

1       AN ACT relating to respiratory care.

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

3       ➔ SECTION 1. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO  
4       READ AS FOLLOWS:

5       **RESPIRATORY CARE INTERSTATE COMPACT**

6       **SECTION 1.**

7       **TITLE AND PURPOSE**

8       **A. The purpose of this compact is to facilitate the interstate practice of respiratory**  
9       **therapy with the goal of improving public access to respiratory therapy services by**  
10       **providing respiratory therapists licensed in a member state the ability to practice**  
11       **in other member states. This compact preserves the regulatory authority of states**  
12       **to protect public health and safety through the current system of state licensure.**

13       **B. This compact is designed to achieve the following objectives:**

14       **1. Increase public access to respiratory therapy services by creating a**  
15       **responsible, streamlined pathway for licensees to practice in member states**  
16       **with the goal of improving outcomes for patients;**  
17       **2. Enhance states' ability to protect the public's health and safety;**  
18       **3. Promote the cooperation of member states in regulating the practice of**  
19       **respiratory therapy within those member states;**  
20       **4. Ease administrative burdens on states by encouraging the cooperation of**  
21       **member states in regulating multistate respiratory therapy practice;**  
22       **5. Support relocating active military members and their spouses; and**  
23       **6. Promote mobility and address workforce shortages.**

24       **SECTION 2.**

25       **DEFINITIONS**

26       **As used in this compact, unless the context requires otherwise, the following**  
27       **definitions shall apply:**

1    A.    "Active military member" means any person with a full-time duty status in the  
2    Armed Forces of the United States, including members of the National Guard  
3    and Reserve;

4    B.    "Adverse action" means any administrative, civil, equitable, or criminal action  
5    permitted by a state's laws which is imposed by any state authority with  
6    regulatory authority over respiratory therapists, such as license denial, censure,  
7    revocation, suspension, probation, monitoring of the licensee, or restriction on  
8    the licensee's practice, not including participation in an alternative program;

9    C.    "Alternative program" means a nondisciplinary monitoring or practice  
10    remediation process applicable to a respiratory therapist approved by any state  
11    authority with regulatory authority over respiratory therapists. This includes but  
12    is not limited to programs to which licensees with substance abuse or addiction  
13    issues are referred in lieu of adverse action;

14    D.    "Charter member states" means those member states who were the first seven (7)  
15    states to enact the compact into the laws of their state;

16    E.    "Commission" or "Respiratory Care Interstate Compact Commission" means the  
17    government instrumentality and body politic whose membership consists of all  
18    member states that have enacted the compact;

19    F.    "Commissioner" means the individual appointed by a member state to serve as  
20    the member of the commission for that member state;

21    G.    "Compact" means the Respiratory Care Interstate Compact;

22    H.    "Compact privilege" means the authorization granted by a remote state to allow a  
23    licensee from another member state to practice as a respiratory therapist in the  
24    remote state under the remote state's laws and rules. The practice of respiratory  
25    therapy occurs in the member state where the patient is located at the time of the  
26    patient encounter;

27    I.    "Criminal background check" means the submission by the member state of

1       *fingerprints or other biometric-based information on license applicants at the*  
2       *time of initial licensing for the purpose of obtaining that applicant's criminal*  
3       *history record information, as defined in 28 C.F.R. sec. 20.3(d) or successor*  
4       *provision, from the Federal Bureau of Investigation and the state's criminal*  
5       *history record repository, as defined in 28 C.F.R. sec. 20.3(f) or successor*  
6       *provision;*

7       *J. "Data system" means the commission's repository of information about licensees*  
8       *as further set forth in Section 8 of this compact;*

9       *K. "Domicile" means the jurisdiction which is the licensee's principal home for*  
10       *legal purposes;*

11       *L. "Encumbered license" means a license that a state's respiratory therapy*  
12       *licensing authority has limited in any way;*

13       *M. "Executive committee" means a group of directors elected or appointed to act on*  
14       *behalf of, and within the powers granted to them by, the commission;*

15       *N. "Home state" except as set forth in Section 5 of this compact, means the member*  
16       *state that is the licensee's primary domicile;*

17       *O. "Home state license" means an active license to practice respiratory therapy in a*  
18       *home state that is not an encumbered license;*

19       *P. "Jurisprudence requirement" means an assessment of an individual's knowledge*  
20       *of the state laws and regulations governing the practice of respiratory therapy in*  
21       *such state;*

22       *Q. "Licensee" means an individual who currently holds an authorization from the*  
23       *state to practice as a respiratory therapist;*

24       *R. "Member state" means a state that has enacted the compact and been admitted to*  
25       *the commission in accordance with the provisions herein and commission rules;*

26       *S. "Model compact" means the model for the Respiratory Care Interstate Compact*  
27       *on file with the Council of State Governments or other entity as designated by the*

1        *commission;*

2        **T. "Remote state"** means a member state where a licensee is exercising or seeking to  
3        *exercise the compact privilege;*

4        **U. "Respiratory therapist"** or **"respiratory care practitioner"** means an individual  
5        *who holds a credential issued by the National Board for Respiratory Care, or its*  
6        *successor, and holds a license in a state to practice respiratory therapy. For*  
7        *purposes of this compact, any other title or status adopted by a state to replace the*  
8        *term "respiratory therapist" or "respiratory care practitioner" shall be deemed*  
9        *synonymous with "respiratory therapist" and shall confer the same rights and*  
10        *responsibilities to the licensee under the provisions of this compact at the time of*  
11        *its enactment;*

12        **V. "Respiratory therapy," "respiratory therapy practice," "respiratory care," "the**  
13        *practice of respiratory care," and "the practice of respiratory therapy"* means the  
14        *care and services provided by or under the direction and supervision of a*  
15        *respiratory therapist or respiratory care practitioner;*

16        **W. "Respiratory therapy licensing authority"** means the agency, board, or other  
17        *body of a state that is responsible for licensing and regulation of respiratory*  
18        *therapists;*

19        **X. "Rule"** means a regulation promulgated by the commission that has the force  
20        *and effect of law;*

21        **Y. "Scope of practice"** means the procedures, actions, and processes a respiratory  
22        *therapist licensed in a state or practicing under a compact privilege in a state is*  
23        *permitted to undertake in that state and the circumstances under which the*  
24        *respiratory therapist is permitted to undertake those procedures, actions, and*  
25        *processes. Such procedures, actions, and processes, and the circumstances under*  
26        *which they may be undertaken, may be established through means, including but*  
27        *not limited to statutes, regulations, case law, and other processes available to the*

1        state respiratory therapy licensing authority or other government agency;

2    Z.    "Significant investigative information" means information, records, and  
3        documents received or generated by a state respiratory therapy licensing authority  
4        pursuant to an investigation for which a determination has been made that there  
5        is probable cause to believe that the licensee has violated a statute or regulation  
6        that is considered more than a minor infraction for which the state respiratory  
7        therapy licensing authority could pursue adverse action against the licensee; and

8    AA.    "State" means any state, commonwealth, district, or territory of the United States.

### SECTION 3.

## **STATE PARTICIPATION IN THIS COMPACT**

11    A. In order to participate in this compact and thereafter continue as a member state,

12    a member state shall:

13    1. Enact a compact that is not materially different from the model compact;

14    2. License respiratory therapists;

15    3. Participate in the commission's data system;

16    4. Have a mechanism in place for receiving and investigating complaints  
17    against licensees and compact privilege holders;

18    5. Notify the commission, in compliance with the terms of this compact and  
19    commission rules, of any adverse action against a licensee, a compact  
20    privilege holder, or a license applicant;

21    6. Notify the commission, in compliance with the terms of this compact and  
22    commission rules, of the existence of significant investigative information;

23    7. Comply with the rules of the commission;

24    8. Grant the compact privilege to a holder of an active home state license and  
25    otherwise meet the applicable requirements of Section 4 of this compact in a  
26    member state; and

27    9. a. Complete a criminal background check for each new licensee at the

**time of initial licensure.**

b. Where expressly authorized or permitted by federal law, whether such federal law is in effect prior to, at, or after the time of a member state's enactment of this compact, a member state's enactment of this compact shall hereby authorize the member state's respiratory therapy licensing authority to perform criminal background checks as defined in Section 2 of this compact. The absence of such a federal law as described in this subsection shall not prevent or preclude such authorization where it may be derived or granted through means other than the enactment of this compact.

11 **B. Nothing in this compact prohibits a member state from charging a fee for**  
12 **granting and renewing the compact privilege.**

## SECTION 4.

## COMPACT PRIVILEGE

15     A. To exercise the compact privilege under the terms and provisions of the compact,  
16            the licensee shall:

1. Hold and maintain an active home state license as a respiratory therapist;
2. Hold and maintain an active credential from the National Board for Respiratory Care, or its successor, that would qualify them for licensure in the remote state in which they are seeking the compact privilege;
3. Have not had any adverse action against a license within the previous two (2) years;
4. Notify the commission that the licensee is seeking the compact privilege within a remote states;
5. Pay any applicable fees, including any state and commission fees and renewal fees, for the compact privilege;
6. Meet any jurisprudence requirements established by the remote state in

which the licensee is seeking a compact privilege;

7. Report to the commission adverse action taken by any nonmember state within thirty (30) days from the date the adverse action is taken;

8. Report to the commission, when applying for a compact privilege, the address of the licensee's domicile and thereafter promptly report to the commission any change in the address of the licensee's domicile within thirty (30) days of the effective date of the change in address; and

9. Consent to accept service of process by mail at the licensee's domicile on record with the commission with respect to any action brought against the licensee by the commission or a member state, and consent to accept service of a subpoena by mail at the licensee's domicile on record with the commission with respect any action brought or investigation conducted by the commission or a member state.

14 **B. The compact privilege is valid until the expiration date or revocation of the home**  
15 **state license unless terminated pursuant to adverse action. The licensee must**  
16 **comply with all of the requirements of subsection A. of this section to maintain**  
17 **the compact privilege in a remote state. If those requirements are met, no adverse**  
18 **actions are taken, and the licensee has paid any applicable compact privilege**  
19 **renewal fees, then the licensee will maintain the licensee's compact privilege.**

20 C. A licensee providing respiratory therapy in a remote state under the compact  
21 privilege shall function within the scope of practice authorized by the remote state  
22 for the type of respiratory therapist license the licensee holds. Such procedures,  
23 actions, processes, and the circumstances under which they may be undertaken  
24 may be established through means, including but not limited to statutes,  
25 regulations, case law, and other processes available to the state respiratory  
26 therapy licensing authority or other government agency.

27 D. If a licensee's compact privilege in a remote state is removed by the remote state,

1        the individual shall lose or be ineligible for the compact privilege in that remote  
2        state until the compact privilege is no longer limited or restricted by that state.

3        E. If a home state license is encumbered, the licensee shall lose the compact  
4        privilege in all remote states until the following occur:

- 5        1. The home state license is no longer encumbered; and
- 6        2. Two (2) years have elapsed from the date on which the license is no longer  
7        encumbered due to the adverse action.

8        F. Once a licensee with a restricted or limited license meets the requirements of  
9        subsection E. of this section, the licensee must also meet the requirements of  
10        subsection A. of this section to obtain a compact privilege in a remote state.

## 11        SECTION 5.

### 12        ACTIVE MILITARY MEMBER OR THEIR SPOUSE

13        A. An active military member, or their spouse, shall designate a home state where  
14        the individual has a current license in good standing. The individual may retain  
15        the home state designation during the period the service member is on active  
16        duty.

17        B. An active military member and their spouse shall not be required to pay to the  
18        commission for a compact privilege any fee that may otherwise be charged by the  
19        commission. If a remote state chooses to charge a fee for a compact privilege, it  
20        may choose to charge a reduced fee or no fee to an active military member and  
21        their spouse for a compact privilege.

## 22        SECTION 6.

### 23        ADVERSE ACTIONS

24        A. A member state in which a licensee is licensed shall have authority to impose  
25        adverse action against the license issued by that member state.

26        B. A member state may take adverse action based on significant investigative  
27        information of a remote state or the home state, so long as the member state

1        follows its own procedures for imposing adverse action.

2        C. Nothing in this compact shall override a member state's decision that  
3        participation in an alternative program may be used in lieu of adverse action and  
4        that such participation shall remain nonpublic if required by the member state's  
5        laws.

6        D. A remote state shall have the authority to:

7        1. Take adverse actions as set forth herein against a licensee's compact  
8        privilege in that state;

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

11        a. Subpoenas may be issued by a respiratory therapy licensing authority  
12        in a member state for the attendance and testimony of witnesses and  
13        the production of evidence.

14        b. Subpoenas issued by a respiratory therapy licensing authority in a  
15        member state for the attendance and testimony of witnesses shall be  
16        enforced in the latter state by any court of competent jurisdiction in  
17        the latter state, according to the practice and procedure of that court  
18        applicable to subpoenas issued in proceedings pending before it.

19        c. Subpoenas issued by a respiratory therapy licensing authority in a  
20        member state for production of evidence from another member state  
21        shall be enforced in the latter state, according to the practice and  
22        procedure of that court applicable to subpoenas issued in the  
23        proceedings pending before it.

24        d. The issuing authority shall pay any witness fees, travel expenses,  
25        mileage, and other fees required by the service statutes of the state  
26        where the witnesses or evidence are located;

27        3. Unless otherwise prohibited by state law, recover from the licensee the costs

1                   of investigations and disposition of cases resulting from any adverse action  
2                   taken against that licensee;

3                  4. Notwithstanding paragraph 2. of this subsection, a member state may not  
4                  issue a subpoena to gather evidence of conduct in another member state  
5                  that is lawful in such other member state for the purpose of taking adverse  
6                  action against a licensee's compact privilege or application for a compact  
7                  privilege in that member state; and

8                  5. Nothing in this compact authorizes a member state to impose discipline  
9                  against a respiratory therapist's compact privilege in that member state for  
10                 the individual's otherwise lawful practice in another state.

11                 E. Joint investigations.

12                 1. In addition to the authority granted to a member state by its respective  
13                 respiratory therapy practice act or other applicable state law, a member state  
14                 may participate with other member states in joint investigations of licensees,  
15                 provided, however, that a member state receiving such a request has no  
16                 obligation to respond to any subpoena issued regarding an investigation of  
17                 conduct or practice that was lawful in a member state at the time it was  
18                 undertaken.

19                 2. Member states shall share any significant investigative information,  
20                 litigation, or compliance materials in furtherance of any joint or individual  
21                 investigation initiated under the compact. In sharing such information  
22                 between member state respiratory therapy licensing authorities, all  
23                 information obtained shall be kept confidential, except as otherwise  
24                 mutually agreed upon by the sharing and receiving member state or states.

25                 F. Nothing in this compact may permit a member state to take any adverse action  
26                 against a licensee or holder of a compact privilege for conduct or practice that  
27                 was legal in the member state at the time it was undertaken.

**G. Nothing in this compact may permit a member state to take disciplinary action against a licensee or holder of a compact privilege for conduct or practice that was legal in the member state at the time it was undertaken.**

## SECTION 7.

**ESTABLISHMENT OF THE RESPIRATORY CARE INTERSTATE COMPACT**

**COMMISSION**

A. The compact member states hereby create and establish a joint government agency whose membership consists of all member states that have enacted the compact known as the Respiratory Care Interstate Compact Commission. The commission is an instrumentality of the compact member states acting jointly and not an instrumentality of any one (1) state. The commission shall come into existence on or after the effective date of the compact, as set forth in Section 11 of this compact.

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

1. Each member state shall have and be limited to one (1) commissioner selected by that member state's respiratory therapy licensing authority.
2. The commissioner shall be an administrator or their designated staff member of the member state's respiratory therapy licensing authority.
3. The commission shall by rule or bylaw establish a term of office for commissioners and may by rule or bylaw establish term limits.
4. The commission may recommend to a member state the removal or suspension any commissioner from office.
5. A member state's respiratory therapy licensing authority shall fill any vacancy of its commissioner occurring on the commission within sixty (60) days of the vacancy.
6. Each commissioner shall be entitled to one (1) vote on all matters before the commission requiring a vote by commissioners.

1       7. A commissioner shall vote in person or by such other means as provided in  
2       the bylaws. The bylaws may provide for commissioners to meet by  
3       telecommunication, videoconference, or other means of communication.  
4       8. The commission shall meet at least once during each calendar year.  
5       Additional meetings may be held as set forth in the bylaws.

6       C. The commission shall have the following powers:

7       1. Establish and amend the fiscal year of the commission;  
8       2. Establish and amend bylaws and policies, including but not limited to a  
9       code of conduct and conflict of interest;  
10       3. Establish and amend rules, which shall be binding in all member states;  
11       4. Maintain its financial records in accordance with the bylaws;  
12       5. Meet and take such actions as are consistent with the provisions of this  
13       compact, the commission's rules, and the bylaws;  
14       6. Initiate and conduct legal proceedings or actions in the name of the  
15       commission, provided that the standing of any respiratory therapy licensing  
16       authority to sue or be sued under applicable law shall not be affected;  
17       7. Maintain and certify records and information provided to a member state as  
18       the authenticated business records of the commission, and designate an  
19       agent to do so on the commission's behalf;  
20       8. Purchase and maintain insurance and bonds;  
21       9. Accept or contract for services of personnel, including but not limited to  
22       employees of a member state;  
23       10. Conduct an annual financial review;  
24       11. Hire employees, elect or appoint officers, fix compensation, define duties,  
25       grant such individuals appropriate authority to carry out the purposes of the  
26       compact, and establish the commission's personnel policies and programs  
27       relating to conflicts of interest, qualifications of personnel, and other

1                   related personnel matters;

2                   12. Assess and collect fees;

3                   13. Accept any and all appropriate gifts, donations, grants of money, other  
4                   sources of revenue, equipment, supplies, materials, and services, and  
5                   receive, utilize, and dispose of the same, provided that at all times:

6                   a. The commission shall avoid any appearance of impropriety; and  
7                   b. The commission shall avoid any appearance of conflict of interest;

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

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

12                   16. Establish a budget and make expenditures;

13                   17. Borrow money in a fiscally responsible manner;

14                   18. Appoint committees, including standing committees, composed of  
15                   commissioners, state regulators, state legislators or their representatives,  
16                   and consumer representatives, and such other interested persons as may be  
17                   designated in this compact and the bylaws;

18                   19. Provide and receive information from, and cooperate with, law enforcement  
19                   agencies;

20                   20. Establish and elect an executive committee, including a chair, vice-chair,  
21                   secretary, treasurer, and such other offices as the commission shall  
22                   establish by rule or bylaw;

23                   21. Enter into contracts or arrangements for the management of the affairs of  
24                   the commission;

25                   22. Determine whether a state's adopted language is materially different from  
26                   the model compact language such that the state would not qualify for  
27                   participation in the compact; and

1        23. Perform such other functions as may be necessary or appropriate to achieve  
2        the purposes of this compact.

3        **D. The Executive Committee.**

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

- 7        a. Overseeing the day-to-day activities of the administration of the  
8        compact, including enforcement and compliance with the provisions  
9        of the compact, its rules and bylaws, and other such duties as deemed  
10        necessary;
- 11        b. Recommending to the commission changes to the rules or bylaws,  
12        changes to this compact legislation, fees charged to compact member  
13        states, fees charged to licensees, and other fees;
- 14        c. Ensuring compact administration services are appropriately provided,  
15        including by contract;
- 16        d. Preparing and recommending the budget;
- 17        e. Maintaining financial records on behalf of the commission;
- 18        f. Monitoring compact compliance of member states and providing  
19        compliance reports to the commission;
- 20        g. Establishing additional committees as necessary;
- 21        h. Exercising the powers and duties of the commission during the  
22        interim between commission meetings, except for adopting or  
23        amending rules, adopting or amending bylaws, and exercising any  
24        other powers and duties expressly reserved to the commission by rule  
25        or bylaw; and
- 26        i. Performing other duties as provided in the rules or bylaws of the  
27        commission.

- 1       2. *The executive committee shall be composed of up to nine (9) members, as*  
2       *further set forth in the bylaws of the commission:*  
3        a. *Seven (7) voting members who are elected by the commission from the*  
4       *current membership of the commission; and*  
5        b. *Two (2) ex-officio, nonvoting members;*  
6       3. *The commission may remove any member of the executive committee as*  
7       *provided in the commission's bylaws.*  
8       4. *The executive committee shall meet at least annually.*  
9        a. *Executive committee meetings shall be open to the public, except that*  
10       *the executive committee may meet in a closed, non-public meeting as*  
11       *provided in subsection F.4. of this section;*  
12       b. *The executive committee shall give advance notice of its meetings,*  
13       *posted on its website and as determined to provide notice to persons*  
14       *with an interest in the business of the commission; and*  
15       c. *The executive committee may hold a special meeting in accordance*  
16       *with subsection F.2. of this section.*  
17       E. *The commission shall adopt and provide to the member states an annual report.*  
18       F. *Meetings of the Compact Commission.*  
19       1. *All meetings of the commission that are not closed pursuant to paragraph 4.*  
20       *of this subsection shall be open to the public. Notice of public meetings*  
21       *shall be posted on the commission's website at least thirty (30) days prior to*  
22       *the public meeting.*  
23       2. *Notwithstanding paragraph 1. of this subsection, the commission may*  
24       *convene an emergency public meeting by providing at least twenty-four (24)*  
25       *hours prior notice on the commission's website, and any other means as*  
26       *provided in the commission's rules, for any of the reasons it may dispense*  
27       *with notice of proposed rulemaking under subsection G. of Section 9 of this*

1                   compact. The commission's legal counsel shall certify that one (1) of the  
2                   reasons justifying an emergency public meeting has been met.

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

7                   4. The commission or the executive committee may convene in a closed,  
8                   nonpublic meeting for the commission or executive committee to receive or  
9                   solicit legal advice or to discuss:

10                   a. Noncompliance of a member state with its obligations under the  
11                   compact;

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

14                   c. Current or threatened discipline of a licensee or compact privilege  
15                   holder by the commission or by a member state's respiratory therapy  
16                   licensing authority;

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

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

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

21                   g. Trade secrets or commercial or financial information that is privileged  
22                   or confidential;

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

25                   i. Investigative records compiled for law enforcement purposes;

26                   j. Information related to any investigative reports prepared by or on  
27                   behalf of or for use of the commission or other committee charged

with responsibility of investigation or determination of compliance issues pursuant to the compact;

**k. Legal advice;**

**l. Matters specifically exempted from disclosure by federal or member state law; or**

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

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

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

#### G. Financing of the Compact Commission.

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

2. The commission may accept any and all appropriate revenue sources as provided herein.

3. The commission may levy on and collect an annual assessment from each member state and impose fees on licensees of member states to whom it grants a compact privilege to cover the cost of the operations and activities of the commission and its staff. The aggregate annual assessment amount for member states, if any, shall be allocated based upon a formula that the commission shall promulgate by rule.

4. The commission shall not incur obligations of any kind prior to securing the funds or a loan adequate to meet the same; nor shall the commission

1 pledge the credit of any of the member states, except by and with the  
2 authority of the member state.

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

10 **H. Qualified Immunity, Defense, and Indemnification.**

11 1. Nothing herein shall be construed as a limitation on the liability of any  
12 licensee for professional malpractice or misconduct, which shall be  
13 governed solely by any other applicable state laws.

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

26 3. The commission shall defend any commissioner, officer, executive director,  
27 employee, and agent of the commission in any civil action seeking to impose

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

4. *The commission shall indemnify and hold harmless any commissioner, member, officer, executive director, employee, and agent of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.*

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

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

## SECTION 8.

## DATA SYSTEM

**A. The commission shall provide for the development, maintenance, operation, and**

1        utilization of a coordinated database and reporting system containing licensure,  
2        adverse action, and the presence of significant investigative information.

3        **B. Notwithstanding any other provision of state law to the contrary, a member state**  
4        **shall submit a uniform data set to the data system as required by the rules of the**  
5        **commission, including but not limited to:**

6        **1. Identifying information;**

7        **2. Licensure data;**

8        **3. Adverse actions against a licensee, license applicant, or compact privilege**  
9        **holder and information related thereto;**

10        **4. Nonconfidential information related to alternative program participation,**  
11        **the beginning and ending dates of such participation, and other information**  
12        **related to such participation not made confidential under member state law;**

13        **5. Any denial of application for licensure, and the reasons for such denial;**

14        **6. The presence of current significant investigative information; and**

15        **7. Other information that may facilitate the administration of this compact or**  
16        **the protection of the public, as determined by the rules of the commission.**

17        **C. No member state shall submit any information which constitutes criminal history**  
18        **record information, as defined by applicable federal law, to the data system**  
19        **established hereunder.**

20        **D. The records and information provided to a member state pursuant to this compact**  
21        **or through the data system, when certified by the commission or an agent thereof,**  
22        **shall constitute the authenticated business records of the commission, and shall**  
23        **be entitled to any associated hearsay exception in any relevant judicial, quasi-**  
24        **judicial, or administrative proceedings in a member state.**

25        **E. Significant investigative information pertaining to a licensee in any member state**  
26        **will only be available to other member states.**

27        **F. It is the responsibility of the member states to report any adverse action against a**

1       licensee and to monitor the database to determine whether adverse action has  
2       been taken against a licensee. adverse action information pertaining to a licensee  
3       in any member state will be available to any other member state.

4       G. Member states contributing information to the data system may designate  
5       information that may not be shared with the public without the express  
6       permission of the contributing state.

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

10       SECTION 9.

11       RULEMAKING

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

19       B. For purposes of the compact, the rules of the commission shall have the force of  
20       law in each member state.

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

24       D. If a majority of the legislatures of the member states rejects a rule or portion of a  
25       rule, by enactment of a statute or resolution in the same manner used to adopt the  
26       compact within four (4) years of the date of adoption of the rule, then such rule  
27       shall have no further force and effect in any member state.

- 1    **E. Rules shall be adopted at a regular or special meeting of the commission.**
- 2    **F. Prior to adoption of a proposed rule, the commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.**
- 3    **G. Prior to adoption of a proposed rule by the commission, and at least thirty (30) days in advance of the meeting at which the commission will hold a public hearing on the proposed rule, the commission shall provide a notice of proposed rulemaking:**
  - 4    **1. On the website of the commission or other publicly accessible platform;**
  - 5    **2. To persons who have requested notice of the commission's notices of proposed rulemaking, and**
  - 6    **3. In such other ways as the commission may by rule specify.**
- 7    **H. The notice of proposed rulemaking shall include:**
  - 8    **1. The time, date, and location of the public hearing at which the commission will hear public comments on the proposed rule and, if different, the time, date, and location of the meeting where the commission will consider and vote on the proposed rule;**
  - 9    **2. If the hearing is held via telecommunication, video conference, or other electronic means, the mechanism for access to the hearing in the notice of proposed rulemaking;**
  - 10    **3. The text of the proposed rule and the reason therefor;**
  - 11    **4. A request for comments on the proposed rule from any interested person;**  
12    **and**
  - 13    **5. The manner in which interested persons may submit written comments.**
- 14    **I. All hearings will be recorded. A copy of the recording and all written comments and documents received by the commission in response to the proposed rule shall be available to the public.**

1     J. Nothing in this section shall be construed as requiring a separate hearing on  
2     each rule. Rules may be grouped for the convenience of the commission at  
3     hearings required by this section.

4     K. The commission shall, by majority vote of all commissioners, take final action on  
5     the proposed rule based on the rulemaking record and the full text of the rule.

6       1. The commission may adopt changes to the proposed rule provided the  
7       changes are consistent with the original purpose of the proposed rule.

8       2. The commission shall provide an explanation of the reasons for substantive  
9       changes made to the proposed rule as well as reasons for substantive  
10       changes not made that were recommended by commenters.

11       3. The commission shall determine a reasonable effective date for the rule.  
12       Except for an emergency as provided in subsection L. of this section, the  
13       effective date of the rule shall be no sooner than thirty (30) days after  
14       issuing the notice that it adopted or amended the rule.

15     L. Upon determination that an emergency exists, the commission may consider and  
16     adopt an emergency rule with twenty-four (24) hours' notice, and with  
17     opportunity to comment, provided that the usual rulemaking procedures provided  
18     in the compact and in this section shall be retroactively applied to the rule as soon  
19     as reasonably possible, in no event later than ninety (90) days after the effective  
20     date of the rule. For the purposes of this provision, an emergency rule is one that  
21     must be adopted immediately in order to:

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

27     M. The commission or an authorized committee of the commission may direct

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

11 *N. No member state's rulemaking process or procedural requirements shall apply to*  
12 *the commission. The commission shall have no authority over any member state's*  
13 *rulemaking process or procedural requirements that do not pertain to the*  
14 *compact.*

15 *O. Nothing in this compact, nor any rule or regulation of the commission, shall be*  
16 *construed to limit, restrict, or in any way reduce the ability of a member state to*  
17 *enact and enforce laws, regulations, or other rules related to the practice of*  
18 *respiratory therapy in that state, where those laws, regulations, or other rules are*  
19 *not inconsistent with the provisions of this compact.*

20 **SECTION 10.**

21 **OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

22 *A. Oversight.*

- 23 *1. The executive and judicial branches of state government in each member*  
24 *state shall enforce this compact and take all actions necessary and*  
25 *appropriate to implement the compact.*
- 26 *2. Venue is proper and judicial proceedings by or against the commission shall*  
27 *be brought solely and exclusively in a court of competent jurisdiction where*

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

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

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

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

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

23        **C. If a state in default fails to cure the default, the defaulting state may be**  
24        **terminated from the compact upon an affirmative vote of a majority of the**  
25        **commissioners of the member states, and all rights, privileges, and benefits**  
26        **conferred on that state by this compact may be terminated on the effective date of**  
27        **termination. A cure of the default does not relieve the offending state of**

1        obligations or liabilities incurred during the period of default.

2        **D.** Termination of membership in the compact shall be imposed only after all other  
3        means of securing compliance have been exhausted. Notice of intent to suspend  
4        or terminate shall be given by the commission to the governor, the majority and  
5        minority leaders of the defaulting state's legislature, the defaulting state's  
6        respiratory therapy licensing authority and each of the member states' respiratory  
7        therapy licensing authorities.

8        **E.** A state that has been terminated is responsible for all assessments, obligations,  
9        and liabilities incurred through the effective date of termination, including  
10        obligations that extend beyond the effective date of termination, if necessary.

11        **F.** Upon the termination of a state's membership from this compact, that state shall  
12        immediately provide notice to all licensees and compact privilege holders, of  
13        which the commission has a record, within that state of such termination. The  
14        terminated state shall continue to recognize all licenses granted pursuant to this  
15        compact for a minimum of one hundred eighty (180) days after the date of said  
16        notice of termination.

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

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

24        **I.** Dispute Resolution.

25        **I.** Upon request by a member state, the commission shall attempt to resolve  
26        disputes related to the compact that arise among member states and between  
27        member and nonmember states.

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

### J. Enforcement.

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

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

3. No person other than a member state shall enforce this compact against the commission.

## SECTION 11.

#### ***EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT***

27 A. *The compact shall come into effect on the date on which the compact statute is*

1        enacted into law in the seventh member state.

2        1. On or after the effective date of the compact, the commission shall convene  
3        and review the enactment of each of the first seven (7) member states to  
4        determine if the statute enacted by each such charter member state is  
5        materially different than the model compact.

6        a. A charter member state whose enactment is found to be materially  
7        different from the model compact shall be entitled to the default  
8        process set forth in Section 10 of this compact.

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

13        2. Member states enacting the compact subsequent to the seven (7) initial  
14        charter member states shall be subject to the process set forth herein and  
15        commission rule to determine if their enactments are materially different  
16        from the model compact and whether they qualify for participation in the  
17        compact.

18        3. All actions taken for the benefit of the commission or in furtherance of the  
19        purposes of the administration of the compact prior to the effective date of  
20        the compact or the commission coming into existence shall be considered to  
21        be actions of the commission unless specifically repudiated by the  
22        commission. The commission shall own and have all rights to any  
23        intellectual property developed on behalf or in furtherance of the  
24        commission by individuals or entities involved in organizing or establishing  
25        the commission, as may be further set forth in rules of the commission.

26        4. Any state that joins the compact subsequent to the commission's initial  
27        adoption of the rules and bylaws shall be subject to the rules and bylaws as

they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the date the compact becomes law in that state.

4 B. Any member state may withdraw from this compact by enacting a statute  
5 repealing the same.

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

8        2. Withdrawal shall not affect the continuing requirement of the withdrawing  
9        state's respiratory therapy licensing authority to comply with the  
0        investigative and adverse action reporting requirements of this compact  
1        prior to the effective date of withdrawal.

12       3. Upon the enactment of a statute withdrawing from this compact, a state  
13        shall immediately provide notice of such withdrawal to all licensees and  
14        compact privilege holders, of which the commission has a record, within  
15        that state. Notwithstanding any subsequent statutory enactment to the  
16        contrary, such withdrawing state shall continue to recognize all licenses  
17        granted pursuant to this compact for a minimum of one hundred eighty  
18        (180) days after the date of such notice of withdrawal.

19 **C. Nothing contained in this compact shall be construed to invalidate or prevent any**  
20 **licensure agreement or other cooperative arrangement between a member state**  
21 **and a nonmember state that does not conflict with the provisions of this compact.**

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

## SECTION 12.

## **CONSTRUCTION AND SEVERABILITY**

27 A. *This compact and the commission's rulemaking authority shall be liberally*

1 construed so as to effectuate the purposes and the implementation and  
2 administration of the compact. Provisions of the compact expressly authorizing or  
3 requiring the promulgation of rules shall not be construed to limit the  
4 commission's rulemaking authority solely for those purposes.

5 **B. The provisions of this compact shall be severable, and if any phrase, clause,**  
6 **sentence or provision of this compact is held by a court of competent jurisdiction**  
7 **to be contrary to the constitution of any member state, a state seeking**  
8 **participation in the compact, or of the United States, or the applicability thereof**  
9 **to any government, agency, person, or circumstance is held to be unconstitutional**  
10 **by a court of competent jurisdiction, the validity of the remainder of this compact**  
11 **and the applicability thereof to any other government, agency, person, or**  
12 **circumstance shall not be affected thereby.**

13 C. Notwithstanding subsection B. of this section, the commission may deny a state's  
14 participation in the compact or, in accordance with the requirements of Section  
15 10 of this compact, terminate a member state's participation in the compact, if it  
16 determines that a constitutional requirement of a member state is a material  
17 departure from the compact. Otherwise, if this compact shall be held to be  
18 contrary to the constitution of any member state, the compact shall remain in full  
19 force and effect as to the remaining member states and in full force and effect as  
20 to the member state affected as to all severable matters.

### SECTION 13.

## ***CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS***

23 A. Nothing herein shall prevent or inhibit the enforcement of any other law of a  
24 member state that is not inconsistent with the compact.

25 **B. Any laws, statutes, regulations, or other legal requirements in a member state in**  
26 **conflict with the compact are superseded to the extent of the conflict, including**  
27 **any subsequently enacted state laws.**

- 1     *C. All permissible agreements between the commission and the member states are*
- 2     *binding in accordance with their terms.*
- 3     *D. Other than as expressly set forth herein, nothing in this compact will impact*
- 4     *initial licensure.*