless of the title used by that State, to independently assess, diagnose,*
9 *and treat behavioral health conditions;*
- 10 *P. "Licensee" means an individual who currently holds an authorization from the*
11 *State to practice as a Licensed Professional Counselor;*
- 12 *Q. "Licensing Board" means the agency of a State, or equivalent, that is responsible*
13 *for the licensing and regulation of Licensed Professional Counselors;*
- 14 *R. "Member State" means a State that has enacted the Compact;*
- 15 *S. "Privilege to Practice" means a legal authorization, which is equivalent to a*
16 *license, permitting the practice of Professional Counseling in a Remote State;*
- 17 *T. "Professional Counseling" means the assessment, diagnosis, and treatment of*
18 *behavioral health conditions by a Licensed Professional Counselor;*
- 19 *U. "Remote State" means a Member State other than the Home State, where a*
20 *Licensee is exercising or seeking to exercise the Privilege to Practice;*
- 21 *V. "Rule" means a regulation promulgated by the Commission that has the force of*
22 *law;*
- 23 *W. "Single State License" means a Licensed Professional Counselor license issued*
24 *by a Member State that authorizes practice only within the issuing State and does*
25 *not include a Privilege to Practice in any other Member State;*
- 26 *X. "State" means any state, commonwealth, district, or territory of the United States*
27 *of America that regulates the practice of Professional Counseling;*

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

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

7 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

9 1. License and regulate Licensed Professional Counselors;

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

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

16 a. Professional Counseling Orientation and Ethical Practice;

17 b. Social and Cultural Diversity;

18 c. Human Growth and Development;

19 d. Career Development;

20 e. Counseling and Helping Relationships;

21 f. Group Counseling and Group Work;

22 g. Diagnosis and Treatment;

23 h. Assessment and Testing;

24 i. Research and Program Evaluation; and

25 j. Other areas as determined by the Commission.

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

1 5. Have a mechanism in place for receiving and investigating complaints
2 about Licensees.

3 B. A Member State shall:

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

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

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

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

19 b. Communication between a Member State, the Commission, and
20 among Member States regarding the verification of eligibility for
21 licensure through the Compact shall not include any information
22 received from the Federal Bureau of Investigation relating to a federal
23 criminal records check performed by a Member State under Pub. L.
24 No. 92-544;

25 4. Comply with the Rules of the Commission;

26 5. Require an applicant to obtain or retain a license in the Home State and
27 meet the Home State's qualifications for licensure or renewal of licensure,

1 as well as all other applicable State laws;

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

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

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

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

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

15 F. A license issued to a Licensed Professional Counselor by a Home State to a
16 resident in that State shall be recognized by each Member State as authorizing a
17 Licensed Professional Counselor to practice Professional Counseling, under a
18 Privilege to Practice, in each Member State.

19 SECTION 4. PRIVILEGE TO PRACTICE

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

22 1. Hold a license in the Home State;

23 2. Have a valid United States Social Security Number or National Practitioner
24 Identifier;

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

27 4. Have not had any Encumbrance or restriction against any license or

- 1 Privilege to Practice within the previous two (2) years;
- 2 5. Notify the Commission that the Licensee is seeking the Privilege to Practice
- 3 within a Remote State(s);
- 4 6. Pay any applicable fees, including any State fee, for the Privilege to
- 5 Practice;
- 6 7. Meet any Continuing Competence/Education requirements established by
- 7 the Home State;
- 8 8. Meet any Jurisprudence Requirements established by the Remote State(s) in
- 9 which the Licensee is seeking a Privilege to Practice; and
- 10 9. Report to the Commission any Adverse Action, Encumbrance, or restriction
- 11 on license taken by any non-Member State within thirty (30) days from the
- 12 date the action is taken.
- 13 B. The Privilege to Practice is valid until the expiration date of the Home State
- 14 license. The Licensee must comply with the requirements of Section 4(A) to
- 15 maintain the Privilege to Practice in the Remote State.
- 16 C. A Licensee providing Professional Counseling in a Remote State under the
- 17 Privilege to Practice shall adhere to the laws and regulations of the Remote State.
- 18 D. A Licensee providing Professional Counseling services in a Remote State is
- 19 subject to that State's regulatory authority. A Remote State may, in accordance
- 20 with due process and that State's laws, remove a Licensee's Privilege to Practice
- 21 in the Remote State for a specific period of time, impose fines, and/or take any
- 22 other necessary actions to protect the health and safety of its citizens. The
- 23 Licensee may be ineligible for a Privilege to Practice in any Member State until
- 24 the specific time for removal has passed and all fines are paid.
- 25 E. If a Home State license is encumbered, the Licensee shall lose the Privilege to
- 26 Practice in any Remote State until the following occur:
- 27 1. The Home State license is no longer encumbered; and

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

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

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

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

11 2. All fines have been paid; and

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

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

16 SECTION 5. OBTAINING A NEW HOME STATE LICENSE BASED ON A
17 PRIVILEGE TO PRACTICE

18 A. A Licensed Professional Counselor may hold a Home State license, which allows
19 for a Privilege to Practice in other Member States, in only one (1) Member State
20 at a time.

21 B. If a Licensed Professional Counselor changes primary State of residence by
22 moving between two (2) Member States:

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

27 2. Upon receipt of an application for obtaining a new Home State license by

- 1 virtue of a Privilege to Practice, the new Home State shall verify that the
2 Licensed Professional Counselor meets the pertinent criteria outlined in
3 Section 4 via the Data System without need for primary source verification
4 except for:
- 5 a. A Federal Bureau of Investigation fingerprint based criminal
6 background check if not previously performed or updated pursuant to
7 applicable rules adopted by the Commission in accordance with Public
8 Law 92-544;
- 9 b. Other criminal background check as required by the new Home State;
10 and
- 11 c. Completion of any requisite Jurisprudence Requirements of the new
12 Home State.
- 13 3. The former Home State shall convert the former Home State license into a
14 Privilege to Practice once the new Home State has activated the new Home
15 State license in accordance with applicable Rules adopted by the
16 Commission.
- 17 4. Notwithstanding any other provision of this Compact, if the Licensed
18 Professional Counselor cannot meet the criteria in Section 4, the new Home
19 State may apply its requirements for issuing a new Single State License.
- 20 5. The Licensed Professional Counselor shall pay all applicable fees to the
21 new Home State in order to be issued a new Home State license.
- 22 C. If a Licensed Professional Counselor changes Primary State of Residence by
23 moving from a Member State to a non-Member State, or from a non-Member
24 State to a Member State, the State criteria shall apply for issuance of a Single
25 State License in the new State.
- 26 D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single
27 State License in multiple States. However, for the purposes of this Compact, a

1 Licensee shall have only one (1) Home State license.

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

4 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

11 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

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

17 B. A Licensee providing Professional Counseling services in a Remote State under
18 the Privilege to Practice shall adhere to the laws and regulations of the Remote
19 State.

20 SECTION 8. ADVERSE ACTIONS

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

23 1. Take Adverse Action against a Licensed Professional Counselor's Privilege
24 to Practice within that Member State; and

25 2. Issue subpoenas for both hearings and investigations that require the
26 attendance and testimony of witnesses as well as the production of evidence.

27 Subpoenas issued by a Licensing Board in a Member State for the

1 attendance and testimony of witnesses or the production of evidence from
2 another Member State shall be enforced in the latter State by any court of
3 competent jurisdiction, according to the practice and procedure of that
4 court applicable to subpoenas issued in proceedings pending before it. The
5 issuing authority shall pay any witness fees, travel expenses, mileage, and
6 other fees required by the service statutes of the State in which the witnesses
7 or evidence are located.

8 Only the Home State shall have the power to take Adverse Action against a
9 Licensed Professional Counselor's license issued by the Home State.

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

14 C. The Home State shall complete any pending investigations of a Licensed
15 Professional Counselor who changes primary State of residence during the
16 course of the investigations. The Home State shall also have the authority to take
17 appropriate action(s) and shall promptly report the conclusions of the
18 investigations to the administrator of the Data System. The administrator of the
19 coordinated licensure information system shall promptly notify the new Home
20 State of any Adverse Actions.

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

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

1 **F. Joint Investigations:**

2 **1. In addition to the authority granted to a Member State by its respective**
3 **Professional Counseling practice act or other applicable State law, any**
4 **Member State may participate with other Member States in joint**
5 **investigations of Licensees.**

6 **2. Member States shall share any investigative, litigation, or compliance**
7 **materials in furtherance of any joint or individual investigation initiated**
8 **under the Compact.**

9 **G. If Adverse Action is taken by the Home State against the license of a Licensed**
10 **Professional Counselor, the Licensed Professional Counselor's Privilege to**
11 **Practice in all other Member States shall be deactivated until all Encumbrances**
12 **have been removed from the State license. All Home State disciplinary orders that**
13 **impose Adverse Action against the license of a Licensed Professional Counselor**
14 **shall include a Statement that the Licensed Professional Counselor's Privilege to**
15 **Practice is deactivated in all Member States during the pendency of the order.**

16 **H. If a Member State takes Adverse Action, it shall promptly notify the administrator**
17 **of the Data System. The administrator of the Data System shall promptly notify**
18 **the Home State of any Adverse Actions by Remote States.**

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

21 **SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION**

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

24 **1. The Commission is an instrumentality of the Compact States.**

25 **2. Venue is proper and judicial proceedings by or against the Commission**
26 **shall be brought solely and exclusively in a court of competent jurisdiction**
27 **where the principal office of the Commission is located. The Commission**

1 may waive venue and jurisdictional defenses to the extent it adopts or
2 consents 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 by
7 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 sixty (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;

- 1 2. Establish bylaws;
- 2 3. Maintain its financial records in accordance with the bylaws;
- 3 4. Meet and take such actions as are consistent with the provisions of this
- 4 Compact and the bylaws;
- 5 5. Promulgate Rules which shall be binding to the extent and in the manner
- 6 provided for in the Compact;
- 7 6. Bring and prosecute legal proceedings or actions in the name of the
- 8 Commission, provided that the standing of any State Licensing Board to sue
- 9 or be sued under applicable law shall not be affected;
- 10 7. Purchase and maintain insurance and bonds;
- 11 8. Borrow, accept, or contract for services of personnel, including but not
- 12 limited to employees of a Member State;
- 13 9. Hire employees, elect or appoint officers, fix compensation, define duties,
- 14 grant such individuals appropriate authority to carry out the purposes of the
- 15 Compact, and establish the Commission's personnel policies and programs
- 16 relating to conflicts of interest, qualifications of personnel, and other
- 17 related personnel matters;
- 18 10. Accept any and all appropriate donations and grants of money, equipment,
- 19 supplies, materials, and services, and to receive, utilize, and dispose of the
- 20 same; provided that at all times the Commission shall avoid any appearance
- 21 of impropriety and/or conflict of interest;
- 22 11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to
- 23 own, hold, improve, or use any property, real, personal, or mixed; provided
- 24 that at all times the Commission shall avoid any appearance of impropriety;
- 25 12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
- 26 dispose of any property real, personal, or mixed;
- 27 13. Establish a budget and make expenditures;

- 1 14. Borrow money;
- 2 15. Appoint committees, including standing committees composed of members,
- 3 State regulators, State legislators or their representatives, consumer
- 4 representatives, and such other interested persons as may be designated in
- 5 this Compact and the bylaws;
- 6 16. Provide and receive information from, and cooperate with, law enforcement
- 7 agencies;
- 8 17. Establish and elect an Executive Committee; and
- 9 18. Perform such other functions as may be necessary or appropriate to achieve
- 10 the purposes of this Compact consistent with the State regulation of
- 11 Professional Counseling licensure and practice.

12 D. The Executive Committee

- 13 1. The Executive Committee shall have the power to act on behalf of the
- 14 Commission according to the terms of this Compact.
- 15 2. The Executive Committee shall be composed of up to eleven (11) members:
- 16 a. Seven (7) voting members who are elected by the Commission from
- 17 the current membership of the Commission; and
- 18 b. Up to four (4) ex-officio, nonvoting members from four (4) recognized
- 19 national professional counselor organizations. The ex-officio
- 20 members shall be selected by their respective organizations.
- 21 3. The Commission may remove any member of the Executive Committee as
- 22 provided in bylaws.
- 23 4. The Executive Committee shall meet at least annually.
- 24 5. The Executive Committee shall have the following duties and
- 25 responsibilities:
- 26 a. Recommend to the entire Commission changes to the Rules or bylaws,
- 27 changes to this Compact legislation, fees paid by Compact Member

- 1 States such as annual dues, and any Commission Compact fee
2 charged to Licensees for the Privilege to Practice;
3 b. Ensure Compact administration services are appropriately provided,
4 contractual or otherwise;
5 c. Prepare and recommend the budget;
6 d. Maintain financial records on behalf of the Commission;
7 e. Monitor Compact compliance of Member States and provide
8 compliance reports to the Commission;
9 f. Establish additional committees as necessary; and
10 g. Other duties as provided in Rules or bylaws.

11 E. Meetings of the Commission

- 12 1. All meetings shall be open to the public, and public notice of meetings shall
13 be given in the same manner as required under the Rulemaking provisions
14 in Section 11.
15 2. The Commission or the Executive Committee or other committees of the
16 Commission may convene in a closed, non-public meeting if the
17 Commission or Executive Committee or other committees of the
18 Commission must discuss:
19 a. Non-compliance of a Member State with its obligations under the
20 Compact;
21 b. The employment, compensation, discipline, or other matters, practices,
22 or procedures related to specific employees or other matters related to
23 the Commission's internal personnel practices and procedures;
24 c. Current, threatened, or reasonably anticipated litigation;
25 d. Negotiation of contracts for the purchase, lease, or sale of goods,
26 services, or real estate;
27 e. Accusing any person of a crime or formally censuring any person;

1 f. Disclosure of trade secrets or commercial or financial information
2 that is privileged or confidential;

3 g. Disclosure of information of a personal nature where disclosure
4 would constitute a clearly unwarranted invasion of personal privacy;

5 h. Disclosure of investigative records compiled for law enforcement
6 purposes;

7 i. Disclosure of information related to any investigative reports prepared
8 by or on behalf of or for use of the Commission or other committee
9 charged with responsibility of investigation or determination of
10 compliance issues pursuant to the Compact; or

11 j. Matters specifically exempted from disclosure by federal or Member
12 State statute.

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

16 4. The Commission shall keep minutes that fully and clearly describe all
17 matters discussed in a meeting and shall provide a full and accurate
18 summary of actions taken, and the reasons therefor, including a description
19 of the views expressed. All documents considered in connection with an
20 action shall be identified in such minutes. All minutes and documents of a
21 closed meeting shall remain under seal, subject to release by a majority vote
22 of the Commission or order of a court of competent jurisdiction.

23 F. Financing of the Commission

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

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

1 services.

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

10 4. The Commission shall not incur obligations of any kind prior to securing
11 the funds adequate to meet the same; nor shall the Commission pledge the
12 credit of any of the Member States, except by and with the authority of the
13 Member State. The Commission shall keep accurate accounts of all receipts
14 and disbursements. The receipts and disbursements of the Commission
15 shall be subject to the audit and accounting procedures established under
16 its bylaws. However, all receipts and disbursements of funds handled by the
17 Commission shall be audited yearly by a certified or licensed public
18 accountant, and the report of the audit shall be included in and become part
19 of the annual report of the Commission.

20 G. Qualified Immunity, Defense, and Indemnification

21 1. The members, officers, executive director, employees, and representatives of
22 the Commission shall be immune from suit and liability, either personally
23 or in their official capacity, for any claim for damage to or loss of property
24 or personal injury or other civil liability caused by or arising out of any
25 actual or alleged act, error, or omission that occurred, or that the person
26 against whom the claim is made had a reasonable basis for believing
27 occurred within the scope of Commission employment, duties, or

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

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

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

24 SECTION 10. DATA SYSTEM

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

1 Member States.

2 B. Notwithstanding any other provision of State law to the contrary, a Member State
3 shall submit a uniform data set to the Data System on all individuals to whom
4 this Compact is applicable as required by the Rules of the Commission,
5 including:
6 1. Identifying information;
7 2. Licensure data;
8 3. Adverse Actions against a license or Privilege to Practice;
9 4. Non-confidential information related to Alternative Program participation;
10 5. Any denial of application for licensure, and the reason(s) for such denial;
11 6. Current Significant Investigative Information; and
12 7. Other information that may facilitate the administration of this Compact, as
13 determined by the Rules of the Commission.

14 C. Investigative Information pertaining to a Licensee in any Member State shall
15 only be available to other Member States.

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

20 E. Member States contributing information to the Data System may designate
21 information that may not be shared with the public without the express
22 permission of the contributing State.

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

26 SECTION 11. RULEMAKING

27 A. The Commission shall promulgate reasonable Rules in order to effectively and

1 efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in
2 the event the Commission exercises its Rulemaking authority in a manner that is
3 beyond the scope of the purposes of the Compact, or the powers granted
4 hereunder, then such an action by the Commission shall be invalid and have no
5 force or effect.

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

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

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

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

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

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

24 F. The Notice of Proposed Rulemaking shall include:

25 1. The proposed time, date, and location of the meeting in which the Rule
26 shall be considered and voted upon;

27 2. The text of the proposed Rule or amendment and the reason for the

1 proposed Rule;

2 3. A request for comments on the proposed Rule from any interested person;

3 and

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

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

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

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

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

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

15 I. If a hearing is held on the proposed Rule or amendment, the Commission shall
16 publish the place, time, and date of the scheduled public hearing. If the hearing
17 is held via electronic means, the Commission shall publish the mechanism for
18 access to the electronic hearing.

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

23 2. Hearings shall be conducted in a manner providing each person who
24 wishes to comment a fair and reasonable opportunity to comment orally or
25 in writing.

26 3. All hearings shall be recorded. A copy of the recording shall be made
27 available on request.

- 1 4. Nothing in this section shall be construed as requiring a separate hearing
2 on each Rule. Rules may be grouped for the convenience of the
3 Commission at hearings required by this section.
- 4 J. Following the scheduled hearing date, or by the close of business on the
5 scheduled hearing date if the hearing was not held, the Commission shall
6 consider all written and oral comments received.
- 7 K. If no written notice of intent to attend the public hearing by interested parties is
8 received, the Commission may proceed with promulgation of the proposed Rule
9 without a public hearing.
- 10 L. The Commission shall, by majority vote of all members, take final action on the
11 proposed Rule and shall determine the effective date of the Rule, if any, based on
12 the Rulemaking record and the full text of the Rule.
- 13 M. Upon determination that an emergency exists, the Commission may consider and
14 adopt an emergency Rule without prior notice, opportunity for comment, or
15 hearing, provided that the usual Rulemaking procedures provided in the Compact
16 and in this section shall be retroactively applied to the Rule as soon as reasonably
17 possible, in no event later than ninety (90) days after the effective date of the
18 Rule. For the purposes of this provision, an emergency Rule is one that must be
19 adopted immediately in order to:
- 20 1. Meet an imminent threat to public health, safety, or welfare;
21 2. Prevent a loss of Commission or Member State funds;
22 3. Meet a deadline for the promulgation of an administrative Rule that is
23 established by federal law or Rule; or
24 4. Protect public health and safety.
- 25 N. The Commission or an authorized committee of the Commission may direct
26 revisions to a previously adopted Rule or amendment for purposes of correcting
27 typographical errors, errors in format, errors in consistency, or grammatical

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

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

10 **A. Oversight**

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

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

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

25 **B. Default, Technical Assistance, and Termination**

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

- 1 *promulgated Rules, the Commission shall:*
- 2 *a. Provide written notice to the defaulting State and other Member States*
- 3 *of the nature of the default, the proposed means of curing the default*
- 4 *and/or any other action to be taken by the Commission; and*
- 5 *b. Provide remedial training and specific technical assistance regarding*
- 6 *the default.*
- 7 *C. If a State in default fails to cure the default, the defaulting State may be*
- 8 *terminated from the Compact upon an affirmative vote of a majority of the*
- 9 *Member States, and all rights, privileges, and benefits conferred by this Compact*
- 10 *may be terminated on the effective date of termination. A cure of the default does*
- 11 *not relieve the offending State of obligations or liabilities incurred during the*
- 12 *period of default.*
- 13 *D. Termination of membership in the Compact shall be imposed only after all other*
- 14 *means of securing compliance have been exhausted. Notice of intent to suspend*
- 15 *or terminate shall be given by the Commission to the governor, the majority and*
- 16 *minority leaders of the defaulting State's legislature, and each of the Member*
- 17 *States.*
- 18 *E. A State that has been terminated is responsible for all assessments, obligations,*
- 19 *and liabilities incurred through the effective date of termination, including*
- 20 *obligations that extend beyond the effective date of termination.*
- 21 *F. The Commission shall not bear any costs related to a State that is found to be in*
- 22 *default or that has been terminated from the Compact, unless agreed upon in*
- 23 *writing between the Commission and the defaulting State.*
- 24 *G. The defaulting State may appeal the action of the Commission by petitioning the*
- 25 *U.S. District Court for the District of Columbia or the federal district where the*
- 26 *Commission has its principal offices. The prevailing member shall be awarded all*
- 27 *costs of such litigation, including reasonable attorney's fees.*

1 H. Dispute Resolution

- 2 1. Upon request by a Member State, the Commission shall attempt to resolve
3 disputes related to the Compact that arise among Member States and
4 between member and non-Member States.
- 5 2. The Commission shall promulgate a Rule providing for both mediation and
6 binding dispute resolution for disputes as appropriate.

7 I. Enforcement

- 8 1. The Commission, in the reasonable exercise of its discretion, shall enforce
9 the provisions and Rules of this Compact.
- 10 2. By majority vote, the Commission may initiate legal action in the United
11 States District Court for the District of Columbia or the federal district
12 where the Commission has its principal offices against a Member State in
13 default to enforce compliance with the provisions of the Compact and its
14 promulgated Rules and bylaws. The relief sought may include both
15 injunctive relief and damages. In the event judicial enforcement is
16 necessary, the prevailing member shall be awarded all costs of such
17 litigation, including reasonable attorney's fees.
- 18 3. The remedies herein shall not be the exclusive remedies of the Commission.
19 The Commission may pursue any other remedies available under federal or
20 State law.

21 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT
22 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

- 23 A. The Compact shall come into effect on the date on which the Compact statute is
24 enacted into law in the tenth Member State. The provisions, which become
25 effective at that time, shall be limited to the powers granted to the Commission
26 relating to assembly and the promulgation of Rules. Thereafter, the Commission
27 shall meet and exercise Rulemaking powers necessary to the implementation and

1 administration of the Compact.

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

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

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

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

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

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

22 SECTION 14. CONSTRUCTION AND SEVERABILITY

23 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
24 provisions of this Compact shall be severable and if any phrase, clause, sentence, or
25 provision of this Compact is declared to be contrary to the constitution of any Member
26 State or of the United States or the applicability thereof to any government, agency,
27 person, or circumstance is held invalid, the validity of the remainder of this Compact

1 and the applicability thereof to any government, agency, person, or circumstance shall
2 not be affected thereby. If this Compact shall be held contrary to the constitution of
3 any Member State, the Compact shall remain in full force and effect as to the
4 remaining Member States and in full force and effect as to the Member State affected
5 as to all severable matters.

6 **SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS**

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

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

12 **C. Any laws in a Member State in conflict with the Compact are superseded to the**
13 **extent of the conflict.**

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

16 **E. All permissible agreements between the Commission and the Member States are**
17 **binding in accordance with their terms.**

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

22 **SECTION 16: APPLICABILITY OF KENTUCKY STATE GOVERNMENT**

23 **In order to clarify the effect of certain provisions of this Compact and to ensure that**
24 **the rights and responsibilities of the various branches of government are maintained,**
25 **the following shall be in effect in this state:**

26 **A. By entering into this Compact, this State authorizes the Licensing Board as**
27 **defined in Section 2(O) of this Compact and as created by KRS Chapter 335 to**

1 implement the provisions of this Compact.

2 B. Notwithstanding any provision of this Compact to the contrary:

3 1. When a rule is adopted pursuant to Section 11 of this Compact, the
4 Licensing Board of this State as defined by Section 2(O) of this Compact
5 shall have sixty (60) days to review the rule for the purpose of filing the rule
6 as an emergency administrative regulation pursuant to KRS 13A.190 and
7 for filing the rule as an accompanying ordinary administrative regulation,
8 following the requirements of KRS Chapter 13A. Failure by the Licensing
9 Board of this State as defined by Section 2(O) of this Compact to
10 promulgate a rule adopted by the Counseling Compact Commission as an
11 administrative regulation pursuant to KRS Chapter 13A shall result in
12 withdrawal as set forth in Section 13 of this Compact. Nothing in these
13 provisions shall negate the applicability of a Commission rule or Section 11
14 of this Compact to this state.

15 2. If the proposed administrative regulation is found deficient and the
16 deficiency is not resolved pursuant to KRS 13A.330 or 13A.335, the
17 provisions of Section 12 of this Compact shall apply. If the deficiency is
18 resolved in a manner determined by the Commission to be inconsistent with
19 this Compact or its rules, or if the procedures under Section 12 of this
20 Compact fail to resolve an issue, the withdrawal provisions of Section 13 of
21 this Compact shall apply.

22 3. If a court of competent jurisdiction determines that the Counseling
23 Compact Commission created by Section 9 of this Compact exercises its
24 Rulemaking authority in a manner that is beyond the scope of the purposes
25 of this Compact, or the powers granted under this Compact, then such an
26 action by the Commission shall be invalid and have no force or effect.

27 C. Section 9(F) of this Compact pertaining to the financing of the Commission shall

1 not be interpreted to obligate the general fund of this State. Any funds used to
2 finance this Compact shall be from money collected pursuant to KRS 335.520.
3 D. This Compact shall apply only to those Licensed Professional Counselors who
4 practice or work under a Compact privilege.