

1 AN ACT relating to the Interstate Massage Compact.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO
4 READ AS FOLLOWS:

5 **ARTICLE 1- PURPOSE**

6 *The purpose of this compact is to reduce the burdens on state governments and to*
7 *facilitate the interstate practice and regulation of massage therapy with the goal of*
8 *improving public access to, and the safety of, massage therapy services. Through this*
9 *compact, the member states seek to establish a regulatory framework which provides*
10 *for a new multistate licensing program. Through this additional licensing pathway, the*
11 *member states seek to provide increased value and mobility to licensed massage*
12 *therapists in the member states, while ensuring the provision of safe, competent, and*
13 *reliable services to the public. This compact is designed to achieve the following*
14 *objectives, and the member states hereby ratify the same intentions by subscribing*
15 *hereto:*

16 *A. Increase public access to massage therapy services by providing for a multistate*
17 *licensing pathway;*

18 *B. Enhance the member states' ability to protect the public's health and safety;*

19 *C. Enhance the member states' ability to prevent human trafficking and licensure*
20 *fraud;*

21 *D. Encourage the cooperation of member states in regulating the multistate practice*
22 *of massage therapy;*

23 *E. Support relocating military members and their spouses;*

24 *F. Facilitate and enhance the exchange of licensure, investigative, and disciplinary*
25 *information between the member states;*

26 *G. Create an interstate commission that will exist to implement and administer the*
27 *compact;*

1 H. Allow a member state to hold a licensee accountable, even where that licensee
2 holds a multistate license;

3 I. Create a streamlined pathway for licensees to practice in member states, thus
4 increasing the mobility of duly licensed massage therapists; and

5 J. Serve the needs of licensed massage therapists and the public receiving their
6 services; however

7 K. Nothing in this compact is intended to prevent a state from enforcing its own laws
8 regarding the practice of massage therapy.

9 ARTICLE 2- DEFINITIONS

10 As used in this compact, except as otherwise provided and subject to clarification by the
11 rules of the commission, the following definitions shall govern the terms herein:

12 A. "Active Military Member" means any person with full-time duty status in the
13 Armed Forces of the United States, including members of the National Guard
14 and Reserve;

15 B. "Adverse Action" means any administrative, civil, equitable, or criminal action
16 permitted by a member state's laws which is imposed by a licensing authority or
17 other regulatory body against a licensee, including actions against an
18 individual's authorization to practice such as revocation, suspension, probation,
19 surrender in lieu of discipline, monitoring of the licensee, limitation of the
20 licensee's practice, or any other encumbrance on licensure affecting an
21 individual's ability to practice massage therapy, including the issuance of a cease
22 and desist order;

23 C. "Alternative Program" means a nondisciplinary monitoring or prosecutorial
24 diversion program approved by a member state's licensing authority;

25 D. "Authorization to Practice" means a legal authorization by a remote state
26 pursuant to a multistate license permitting the practice of massage therapy in that
27 remote state, which shall be subject to the enforcement jurisdiction of the

1 licensing authority in that remote state;

2 E. "Background Check" means the submission of an applicant's criminal history
3 record information, as further defined in 28 C.F.R. sec. 20.3(d), as amended,
4 from the Federal Bureau of Investigation and the agency responsible for
5 retaining state criminal records in the applicant's home state;

6 F. "Charter Member States" means member states who have enacted legislation to
7 adopt this compact where such legislation predates the effective date of this
8 compact as defined in Article 12 of this compact;

9 G. "Commission" means the government agency whose membership consists of all
10 states that have enacted this compact, which is known as the Interstate Massage
11 Compact Commission, as defined in Article 8 of this compact, and which shall
12 operate as an instrumentality of the member states;

13 H. "Continuing Competence" means a requirement, as a condition of license
14 renewal, to provide evidence of participation in, and completion of, educational
15 or professional activities that maintain, improve, or enhance massage therapy
16 fitness to practice;

17 I. "Current Significant Investigative Information" means investigative information
18 that a licensing authority, after an inquiry or investigation that complies with a
19 member state's due process requirements, has reason to believe is not groundless
20 and, if proved true, would indicate a violation of that state's laws regarding the
21 practice of massage therapy;

22 J. "Data System" means a repository of information about licensees who hold
23 multistate licenses, which may include but is not limited to license status,
24 investigative information, and adverse actions;

25 K. "Disqualifying Event" means any event which shall disqualify an individual
26 from holding a multistate license under this compact, which the commission may
27 by rule specify;

- 1 *L. "Encumbrance" means a revocation or suspension of, or any limitation or*
2 *condition on, the full and unrestricted practice of massage therapy by a licensing*
3 *authority;*
- 4 *M. "Executive Committee" means a group of delegates elected or appointed to act on*
5 *behalf of, and within the powers granted to them by, the commission;*
- 6 *N. "Home State" means the member state which is a licensee's primary state of*
7 *residence where the licensee holds an active single-state license;*
- 8 *O. "Investigative Information" means information, records, or documents received*
9 *or generated by a licensing authority pursuant to an investigation or other*
10 *inquiry;*
- 11 *P. "Licensing Authority" means a state's regulatory body responsible for issuing*
12 *massage therapy licenses or otherwise overseeing the practice of massage therapy*
13 *in that state;*
- 14 *Q. "Licensee" means an individual who currently holds a license from a member*
15 *state to fully practice massage therapy, whose license is not a student, provisional,*
16 *temporary, inactive, or other similar status;*
- 17 *R. "Massage Therapy", "Massage Therapy Services", and the "Practice of Massage*
18 *Therapy" mean the care and services provided by a licensee as set forth in the*
19 *member state's statutes and regulations in the state where the services are being*
20 *provided;*
- 21 *S. "Member State" means any state that has adopted this compact;*
- 22 *T. "Multistate License" means a license that consists of authorizations to practice*
23 *massage therapy in all remote states pursuant to this compact, which shall be*
24 *subject to the enforcement jurisdiction of the licensing authority in a licensee's*
25 *home state;*
- 26 *U. "National Licensing Examination" means a national examination developed by a*
27 *national association of massage therapy regulatory boards, as defined by*

1 commission rule, that is derived from a practice analysis and is consistent with
2 generally accepted psychometric principles of fairness, validity, and reliability,
3 and is administered under secure and confidential examination protocols;

4 V. "Remote State" means any member state, other than the licensee's home state;

5 W. "Rule" means any opinion or regulation promulgated by the commission under
6 this compact, which shall have the force of law;

7 X. "Single-State License" means a current, valid authorization issued by a member
8 state's licensing authority allowing an individual to fully practice massage
9 therapy, that is not a restricted, student, provisional, temporary, or inactive
10 practice authorization and authorizes practice only within the issuing state; and

11 Y. "State" means a state, territory, possession of the United States, or the District of
12 Columbia.

13 ARTICLE 3- MEMBER STATE REQUIREMENTS

14 A. To be eligible to join this compact, and to maintain eligibility as a member state, a
15 state must:

16 1. License and regulate the practice of massage therapy;

17 2. Have a mechanism or entity in place to receive and investigate complaints
18 from the public, regulatory or law enforcement agencies, or the commission
19 about licensees practicing in that state;

20 3. Accept passage of a national licensing examination as a criterion for
21 massage therapy licensure in that state;

22 4. Require that licensees satisfy educational requirements prior to being
23 licensed to provide massage therapy services to the public in that state;

24 5. Implement procedures for requiring the background check of applicants for
25 a multistate license, and for the reporting of any disqualifying events,
26 including but not limited to obtaining and submitting, for each licensee
27 holding a multistate license and each applicant for a multistate license,

1 fingerprint or other biometric-based information to the Federal Bureau of
2 Investigation for background checks, receiving the results of the Federal
3 Bureau of Investigation record search on background checks, and
4 considering the results of such a background check in making licensure
5 decisions;

6 6. Have continuing competence requirements as a condition for license
7 renewal;

8 7. Participate in the data system, including through the use of unique
9 identifying numbers as described herein;

10 8. Notify the commission and other member states, in compliance with the
11 terms of the compact and rules of the commission, of any disciplinary action
12 taken by the state against a licensee practicing under a multistate license in
13 that state, or of the existence of investigative information or current
14 significant investigative information regarding a licensee practicing in that
15 state pursuant to a multistate license;

16 9. Comply with the rules of the commission; and

17 10. Accept licensees with valid multistate licenses from other member states as
18 established herein.

19 B. Individuals not residing in a member state shall continue to be able to apply for a
20 member state's single-state license as provided under the laws of each member
21 state. However, the single-state license granted to those individuals shall not be
22 recognized as granting a multistate license for massage therapy in any other
23 member state.

24 C. Nothing in this compact shall affect the requirements established by a member
25 state for the issuance of a single-state license.

26 D. A multistate license issued to a licensee shall be recognized by each remote state
27 as an authorization to practice massage therapy in each remote state.

1 ARTICLE 4- MULTISTATE LICENSE REQUIREMENTS

2 A. To qualify for a multistate license under this compact, and to maintain eligibility
3 for such a license, an applicant must:

4 1. Hold an active single-state license to practice massage therapy in the
5 applicant's home state;

6 2. Have completed at least six hundred twenty-five (625) clock hours of
7 massage therapy education or the substantial equivalent which the
8 commission may approve by rule;

9 3. Have passed a national licensing examination or the substantial equivalent
10 which the commission may approve by rule;

11 4. Submit to a background check;

12 5. Have not been convicted or found guilty, or have entered into an agreed
13 disposition, of a felony offense under applicable state or federal criminal
14 law, within five (5) years prior to the date of their application, where such a
15 time period shall not include any time served for the offense, and provided
16 that the applicant has completed any and all requirements arising as a
17 result of any such offense;

18 6. Have not been convicted or found guilty, or have entered into an agreed
19 disposition, of a misdemeanor offense related to the practice of massage
20 therapy under applicable state or federal criminal law, within two (2) years
21 prior to the date of their application where such a time period shall not
22 include any time served for the offense, and provided that the applicant has
23 completed any and all requirements arising as a result of any such offense;

24 7. Have not been convicted or found guilty, or have entered into an agreed
25 disposition, of any offense, whether a misdemeanor or a felony, under state
26 or federal law, at any time, relating to any of the following:

27 a. Kidnapping;

- 1 **b. Human trafficking;**
2 **c. Human smuggling;**
3 **d. Sexual battery, sexual assault, or any related offenses; or**
4 **e. Any other category of offense which the commission may by rule**
5 **designate;**
6 **8. Have not previously held a massage therapy license which was revoked by,**
7 **or surrendered in lieu of discipline to, an applicable licensing authority;**
8 **9. Have no history of any adverse action on any occupational or professional**
9 **license within two (2) years prior to the date of their application; and**
10 **10. Pay all required fees.**
11 **B. A multistate license granted pursuant to this compact may be effective for a**
12 **definite period of time concurrent with the renewal of the home state license.**
13 **C. A licensee practicing in a member state is subject to all scope of practice laws**
14 **governing massage therapy services in that state.**
15 **D. The practice of massage therapy under a multistate license granted pursuant to**
16 **this compact will subject the licensee to the jurisdiction of the licensing authority,**
17 **the courts, and the laws of the member state in which the massage therapy**
18 **services are provided.**

19 **ARTICLE 5- AUTHORITY OF INTERSTATE MASSAGE COMPACT**
20 **COMMISSION AND MEMBER STATE LICENSING AUTHORITIES**

- 21 **A. Nothing in this compact, nor any rule of the commission, shall be construed to**
22 **limit, restrict, or in any way reduce the ability of a member state to enact and**
23 **enforce laws, regulations, or other rules related to the practice of massage**
24 **therapy in that state, where those laws, regulations, or other rules are not**
25 **inconsistent with the provisions of this compact.**
26 **B. Nothing in this compact, nor any rule of the commission, shall be construed to**
27 **limit, restrict, or in any way reduce the ability of a member state to take adverse**

1 action against a licensee's single-state license to practice massage therapy in that
2 state.

3 C. Nothing in this compact, nor any rule of the commission, shall be construed to
4 limit, restrict, or in any way reduce the ability of a remote state to take adverse
5 action against a licensee's authorization to practice in that state.

6 D. Nothing in this compact, nor any rule of the commission, shall be construed to
7 limit, restrict, or in any way reduce the ability of a licensee's home state to take
8 adverse action against a licensee's multistate license based upon information
9 provided by a remote state.

10 E. Insofar as practical, a member state's licensing authority shall cooperate with the
11 commission and with each entity exercising independent regulatory authority
12 over the practice of massage therapy according to the provisions of this compact.

13 ARTICLE 6- ADVERSE ACTIONS

14 A. A licensee's home state shall have exclusive power to impose an adverse action
15 against a licensee's multistate license issued by the home state.

16 B. A home state may take adverse action on a multistate license based on the
17 investigative information, current significant investigative information, or
18 adverse action of a remote state.

19 C. A home state shall retain authority to complete any pending investigations of a
20 licensee practicing under a multistate license who changes their home state
21 during the course of such an investigation. The licensing authority shall also be
22 empowered to report the results of such an investigation to the commission
23 through the data system as described herein.

24 D. Any member state may investigate actual or alleged violations of the scope of
25 practice laws in any other member state for a massage therapist who holds a
26 multistate license.

27 E. A remote state shall have the authority to:

- 1 1. Take adverse actions against a licensee's authorization to practice;
- 2 2. Issue cease and desist orders or impose an encumbrance on a licensee's
- 3 authorization to practice in that state;
- 4 3. Issue subpoenas for both hearings and investigations that require the
- 5 attendance and testimony of witnesses, as well as the production of
- 6 evidence. Subpoenas issued by a licensing authority in a member state for
- 7 the attendance and testimony of witnesses or the production of evidence
- 8 from another member state shall be enforced in the latter state by any court
- 9 of competent jurisdiction, according to the practice and procedure of that
- 10 court applicable to subpoenas issued in proceedings before it. The issuing
- 11 licensing authority shall pay any witness fees, travel expenses, mileage, and
- 12 other fees required by the service statutes of the state in which the witnesses
- 13 or evidence are located;
- 14 4. If otherwise permitted by state law, recover from the affected licensee the
- 15 costs of investigations and disposition of cases resulting from any adverse
- 16 action taken against that licensee; and
- 17 5. Take adverse action against the licensee's authorization to practice in that
- 18 state based on the factual findings of another member state.
- 19 F. If an adverse action is taken by the home state against a licensee's multistate
- 20 license or single-state license to practice in the home state, the licensee's
- 21 authorization to practice in all other member states shall be deactivated until all
- 22 encumbrances have been removed from such license. All home state disciplinary
- 23 orders that impose an adverse action against a licensee shall include a statement
- 24 that the massage therapist's authorization to practice is deactivated in all member
- 25 states during the pendency of the order.
- 26 G. If adverse action is taken by a remote state against a licensee's authorization to
- 27 practice, that adverse action applies to all authorizations to practice in all remote

1 states. A licensee whose authorization to practice in a remote state is removed for
2 a specified period of time is not eligible to apply for a new multistate license in
3 any other state until the specific time for removal of the authorization to practice
4 has passed and all encumbrance requirements are satisfied.

5 H. Nothing in this compact shall override a member state's authority to accept a
6 licensee's participation in an alternative program in lieu of adverse action. A
7 licensee's multistate license shall be suspended for the duration of the licensee's
8 participation in any alternative program.

9 I. Joint Investigations

10 1. In addition to the authority granted to a member state by its respective scope
11 of practice laws or other applicable state law, a member state may
12 participate with other member states in joint investigations of licensees.

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

16 ARTICLE 7- ACTIVE MILITARY MEMBERS AND THEIR SPOUSES

17 Active military members, or their spouses, shall designate a home state where the
18 individual has a current license to practice massage therapy in good standing. The
19 individual may retain their home state designation during any period of service when
20 that individual or their spouse is on active duty assignment.

21 ARTICLE 8- ESTABLISHMENT AND OPERATION OF INTERSTATE MASSAGE
22 COMPACT COMMISSION

23 A. The compact member states hereby create and establish a joint government
24 agency whose membership consists of all member states that have enacted the
25 compact known as the Interstate Massage Compact Commission. The
26 commission is an instrumentality of the compact states acting jointly and not an
27 instrumentality of any one (1) state. The commission shall come into existence on

1 or after the effective date of the compact as set forth in Article 12 of this compact.

2 **B. Membership, Voting, and Meetings**

3 1. Each member state shall have and be limited to one (1) delegate selected by
4 that member state's state licensing authority.

5 2. The delegate shall be the primary administrative officer of the state
6 licensing authority or their designee.

7 3. The commission shall by rule or bylaw establish a term of office for
8 delegates and may by rule or bylaw establish term limits.

9 4. The commission may recommend removal or suspension of any delegate
10 from office.

11 5. A member state's state licensing authority shall fill any vacancy of its
12 delegate occurring on the commission within sixty (60) days of the vacancy.

13 6. Each delegate shall be entitled to one (1) vote on all matters that are voted
14 on by the commission.

15 7. The commission shall meet at least once during each calendar year.
16 Additional meetings may be held as set forth in the bylaws. The commission
17 may meet by telecommunication, video conference, or other similar
18 electronic means.

19 **C. The commission shall have the following powers:**

20 1. Establish the fiscal year of the commission;

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

22 3. Adopt rules and bylaws;

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

24 5. Meet and take such actions as are consistent with the provisions of this
25 compact, the commission's rules, and the bylaws;

26 6. Initiate and conclude legal proceedings or actions in the name of the
27 commission, provided that the standing of any state licensing authority to

- 1 sue or be sued under applicable law shall not be affected;
- 2 7. Maintain and certify records and information provided to a member state as
- 3 the authenticated business records of the commission, and designate an
- 4 agent to do so on the commission's behalf;
- 5 8. Purchase and maintain insurance and bonds;
- 6 9. Borrow, accept, or contract for services of personnel, including but not
- 7 limited to employees of a member state;
- 8 10. Conduct an annual financial review;
- 9 11. Hire employees, elect or appoint officers, fix compensation, define duties,
- 10 grant such individuals appropriate authority to carry out the purposes of the
- 11 compact, and establish the commission's personnel policies and programs
- 12 relating to conflicts of interest, qualifications of personnel, and other
- 13 related personnel matters;
- 14 12. Assess and collect fees;
- 15 13. Accept any and all appropriate gifts, donations, grants of money, other
- 16 sources of revenue, equipment, supplies, materials, and services, and
- 17 receive, utilize, and dispose of the same; provided that at all times the
- 18 commission shall avoid any appearance of impropriety or conflict of
- 19 interest;
- 20 14. Lease, purchase, retain, own, hold, improve, or use any property, real,
- 21 personal, or mixed, or any undivided interest therein;
- 22 15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
- 23 dispose of any property, real, personal, or mixed;
- 24 16. Establish a budget and make expenditures;
- 25 17. Borrow money;
- 26 18. Appoint committees, including standing committees, composed of members,
- 27 state regulators, state legislators or their representatives, and consumer

1 representatives, and such other interested persons as may be designated in
2 this compact and the bylaws;

3 19. Accept and transmit complaints from the public, regulatory or law
4 enforcement agencies, or the commission, to the relevant member state or
5 states regarding potential misconduct of licensees;

6 20. Elect a chair, vice chair, secretary, treasurer, and such other officers of the
7 commission as provided in the commission's bylaws;

8 21. Establish and elect an executive committee, including a chair and a vice
9 chair;

10 22. Adopt and provide to the member states an annual report;

11 23. Determine whether a state's adopted language is materially different from
12 the model compact language such that the state would not qualify for
13 participation in the compact; and

14 24. Perform such other functions as may be necessary or appropriate to achieve
15 the purposes of this compact.

16 D. The Executive Committee

17 1. The executive committee shall have the power to act on behalf of the
18 commission according to the terms of this compact. The powers, duties, and
19 responsibilities of the executive committee shall include:

20 a. Overseeing the day-to-day activities of the administration of the
21 compact, including compliance with the provisions of the compact, the
22 commission's rules and bylaws, and other such duties as deemed
23 necessary;

24 b. Recommending to the commission changes to the rules or bylaws,
25 changes to this compact legislation, fees charged to compact member
26 states, fees charged to licensees, and other fees;

27 c. Ensuring compact administration services are appropriately provided,

- 1 including by contract;
- 2 d. Preparing and recommending the budget;
- 3 e. Maintaining financial records on behalf of the commission;
- 4 f. Monitoring compact compliance of member states and providing
5 compliance reports to the commission;
- 6 g. Establishing additional committees as necessary;
- 7 h. Exercise the powers and duties of the commission during the interim
8 between commission meetings, except for adopting or amending rules,
9 adopting or amending bylaws, and exercising any other powers and
10 duties expressly reserved to the commission by rule or bylaw; and
- 11 i. Other duties as provided in the rules or bylaws of the commission.
- 12 2. The executive committee shall be composed of seven (7) voting members
13 and up to two (2) ex-officio members as follows:
- 14 a. The chair and vice chair of the commission and any other members of
15 the commission who serve on the executive committee shall be voting
16 members of the executive committee;
- 17 b. Other than the chair, vice chair, secretary, and treasurer, the
18 commission shall elect three (3) voting members from the current
19 membership of the commission; and
- 20 c. The commission may elect ex-officio, nonvoting members as necessary
21 as follows:
- 22 i. One (1) ex-officio member who is a representative of the
23 national association of state massage therapy regulatory boards;
24 and
- 25 ii. One (1) ex-officio member as specified in the commission's
26 bylaws.
- 27 3. The commission may remove any member of the executive committee as

1 provided in the commission's bylaws.

2 4. The executive committee shall meet at least annually.

3 a. Executive committee meetings shall be open to the public, except that
4 the executive committee may meet in a closed, nonpublic session of a
5 public meeting when dealing with any of the matters covered under
6 subsection F.4. of this article.

7 b. The executive committee shall give five (5) business days advance
8 notice of its public meetings, posted on its website and as determined
9 to provide notice to persons with an interest in the public matters the
10 executive committee intends to address at those meetings.

11 5. The executive committee may hold an emergency meeting when acting for
12 the commission to:

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

14 b. Prevent a loss of commission or participating state funds; or

15 c. Protect public health and safety.

16 E. The commission shall adopt and provide to the member states an annual report.

17 F. Meetings of the Commission

18 1. All meetings of the commission that are not closed pursuant to this
19 subsection shall be open to the public. Notice of public meetings shall be
20 posted on the commission's website at least thirty (30) days prior to the
21 public meeting.

22 2. Notwithstanding subsection F.1. of this article, the commission may
23 convene an emergency public meeting by providing at least twenty-four (24)
24 hours' prior notice on the commission's website, and any other means as
25 provided in the commission's rules, for any of the reasons it may dispense
26 with notice of proposed rulemaking under Article 10.L. of this compact. The
27 commission's legal counsel shall certify that one (1) of the reasons

1 justifying an emergency public meeting has been met.

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

6 4. The commission may convene in a closed, nonpublic meeting for the
7 commission to discuss:

8 a. Noncompliance of a member state with its obligations under the
9 compact;

10 b. The employment, compensation, discipline or other matters, practices
11 or procedures related to specific employees, or other matters related to
12 the commission's internal personnel practices and procedures;

13 c. Current or threatened discipline of a licensee by the commission or by
14 a member state's licensing authority;

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

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

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

19 g. Trade secrets or commercial or financial information that is privileged
20 or confidential;

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

23 i. Investigative records compiled for law enforcement purposes;

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

1 k. Legal advice;

2 l. Matters specifically exempted from disclosure to the public by federal
3 or member state law; or

4 m. Other matters as promulgated by the commission by rule.

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

8 6. The commission shall keep minutes that fully and clearly describe all
9 matters discussed in a meeting and shall provide a full and accurate
10 summary of actions taken, and the reasons therefor, including a description
11 of the views expressed. All documents considered in connection with an
12 action shall be identified in such minutes. All minutes and documents of a
13 closed meeting shall remain under seal, subject to release only by a majority
14 vote of the commission or order of a court of competent jurisdiction.

15 G. Financing of the Commission

16 1. The commission shall pay, or provide for the payment of, the reasonable
17 expenses of its establishment, organization, and ongoing activities.

18 2. The commission may accept any and all appropriate sources of revenue,
19 donations, and grants of money, equipment, supplies, materials, and
20 services.

21 3. The commission may levy on and collect an annual assessment from each
22 member state and impose fees on licensees of member states to whom it
23 grants a multistate license to cover the cost of the operations and activities
24 of the commission and its staff, which must be in a total amount sufficient
25 to cover its annual budget as approved each year for which revenue is not
26 provided by other sources. The aggregate annual assessment amount for
27 member states shall be allocated based upon a formula that the commission

1 shall promulgate by rule.

2 4. The commission shall not incur obligations of any kind prior to securing
3 the funds adequate to meet the same; nor shall the commission pledge the
4 credit of any member states, except by and with the authority of the member
5 state.

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

13 H. Qualified Immunity, Defense, and Indemnification

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

26 2. The commission shall defend any member, officer, executive director,
27 employee, and representative of the commission in any civil action seeking

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

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

19 4. Nothing herein shall be construed as a limitation on the liability of any
20 licensee for professional malpractice or misconduct, which shall be
21 governed solely by any other applicable state laws.

22 5. Nothing in this compact shall be interpreted to waive or otherwise abrogate
23 a member state's state action immunity or state action affirmative defense
24 with respect to antitrust claims under the Sherman Act, Clayton Act, or any
25 other state or federal antitrust or anticompetitive law or regulation.

26 6. Nothing in this compact shall be construed to be a waiver of sovereign
27 immunity by the member states or by the commission.

1 ARTICLE 9- DATA SYSTEM

- 2 A. The commission shall provide for the development, maintenance, operation, and
3 utilization of a coordinated database and reporting system.
- 4 B. The commission shall assign each applicant for a multistate license a unique
5 identifier, as determined by the rules of the commission.
- 6 C. Notwithstanding any other provision of state law to the contrary, a member state
7 shall submit a uniform data set to the data system on all individuals to whom this
8 compact is applicable as required by the rules of the commission, including:
- 9 1. Identifying information;
10 2. Licensure data;
11 3. Adverse actions against a license and information related thereto;
12 4. Nonconfidential information related to alternative program participation,
13 the beginning and ending dates of such participation, and other information
14 related to such participation;
15 5. Any denial of application for licensure, and the reason or reasons for such
16 denial, excluding the reporting of any criminal history record information
17 where prohibited by law;
18 6. The existence of investigative information;
19 7. The existence of current significant investigative information; and
20 8. Other information that may facilitate the administration of this compact or
21 the protection of the public, as determined by the rules of the commission.
- 22 D. The records and information provided to a member state pursuant to this compact
23 or through the data system, when certified by the commission or an agent thereof,
24 shall constitute the authenticated business records of the commission, and shall
25 be entitled to any associated hearsay exception in any relevant judicial, quasi-
26 judicial, or administrative proceedings in a member state.
- 27 E. The existence of current significant investigative information and the existence of

1 investigative information pertaining to a licensee in any member state shall only
2 be available to other member states.

3 F. It is the responsibility of the member states to report any adverse action against a
4 licensee who holds a multistate license and to monitor the database to determine
5 whether adverse action has been taken against such a licensee or license
6 applicant. Adverse action information pertaining to a licensee or license
7 applicant in any member state shall be available to any other member state.

8 G. Member states contributing information to the data system may designate
9 information that may not be shared with the public without the express
10 permission of the contributing state.

11 H. Any information submitted to the data system that is subsequently expunged
12 pursuant to federal law or the laws of the member state contributing the
13 information shall be removed from the data system.

14 ARTICLE 10- RULEMAKING

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

22 B. The rules of the commission shall have the force of law in each member state,
23 provided however that where the rules of the commission conflict with the laws of
24 the member state that establish the member state's scope of practice as held by a
25 court of competent jurisdiction, the rules of the commission shall be ineffective in
26 that state to the extent of the conflict.

27 C. The commission shall exercise its rulemaking powers pursuant to the criteria set

1 forth in this article and the rules adopted thereunder. Rules shall become binding
2 as of the date specified by the commission for each rule.

3 D. If a majority of the legislatures of the member states reject a rule or portion of a
4 rule, by enactment of a statute or resolution in the same manner used to adopt the
5 compact within four (4) years of the date of adoption of the rule, then such rule
6 shall have no further force and effect in any member state or to any state
7 applying to participate in the compact.

8 E. Rules shall be adopted at a regular or special meeting of the commission.

9 F. Prior to adoption of a proposed rule, the commission shall hold a public hearing
10 and allow persons to provide oral and written comments, data, facts, opinions,
11 and arguments.

12 G. Prior to adoption of a proposed rule by the commission, and at least thirty (30)
13 days in advance of the meeting at which the commission will hold a public
14 hearing on the proposed rule, the commission shall provide a notice of proposed
15 rulemaking:

- 16 1. On the website of the commission or other publicly accessible platform;
17 2. To persons who have requested notice of the commission's notices of
18 proposed rulemaking; and
19 3. In such other way or ways as the commission may by rule specify.

20 H. The notice of proposed rulemaking shall include:

- 21 1. The time, date, and location of the public hearing at which the commission
22 will hear public comments on the proposed rule and, if different, the time,
23 date, and location of the meeting where the commission will consider and
24 vote on the proposed rule;
25 2. If the hearing is held via telecommunication, video conference, or other
26 electronic means, the commission shall include the mechanism for access to
27 the hearing in the notice of proposed rulemaking;

- 1 3. The text of the proposed rule and the reason therefor;
- 2 4. A request for comments on the proposed rule from any interested person;
- 3 and
- 4 5. The manner in which interested persons may submit written comments.
- 5 I. All hearings shall be recorded. A copy of the recording and all written comments
- 6 and documents received by the commission in response to the proposed rule shall
- 7 be available to the public.
- 8 J. Nothing in this article shall be construed as requiring a separate hearing on each
- 9 rule. Rules may be grouped for the convenience of the commission at hearings
- 10 required by this article.
- 11 K. The commission shall, by majority vote of all commissioners, take final action on
- 12 the proposed rule based on the rulemaking record.
- 13 1. The commission may adopt changes to the proposed rule provided the
- 14 changes do not enlarge the original purpose of the proposed rule.
- 15 2. The commission shall provide an explanation of the reasons for substantive
- 16 changes made to the proposed rule as well as reasons for substantive
- 17 changes not made that were recommended by commenters.
- 18 3. The commission shall determine a reasonable effective date for the rule.
- 19 Except for an emergency as provided in subsection L. of this article, the
- 20 effective date of the rule shall be no sooner than thirty (30) days after the
- 21 commission issuing the notice that it adopted or amended the rule.
- 22 L. Upon determination that an emergency exists, the commission may consider and
- 23 adopt an emergency rule with twenty-four (24) hours' notice, provided that the
- 24 usual rulemaking procedures provided in the compact and in this article shall be
- 25 retroactively applied to the rule as soon as reasonably possible, in no event later
- 26 than ninety (90) days after the effective date of the rule. For the purposes of this
- 27 provision, an emergency rule is one that must be adopted immediately to:

- 1 1. Meet an imminent threat to public health, safety, or welfare;
- 2 2. Prevent a loss of commission or member state funds;
- 3 3. Meet a deadline for the promulgation of a rule that is established by federal
- 4 law or rule; or
- 5 4. Protect public health and safety.

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

17 N. No member state's rulemaking requirements shall apply under this compact.

18 ARTICLE 11- OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

19 A. Oversight

- 20 1. The executive and judicial branches of state government in each member
21 state shall enforce this compact and take all actions necessary and
22 appropriate to implement the compact.
- 23 2. Venue is proper and judicial proceedings by or against the commission shall
24 be brought solely and exclusively in a court of competent jurisdiction where
25 the principal office of the commission is located. The commission may
26 waive venue and jurisdictional defenses to the extent it adopts or consents to
27 participate in alternative dispute resolution proceedings. Nothing herein

1 shall affect or limit the selection or propriety of venue in any action against
2 a licensee for professional malpractice, misconduct, or any such similar
3 matter.

4 3. The commission shall be entitled to receive service of process in any
5 proceeding regarding the enforcement or interpretation of the compact and
6 shall have standing to intervene in such a proceeding for all purposes.
7 Failure to provide the commission service of process shall render a
8 judgment or order void as to the commission, this compact, or promulgated
9 rules.

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

11 1. If the commission determines that a member state has defaulted in the
12 performance of its obligations or responsibilities under this compact or the
13 promulgated rules, the commission shall provide written notice to the
14 defaulting state. The notice of default shall describe the default, the
15 proposed means of curing the default, and any other action that the
16 commission may take, and shall offer training and specific technical
17 assistance regarding the default.

18 2. The commission shall provide a copy of the notice of default to the other
19 member states.

20 C. If a state in default fails to cure the default, the defaulting state may be
21 terminated from the compact upon an affirmative vote of a majority of the
22 delegates of the member states, and all rights, privileges, and benefits conferred
23 on that state by this compact may be terminated on the effective date of
24 termination. A cure of the default does not relieve the offending state of
25 obligations or liabilities incurred during the period of default.

26 D. Termination of membership in the compact shall be imposed only after all other
27 means of securing compliance have been exhausted. Notice of intent to suspend

1 or terminate shall be given by the commission to the governor, the majority and
2 minority leaders of the defaulting state's legislature, the defaulting state's state
3 licensing authority, and each of the member states' state licensing authority.

4 E. A state that has been terminated is responsible for all assessments, obligations,
5 and liabilities incurred through the effective date of termination, including
6 obligations that extend beyond the effective date of termination.

7 F. Upon the termination of a state's membership from this compact, that state shall
8 immediately provide notice to all licensees who hold a multistate license within
9 that state of such termination. The terminated state shall continue to recognize all
10 licenses granted pursuant to this compact for a minimum of one hundred eighty
11 (180) days after the date of said notice of termination.

12 G. The commission shall not bear any costs related to a state that is found to be in
13 default or that has been terminated from the compact, unless agreed upon in
14 writing between the commission and the defaulting state.

15 H. The defaulting state may appeal the action of the commission by petitioning the
16 United States District Court for the District of Columbia or the federal district
17 where the commission has its principal offices. The prevailing party shall be
18 awarded all costs of such litigation, including reasonable attorney's fees.

19 I. Dispute Resolution

20 1. Upon request by a member state, the commission shall attempt to resolve
21 disputes related to the compact that arise among member states and between
22 member and non-member states.

23 2. The commission shall promulgate a rule providing for both mediation and
24 binding dispute resolution for disputes as appropriate.

25 J. Enforcement

26 1. The commission, in the reasonable exercise of its discretion, shall enforce
27 the provisions of this compact and the commission's rules.

1 2. By majority vote as provided by commission rule, the commission may
2 initiate legal action against a member state in default in the United States
3 District Court for the District of Columbia or the federal district where the
4 commission has its principal offices to enforce compliance with the
5 provisions of the compact and its promulgated rules. The relief sought may
6 include both injunctive relief and damages. In the event judicial
7 enforcement is necessary, the prevailing party shall be awarded all costs of
8 such litigation, including reasonable attorney's fees. The remedies herein
9 shall not be the exclusive remedies of the commission. The commission may
10 pursue any other remedies available under federal or the defaulting
11 member state's law.

12 3. A member state may initiate legal action against the commission in the
13 United States District Court for the District of Columbia or the federal
14 district where the commission has its principal offices to enforce
15 compliance with the provisions of the compact and its promulgated rules.
16 The relief sought may include both injunctive relief and damages. In the
17 event judicial enforcement is necessary, the prevailing party shall be
18 awarded all costs of such litigation, including reasonable attorney's fees.

19 4. No individual or entity other than a member state may enforce this compact
20 against the commission.

21 ARTICLE 12- EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

22 A. The compact shall come into effect on the date on which the compact statute is
23 enacted into law in the seventh member state.

24 1. On or after the effective date of the compact, the commission shall convene
25 and review the enactment of each of the charter member states to determine
26 if the statute enacted by each such charter member state is materially
27 different than the model compact statute.

1 a. A charter member state whose enactment is found to be materially
2 different from the model compact statute shall be entitled to the
3 default process set forth in Article 11 of this compact.

4 b. If any member state is later found to be in default, or is terminated or
5 withdraws from the compact, the commission shall remain in
6 existence and the compact shall remain in effect even if the number of
7 member states should be less than seven (7).

8 2. Member states enacting the compact subsequent to the charter member
9 states shall be subject to the process set forth in Article 8.C.23. of this
10 compact to determine if their enactments are materially different from the
11 model compact statute and whether they qualify for participation in the
12 compact.

13 3. All actions taken for the benefit of the commission or in furtherance of the
14 purposes of the administration of the compact prior to the effective date of
15 the compact or the commission coming into existence shall be considered to
16 be actions of the commission unless specifically repudiated by the
17 commission.

18 4. Any state that joins the compact shall be subject to the commission's rules
19 and bylaws as they exist on the date on which the compact becomes law in
20 that state. Any rule that has been previously adopted by the commission
21 shall have the full force and effect of law on the day the compact becomes
22 law in that state.

23 B. Any member state may withdraw from this compact by enacting a statute
24 repealing that state's enactment of the compact.

25 1. A member state's withdrawal shall not take effect until one hundred eighty
26 (180) days after enactment of the repealing statute.

27 2. Withdrawal shall not affect the continuing requirement of the withdrawing

1 state's licensing authority to comply with the investigative and adverse
2 action reporting requirements of this compact prior to the effective date of
3 withdrawal.

4 3. Upon the enactment of a statute withdrawing from this compact, a state
5 shall immediately provide notice of such withdrawal to all licensees within
6 that state. Notwithstanding any subsequent statutory enactment to the
7 contrary, such withdrawing state shall continue to recognize all licenses
8 granted pursuant to this compact for a minimum of one hundred eighty
9 (180) days after the date of such notice of withdrawal.

10 C. Nothing contained in this compact shall be construed to invalidate or prevent any
11 licensure agreement or other cooperative arrangement between a member state
12 and a non-member state that does not conflict with the provisions of this compact.

13 D. This compact may be amended by the member states. No amendment to this
14 compact shall become effective and binding upon any member state until it is
15 enacted into the laws of all member states.

16 ARTICLE 13. CONSTRUCTION AND SEVERABILITY

17 A. This compact and the commission's rulemaking authority shall be liberally
18 construed so as to effectuate the purposes, and the implementation and
19 administration of the compact. Provisions of the compact expressly authorizing or
20 requiring the promulgation of rules shall not be construed to limit the
21 commission's rulemaking authority solely for those purposes.

22 B. The provisions of this compact shall be severable and if any phrase, clause,
23 sentence, or provision of this compact is held by a court of competent jurisdiction
24 to be contrary to the constitution of any member state, a state seeking
25 participation in the compact, or of the United States, or the applicability thereof
26 to any government, agency, person, or circumstance is held to be unconstitutional
27 by a court of competent jurisdiction, the validity of the remainder of this compact

1 and the applicability thereof to any other government, agency, person, or
2 circumstance shall not be affected thereby.

3 C. Notwithstanding subsection B. of this article, the commission may deny a state's
4 participation in the compact or, in accordance with the requirements of Article
5 11.B. of this compact terminate a member state's participation in the compact, if
6 it determines that a constitutional requirement of a member state is a material
7 departure from the compact. Otherwise, if this compact shall be held to be
8 contrary to the constitution of any member state, the compact shall remain in full
9 force and effect as to the remaining member states and in full force and effect as
10 to the member state affected as to all severable matters.

11 ARTICLE 14. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE

12 LAWS

13 Nothing herein shall prevent or inhibit the enforcement of any other law of a member
14 state that is not inconsistent with the compact. Any laws, statutes, regulations, or other
15 legal requirements in a member state in conflict with the compact are superseded to the
16 extent of the conflict. All permissible agreements between the commission and the
17 member states are binding in accordance with their terms.

18 ARTICLE 15. APPLICABILITY TO KENTUCKY STATE GOVERNMENT

19 In order to clarify the effect of certain provisions of this compact and to ensure that the
20 rights and responsibilities of the various branches of government are maintained, the
21 following shall be in effect in this state:

22 A. By entering into this compact, this state authorizes the state licensing authority as
23 defined in Article 2 of this compact and as created by KRS 309.354 to implement
24 the provisions of this compact.

25 B. Notwithstanding any provision of this compact to the contrary:

26 1. When a rule is adopted pursuant to Article 10 of this compact, the state
27 licensing authority as defined by Article 2 of this compact shall have sixty

- 1 (60) days to review the rule for the purpose of filing the rule as an
2 emergency administrative regulation pursuant to KRS 13A.190 and for
3 filing the rule as an accompanying ordinary administrative regulation,
4 following the requirements of KRS Chapter 13A. Failure by the state
5 licensing authority as defined by Article 2 of this compact to promulgate a
6 rule adopted by the commission as an administrative regulation pursuant to
7 KRS Chapter 13A shall result in the initiation of the process for withdrawal
8 as set forth in Article 12 of this compact. Nothing in these provisions shall
9 negate the applicability and effect of Article 10 of this compact to this state.
- 10 2. If the proposed administrative regulation is found deficient and the
11 deficiency is not resolved pursuant to KRS 13A.330 or 13A.335, the
12 provisions of Article 11 of this compact shall apply. If the procedures under
13 Article 11 of this compact fail to resolve an issue, the provisions of Article
14 12 of this compact shall apply.
- 15 3. If the commission created by Article 8 of this compact exercises its
16 rulemaking authority in a manner that is beyond the scope of the purposes
17 of this compact, or the powers granted under this compact, then such an
18 action by the commission shall be invalid and have no force or effect.
- 19 C. Article 8 of this compact pertaining to the financing of the commission shall not
20 be interpreted to obligate the general fund of this state. Any funds used to finance
21 this compact shall be from money collected pursuant to KRS 309.350 to 309.364.
- 22 D. This compact shall apply only to those massage therapists who practice or work
23 under a compact privilege.