

1 H.625

2 Introduced by Representative Casey of Montpelier

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations; massage therapists, bodyworkers, and
6 touch professionals

7 Statement of purpose of bill as introduced: This bill proposes to adopt the
8 Interstate Massage Compact to enable reciprocal practice by massage
9 therapists in member states.

10 An act relating to adoption of the Interstate Massage Compact

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 26 V.S.A. chapter 105, subchapter 4 is added to read:

13 Subchapter 4. Interstate Massage Compact

14 § 5430. INTERSTATE MESSAGE COMPACT; ADOPTION

15 This subchapter is the Vermont adoption of the Interstate Massage
16 Compact. The form, format, and text of the Compact have been conformed to
17 the conventions of the Vermont Statutes Annotated. It is the intent of the
18 General Assembly that this subchapter be interpreted as substantively the same
19 as the Interstate Massage Compact that is enacted by other Compact member
20 states.

1 § 5431. PURPOSE

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

12 (1) increase public access to massage therapy services by providing for a
13 multistate licensing pathway;

14 (2) enhance the member states' ability to protect the public's health and
15 safety;

16 (3) enhance the member states' ability to prevent human trafficking and
17 licensure fraud;

18 (4) encourage the cooperation of member states in regulating the
19 multistate practice of massage therapy;

20 (5) support relocating military members and their spouses;

1 (6) facilitate and enhance the exchange of licensure, investigative, and
2 disciplinary information between the member states;

3 (7) create an interstate commission that will exist to implement and
4 administer the Compact;

5 (8) allow a member state to hold a licensee accountable, even where that
6 licensee holds a multistate license;

7 (9) create a streamlined pathway for licensees to practice in member
8 states, thus increasing the mobility of duly licensed massage therapists; and

9 (10) serve the needs of licensed massage therapists and the public
10 receiving their services; however,

11 (11) nothing in this compact is intended to prevent a state from
12 enforcing its own laws regarding the practice of massage therapy.

13 § 5432. DEFINITIONS

14 As used in this compact, except as otherwise provided and subject to
15 clarification by the rules of the Commission, the following definitions shall
16 govern the terms herein:

17 (1) “Active military member” means any person with full-time duty
18 status in the armed forces of the United States, including members of the
19 National Guard and Reserve.

20 (2) “Adverse action” means any administrative, civil, equitable, or
21 criminal action permitted by a member state’s laws which is imposed by a

1 licensing authority or other regulatory body against a licensee, including
2 actions against an individual's authorization to practice such as revocation,
3 suspension, probation, surrender in lieu of discipline, monitoring of the
4 licensee, limitation of the licensee's practice, or any other encumbrance on
5 licensure affecting an individual's ability to practice massage therapy,
6 including the issuance of a cease and desist order.

7 (3) "Alternative program" means a non-disciplinary monitoring or
8 prosecutorial diversion program approved by a member state's licensing
9 authority.

10 (4) "Authorization to practice" means a legal authorization by a remote
11 state pursuant to a multistate license permitting the practice of massage therapy
12 in that remote state, which shall be subject to the enforcement jurisdiction of
13 the licensing authority in that remote state.

14 (5) "Background check" means the submission of an applicant's
15 criminal history record information, as further defined in 28 C.F.R. § 20.3(d),
16 as amended from the Federal Bureau of Investigation and the agency
17 responsible for retaining state criminal records in the applicant's home state.

18 (6) "Charter member states" means member states who have enacted
19 legislation to adopt this compact where such legislation predates the effective
20 date of this compact as defined in section 5441 of this title.

1 (7) “Commission” means the government agency whose membership
2 consists of all states that have enacted this compact, which is known as the
3 Interstate Massage Compact Commission, as defined in section 5437 of this
4 title, and which shall operate as an instrumentality of the member states.

5 (8) “Continuing competence” means a requirement, as a condition of
6 license renewal, to provide evidence of participation in, and completion of,
7 educational or professional activities that maintain, improve, or enhance
8 massage therapy fitness to practice.

9 (9) “Current significant investigative information” means investigative
10 information that a licensing authority, after an inquiry or investigation that
11 complies with a member state’s due process requirements, has reason to
12 believe is not groundless and, if proved true, would indicate a violation of that
13 state’s laws regarding the practice of massage therapy.

14 (10) “Data system” means a repository of information about licensees
15 who hold multistate licenses, which may include but is not limited to license
16 status, investigative information, and adverse actions.

17 (11) “Disqualifying event” means any event which shall disqualify an
18 individual from holding a multistate license under this compact, which the
19 Commission may by rule specify.

1 (12) “Encumbrance” means a revocation or suspension of, or any
2 limitation or condition on, the full and unrestricted practice of massage therapy
3 by a licensing authority.

4 (13) “Executive committee” means a group of delegates elected or
5 appointed to act on behalf of, and within the powers granted to them by, the
6 Commission.

7 (14) “Home state” means the member state which is a licensee’s primary
8 state of residence where the licensee holds an active single-state license.

9 (15) “Investigative information” means information, records, or
10 documents received or generated by a licensing authority pursuant to an
11 investigation or other inquiry.

12 (16) “Licensing authority” means a state’s regulatory body responsible
13 for issuing massage therapy licenses or otherwise overseeing the practice of
14 massage therapy in that state.

15 (17) “Licensee” means an individual who currently holds a license from
16 a member state to fully practice massage therapy, whose license is not a
17 student, provisional, temporary, inactive, or other similar status.

18 (18) “Massage therapy,” “massage therapy services,” and the “practice
19 of massage therapy” mean the care and services provided by a licensee as set
20 forth in the member state’s statutes and regulations in the state where the
21 services are being provided.

1 (19) “Member state” means any state that has adopted this compact.

2 (20) “Multistate license” means a license that consists of authorizations
3 to practice massage therapy in all remote states pursuant to this compact,
4 which shall be subject to the enforcement jurisdiction of the licensing authority
5 in a licensee’s home state.

6 (21) “Remote state” means any member state, other than the licensee’s
7 home state.

8 (22) “Rule” means any opinion or regulation promulgated by the
9 Commission under this compact, which shall have the force of law.

10 (23) “Single-state license” means a current, valid authorization issued
11 by a member state’s licensing authority allowing an individual to fully practice
12 massage therapy, that is not a restricted, student, provisional, temporary, or
13 inactive practice authorization and authorizes practice only within the issuing
14 state.

15 (24) “State” means a state, territory, possession of the United States, or
16 the District of Columbia.

17 § 5433. MEMBER STATE REQUIREMENTS

18 (a) To be eligible to join this compact, and to maintain eligibility as a
19 member state, a state must:

20 (1) license and regulate the practice of massage therapy;

1 (2) have a mechanism or entity in place to receive and investigate
2 complaints from the public, regulatory or law enforcement agencies, or the
3 Commission about licensees practicing in that state;

4 (3) accept passage of a psychometrically valid national examination as a
5 criterion for massage therapy licensure in that state; for purposes of this
6 compact, such examination shall not include a state-administered examination
7 but shall be inclusive of the following:

8 (A) the massage and bodywork licensure examination; or

9 (B) the National Certification Board for Therapeutic Massage &
10 Bodywork prior to January 1, 2015; or

11 (C) the substantial equivalent of the foregoing which the Commission
12 may approve by rule;

13 (4) require that licensees satisfy educational requirements prior to being
14 licensed to provide massage therapy services to the public in that state;

15 (5) implement procedures for requiring the background check of
16 applicants for a multistate license, and for the reporting of any disqualifying
17 events, including but not limited to obtaining and submitting, for each licensee
18 holding a multistate license and each applicant for a multistate license,
19 fingerprint or other biometric-based information to the Federal Bureau of
20 Investigation for background checks; receiving the results of the Federal

1 Bureau of Investigation record search on background checks; and considering
2 the results of such a background check in making licensure decisions;

3 (6) have continuing competence requirements as a condition for license
4 renewal;

5 (7) participate in the data system, including through the use of unique
6 identifying numbers as described herein;

7 (8) notify the Commission and other member states, in compliance with
8 the terms of the Compact and rules of the Commission, of any disciplinary
9 action taken by the state against a licensee practicing under a multistate license
10 in that state, or of the existence of investigative information or current
11 significant investigative information regarding a licensee practicing in that
12 state pursuant to a multistate license;

13 (9) comply with the rules of the Commission; and

14 (10) accept licensees with valid multistate licenses from other member
15 states as established herein.

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

1 (c) Nothing in this compact shall affect the requirements established by a
2 member state for the issuance of a single-state license.

3 (d) A multistate license issued to a licensee shall be recognized by each
4 remote state as an authorization to practice massage therapy in each remote
5 state.

6 § 5434. MULTISTATE LICENSE REQUIREMENTS

7 (a) To qualify for a multistate license under this compact, and to maintain
8 eligibility for such a license, an applicant must:

9 (1) hold an active single-state license to practice massage therapy in the
10 applicant's home state;

11 (2) satisfy one of the following:

12 (A) completion of at least 625 hours of massage therapy education;

13 or

14 (B) graduation from an educational program that meets the minimum
15 qualifications for licensure in the home state and two years of continuous
16 licensure with a single-state license in good standing in the home state (except
17 as provided in section 5436 of this title); or

18 (C) satisfaction of the substantial equivalent of the foregoing which
19 the Commission may approve by rule;

1 (3) successfully pass a psychometrically valid national examination; for
2 purposes of this compact, such examination shall not include a state-
3 administered examination but shall be inclusive of the following:

4 (A) the massage and bodywork licensure examination; or

5 (B) the National Certification Board for Therapeutic Massage &
6 Bodywork prior to January 1, 2015; or

7 (C) the substantial equivalent of the foregoing which the Commission
8 may approve by rule;

9 (4) submit to a background check;

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

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

1 (7) have not been convicted or found guilty, or have entered into an
2 agreed disposition, of any offense, whether a misdemeanor or a felony, under
3 state or federal law, at any time, relating to any of the following:

4 (A) kidnapping;

5 (B) human trafficking;

6 (C) human smuggling;

7 (D) sexual battery, sexual assault, or any related offenses; or

8 (E) any other category of offense which the Commission may by rule
9 designate;

10 (8) have not previously held a massage therapy license which was
11 revoked by, or surrendered in lieu of discipline to, an applicable licensing
12 authority;

13 (9) have no history of any adverse action on any occupational or
14 professional license within two years prior to the date of their application; and

15 (10) pay all required fees.

16 (b) A multistate license granted pursuant to this compact may be effective
17 for a definite period of time concurrent with the renewal of the home state
18 license.

19 (c) A licensee practicing in a member state is subject to all scope of
20 practice laws governing massage therapy services in that state.

1 (d) The practice of massage therapy under a multistate license granted
2 pursuant to this compact will subject the licensee to the jurisdiction of the
3 licensing authority, the courts, and the laws of the member state in which the
4 massage therapy services are provided.

5 § 5435. AUTHORITY OF INTERSTATE MASSAGE COMPACT

6 COMMISSION AND MEMBER STATE LICENSING

7 AUTHORITIES

8 (a) Nothing in this compact, nor any rule of the Commission, shall be
9 construed to limit, restrict, or in any way reduce the ability of a member state
10 to enact and enforce laws, regulations, or other rules related to the practice of
11 massage therapy in that state, where those laws, regulations, or other rules are
12 not inconsistent with the provisions of this compact.

13 (b) Nothing in this compact, nor any rule of the Commission, shall be
14 construed to limit, restrict, or in any way reduce the ability of a member state
15 to take adverse action against a licensee's single-state license to practice
16 massage therapy in that state.

17 (c) Nothing in this compact, nor any rule of the Commission, shall be
18 construed to limit, restrict, or in any way reduce the ability of a remote state to
19 take adverse action against a licensee's authorization to practice in that state.

20 (d) Nothing in this compact, nor any rule of the Commission, shall be
21 construed to limit, restrict, or in any way reduce the ability of a licensee's

1 home state to take adverse action against a licensee's multistate license based
2 upon information provided by a remote state.

3 (e) Insofar as practical, a member state's licensing authority shall cooperate
4 with the Commission and with each entity exercising independent regulatory
5 authority over the practice of massage therapy according to the provisions of
6 this compact.

7 § 5436. ADVERSE ACTIONS

8 (a) A licensee's home state shall have exclusive power to impose an
9 adverse action against a licensee's multistate license issued by the home state.

10 (b) A home state may take adverse action on a multistate license based on
11 the investigative information, current significant investigative information, or
12 adverse action of a remote state.

13 (c) A home state shall retain authority to complete any pending
14 investigations of a licensee practicing under a multistate license who changes
15 their home state during the course of such an investigation. The licensing
16 authority shall also be empowered to report the results of such an investigation
17 to the Commission through the data system as described herein.

18 (d) Any member state may investigate actual or alleged violations of the
19 scope of practice laws in any other member state for a massage therapist who
20 holds a multistate license.

21 (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

3 licensee's 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 evidence.

6 Subpoenas issued by a licensing authority in a member state for the attendance
7 and testimony of witnesses or the production of evidence from another member
8 state shall be enforced in the latter state by any court of competent jurisdiction,
9 according to the practice and procedure of that court applicable to subpoenas
10 issued in proceedings before it. The issuing licensing authority shall pay any
11 witness fees, travel expenses, mileage, and other fees required by the service
12 statutes of the state in which the witnesses or evidence are located;

13 (4) if otherwise permitted by state law, recover from the affected
14 licensee the costs of investigations and disposition of cases resulting from any
15 adverse action taken against that licensee; and

16 (5) take adverse action against the licensee's authorization to practice in
17 that state based on the factual findings of another member state.

18 (f) If an adverse action is taken by the home state against a licensee's
19 multistate license or single-state license to practice in the home state, the
20 licensee's authorization to practice in all other member states shall be
21 deactivated until all encumbrances have been removed from such license. All

1 home state disciplinary orders that impose an adverse action against a licensee
2 shall include a statement that the massage therapist's authorization to practice
3 is deactivated in all member states during the pendency of the order.

4 (g) If adverse action is taken by a remote state against a licensee's
5 authorization to practice, that adverse action applies to all authorizations to
6 practice in all remote states. A licensee whose authorization to practice in a
7 remote state is removed for a specified period of time is not eligible to apply
8 for a new multistate license in any other state until the specific time for
9 removal of the authorization to practice has passed and all encumbrance
10 requirements are satisfied.

11 (h) Nothing in this compact shall override a member state's authority to
12 accept a licensee's participation in an alternative program in lieu of adverse
13 action. A licensee's multistate license shall be suspended for the duration of
14 the licensee's participation in any alternative program.

15 (i)(1) In addition to the authority granted to a member state by its
16 respective scope of practice laws or other applicable state law, a member state
17 may participate with other member states in joint investigations of licensees.

18 (2) Member states shall share any investigative, litigation, or compliance
19 materials in furtherance of any joint or individual investigation initiated under
20 the Compact.

21 § 5437. ACTIVE MILITARY MEMBER AND THEIR SPOUSES

1 Active military member, or their spouses, shall designate a home state
2 where the individual has a current license to practice massage therapy in good
3 standing. The individual may retain their home state designation during any
4 period of service when that individual or their spouse is on active-duty
5 assignment. Further, active military members or their spouses shall satisfy the
6 requirements of subdivision 5433(a)(2) of this title by successful graduation
7 from an educational program that meets the minimum qualifications for
8 licensure in the designated home state.

9 § 5438. ESTABLISHMENT AND OPERATION OF INTERSTATE

10 MASSAGE COMPACT COMMISSION

11 (a) Establishment. The Compact member states hereby create and establish
12 a joint government agency whose membership consists of all member states
13 that have enacted the Compact known as the Interstate Massage Compact
14 Commission. The Commission is an instrumentality of the Compact states
15 acting jointly and not an instrumentality of any one state. The Commission
16 shall come into existence on or after the effective date of the Compact as set
17 forth in section 5441 of this title.

18 (b) Membership, voting, and meetings.

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

21 (2) The delegate shall be either:

1 (A) a member of the state licensing authority; or

2 (B) the primary administrative officer of the state licensing authority
3 or their designee.

4 (3) The Commission shall by rule or bylaw establish a term of office for
5 delegates and may by rule or bylaw establish term limits.

6 (4) The Commission may recommend removal or suspension of any
7 delegate from office.

8 (5) A member state's state licensing authority shall fill any vacancy of
9 its delegate occurring on the Commission within 60 days of the vacancy.

10 (6) Each delegate shall be entitled to one vote on all matters that are
11 voted on by the Commission.

12 (7) The Commission shall meet at least once during each calendar year.
13 additional meetings may be held as set forth in the bylaws. The Commission
14 may meet by telecommunication, video conference, or other similar electronic
15 means.

16 (c) Powers. The Commission shall have the following powers:

17 (1) establish the fiscal year of the Commission;

18 (2) establish code of conduct and conflict of interest policies;

19 (3) adopt rules and bylaws;

20 (4) maintain its financial records in accordance with the bylaws;

1 (5) meet and take such actions as are consistent with the provisions of
2 this compact, the Commission's rules, and the bylaws;

3 (6) initiate and conclude legal proceedings or actions in the name of the
4 Commission, provided that the standing of any state licensing authority to sue
5 or be sued under applicable law shall not be affected;

6 (7) maintain and certify records and information provided to a member
7 state as the authenticated business records of the Commission, and designate
8 an agent to do so on the Commission's behalf;

9 (8) purchase and maintain insurance and bonds;

10 (9) borrow, accept, or contract for services of personnel, including, but
11 not limited to, employees of a member state;

12 (10) conduct an annual financial review;

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

18 (12) assess and collect fees;

19 (13) accept any and all appropriate gifts, donations, grants of money,
20 other sources of revenue, equipment, supplies, materials, and services, and

1 receive, utilize, and dispose of the same; provided that at all times the
2 Commission shall avoid any appearance of impropriety or conflict of interest;

3 (14) lease, purchase, retain, own, hold, improve, or use any property,
4 real, personal, or mixed, or any undivided interest therein;

5 (15) sell, convey, mortgage, pledge, lease, exchange, abandon, or
6 otherwise dispose of any property real, personal, or mixed;

7 (16) establish a budget and make expenditures;

8 (17) borrow money;

9 (18) appoint committees, including standing committees, composed of
10 members, state regulators, state legislators or their representatives, and
11 consumer representatives, and such other interested persons as may be
12 designated in this compact and the bylaws;

13 (19) the Commission may elect up to two ex-officio, nonvoting
14 members of the Commission as specified in the Commission's bylaws;

15 (20) accept and transmit complaints from the public, regulatory or law
16 enforcement agencies, or the Commission, to the relevant member state(s)
17 regarding potential misconduct of licensees;

18 (21) elect a chair, vice chair, secretary, and treasurer and such other
19 officers of the Commission as provided in the Commission's bylaws;

20 (22) establish and elect an executive committee, including a chair and a
21 vice chair;

1 (23) adopt and provide to the member states an annual report;

2 (24) determine whether a state's adopted language is materially different
3 from the model Compact language such that the state would not qualify for
4 participation in the Compact; and

5 (25) perform such other functions as may be necessary or appropriate to
6 achieve the purposes of this compact.

7 (d) Executive committee.

8 (1) The executive committee shall have the power to act on behalf of the
9 Commission according to the terms of this compact. The powers, duties, and
10 responsibilities of the executive committee shall include:

11 (A) overseeing the day-to-day activities of the administration of the
12 Compact including compliance with the provisions of the Compact, the
13 Commission's rules and bylaws, and other such duties as deemed necessary;

14 (B) recommending to the Commission changes to the rules or
15 bylaws, changes to this compact legislation, fees charged to Compact member
16 states, fees charged to licensees, and other fees;

17 (C) ensuring Compact administration services are appropriately
18 provided, including by contract;

19 (D) preparing and recommending the budget;

20 (E) maintaining financial records on behalf of the Commission;

1 (F) monitoring Compact compliance of member states and providing
2 compliance reports to the Commission;

3 (G) establishing additional committees as necessary;

4 (H) exercise the powers and duties of the Commission during the
5 interim between Commission meetings, except for adopting or amending rules,
6 adopting or amending bylaws, and exercising any other powers and duties
7 expressly reserved to the Commission by rule or bylaw; and

8 (I) other duties as provided in the rules or bylaws of the Commission.

9 (2) The executive committee shall be composed of seven voting
10 members as follows:

11 (A) the Chair and Vice Chair of the Commission and any other
12 members of the Commission who serve on the executive committee shall be
13 voting members of the executive committee; and

14 (B) other than the Chair, Vice Chair, Secretary, and Treasurer, the
15 Commission shall elect three voting members from the current membership of
16 the Commission.

17 (3) The Commission may remove any member of the executive
18 committee as provided in the Commission's bylaws.

19 (4) The executive committee shall meet at least annually.

20 (A) Executive committee meetings shall be open to the public, except
21 that the executive committee may meet in a closed, non-public session of a

1 public meeting when dealing with any of the matters covered under
2 subdivision (f)(4) of this section.

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

7 (5) The executive committee may hold an emergency meeting when
8 acting for the Commission to:

9 (A) meet an imminent threat to public health, safety, or welfare;

10 (B) prevent a loss of Commission or participating state funds; or

11 (C) protect public health and safety.

12 (e) Annual report. The Commission shall adopt and provide to the member
13 states an annual report.

14 (f) Meetings of the Commission.

15 (1) All meetings of the Commission that are not closed pursuant to this
16 subsection shall be open to the public. Notice of public meetings shall be
17 posted on the Commission's website at least 30 days prior to the public
18 meeting.

19 (2) Notwithstanding subdivision (1) of this subsection, the Commission
20 may convene an emergency public meeting by providing at least 24 hours prior
21 notice on the Commission's website, and any other means as provided in the

1 Commission's rules, for any of the reasons it may dispense with notice of
2 proposed rulemaking under subsection 5439(1) of this subchapter. The
3 Commission's legal counsel shall certify that one of the reasons justifying an
4 emergency public meeting has been met.

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

9 (4) The Commission may convene in a closed, non-public meeting for
10 the Commission to discuss:

11 (A) non-compliance of a member state with its obligations under the
12 Compact;

13 (B) the employment, compensation, discipline or other matters,
14 practices or procedures related to specific employees or other matters related to
15 the Commission's internal personnel practices and procedures;

16 (C) current or threatened discipline of a licensee by the Commission
17 or by a member state's licensing authority;

18 (D) current, threatened, or reasonably anticipated litigation;

19 (E) negotiation of contracts for the purchase, lease, or sale of goods,
20 services, or real estate;

21 (F) accusing any person of a crime or formally censuring any person;

1 (G) trade secrets or commercial or financial information that is
2 privileged or confidential;

3 (H) information of a personal nature where disclosure would
4 constitute a clearly unwarranted invasion of personal privacy;

5 (I) investigative records compiled for law enforcement purposes;

6 (J) information related to any investigative reports prepared by or on
7 behalf of or for use of the Commission or other committee charged with
8 responsibility of investigation or determination of compliance issues pursuant
9 to the Compact;

10 (K) legal advice;

11 (L) matters specifically exempted from disclosure to the public by
12 federal or member state law; or

13 (M) other matters as promulgated by the Commission by rule.

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

17 (6) The Commission shall keep minutes that fully and clearly describe
18 all matters discussed in a meeting and shall provide a full and accurate
19 summary of actions taken, and the reasons therefore, including a description of
20 the views expressed. All documents considered in connection with an action
21 shall be identified in such minutes. All minutes and documents of a closed

1 meeting shall remain under seal, subject to release only by a majority vote of
2 the Commission or order of a court of competent jurisdiction.

3 (g) Financing of the Commission.

4 (1) The Commission shall pay, or provide for the payment of, the
5 reasonable expenses of its establishment, organization, and ongoing activities.

6 (2) The Commission may accept any and all appropriate sources of
7 revenue, donations, and grants of money, equipment, supplies, materials, and
8 services.

9 (3) The Commission may levy on and collect an annual assessment from
10 each member state and impose fees on licensees of member states to whom it
11 grants a multistate license to cover the cost of the operations and activities of
12 the Commission and its staff, which must be in a total amount sufficient to
13 cover its annual budget as approved each year for which revenue is not
14 provided by other sources. The aggregate annual assessment amount for
15 member states shall be allocated based upon a formula that the Commission
16 shall promulgate by rule.

17 (4) The Commission shall not incur obligations of any kind prior to
18 securing the funds adequate to meet the same; nor shall the Commission
19 pledge the credit of any member states, except by and with the authority of the
20 member state.

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

8 (h) Qualified immunity, defense, and indemnification.

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

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

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

1 (4) Nothing herein shall be construed as a limitation on the liability of
2 any licensee for professional malpractice or misconduct, which shall be
3 governed solely by any other applicable state laws.

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

8 (6) Nothing in this compact shall be construed to be a waiver of
9 sovereign immunity by the member states or by the Commission.

10 § 5439. DATA SYSTEM

11 (a) The Commission shall provide for the development, maintenance,
12 operation, and utilization of a coordinated database and reporting system.

13 (b) The Commission shall assign each applicant for a multistate license a
14 unique identifier, as determined by the rules of the Commission.

15 (c) Notwithstanding any other provision of state law to the contrary, a
16 member state shall submit a uniform data set to the data system on all
17 individuals to whom this compact is applicable as required by the rules of the
18 Commission, including:

19 (1) identifying information;

20 (2) licensure data;

21 (3) adverse actions against a license and information related thereto;

1 (4) non-confidential information related to alternative program
2 participation, the beginning and ending dates of such participation, and other
3 information related to such participation;

4 (5) any denial of application for licensure, and the reasons for such
5 denial, excluding the reporting of any criminal history record information
6 where prohibited by law;

7 (6) the existence of investigative information;

8 (7) the existence presence of current significant investigative
9 information; and

10 (8) other information that may facilitate the administration of this
11 compact or the protection of the public, as determined by the rules of the
12 Commission.

13 (d) The records and information provided to a member state pursuant to
14 this compact or through the data system, when certified by the Commission or
15 an agent thereof, shall constitute the authenticated business records of the
16 Commission and shall be entitled to any associated hearsay exception in any
17 relevant judicial, quasi-judicial, or administrative proceedings in a member
18 state.

19 (e) The existence of current significant investigative information and the
20 existence of investigative information pertaining to a licensee in any member
21 state will only be available to other member states.

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

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

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

13 § 5440. RULEMAKING

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

1 (b) The rules of the Commission shall have the force of law in each
2 member state, provided however that where the rules of the Commission
3 conflict with the laws of the member state that establish the member state's
4 scope of practice as held by a court of competent jurisdiction, the rules of the
5 Commission shall be ineffective in that state to the extent of the conflict.

6 (c) The Commission shall exercise its rulemaking powers pursuant to the
7 criteria set forth in this section and the rules adopted thereunder. Rules shall
8 become binding as of the date specified by the Commission for each rule.

9 (d) If a majority of the legislatures of the member states rejects a rule or
10 portion of a rule, by enactment of a statute or resolution in the same manner
11 used to adopt the Compact within four years of the date of adoption of the rule,
12 then such rule shall have no further force and effect in any member state or to
13 any state applying to participate in the Compact.

14 (e) Rules shall be adopted at a regular or special meeting of the
15 Commission.

16 (f) Prior to adoption of a proposed rule, the Commission shall hold a public
17 hearing and allow persons to provide oral and written comments, data, facts,
18 opinions, and arguments.

19 (g) Prior to adoption of a proposed rule by the Commission, and at least 30
20 days in advance of the meeting at which the Commission will hold a public

1 hearing on the proposed rule, the Commission shall provide a notice of
2 proposed rulemaking:

3 (1) on the website of the Commission or other publicly accessible
4 platform;

5 (2) to persons who have requested notice of the Commission's notices of
6 proposed rulemaking; and

7 (3) in such other ways as the Commission may by rule specify.

8 (h) The notice of proposed rulemaking shall include:

9 (1) the time, date, and location of the public hearing at which the
10 Commission will hear public comments on the proposed rule and, if different,
11 the time, date, and location of the meeting where the Commission will consider
12 and vote on the proposed rule;

13 (2) if the hearing is held via telecommunication, video conference, or
14 other electronic means, the Commission shall include the mechanism for
15 access to the hearing in the notice of proposed rulemaking;

16 (3) the text of the proposed rule and the reason therefor;

17 (4) a request for comments on the proposed rule from any interested
18 person; and

19 (5) the manner in which interested persons may submit written
20 comments.

1 (i) All hearings will be recorded. A copy of the recording and all written
2 comments and documents received by the Commission in response to the
3 proposed rule shall be available to the public.

4 (j) Nothing in this section shall be construed as requiring a separate hearing
5 on each rule. Rules may be grouped for the convenience of the Commission at
6 hearings required by this section.

7 (k) The Commission shall, by majority vote of all commissioners, take
8 final action on the proposed rule based on the rulemaking record.

9 (1) The Commission may adopt changes to the proposed rule, provided
10 the changes do not enlarge the original purpose of the proposed rule.

11 (2) The Commission shall provide an explanation of the reasons for
12 substantive changes made to the proposed rule as well as reasons for
13 substantive changes not made that were recommended by commenters.

14 (3) The Commission shall determine a reasonable effective date for the
15 rule. Except for an emergency as provided in subsection (l) of this section, the
16 effective date of the rule shall be no sooner than 30 days after the Commission
17 issuing the notice that it adopted or amended the rule.

18 (l) Upon determination that an emergency exists, the Commission may
19 consider and adopt an emergency rule with 24 hours' notice, provided that the
20 usual rulemaking procedures provided in the Compact and in this section shall
21 be retroactively applied to the rule as soon as reasonably possible, in no event

1 later than 90 days after the effective date of the rule. For the purposes of this
2 provision, an emergency rule is one that must be adopted immediately to:

3 (1) meet an imminent threat to public health, safety, or welfare;

4 (2) prevent a loss of Commission or member state funds;

5 (3) meet a deadline for the promulgation of a rule that is established by
6 federal law or rule; or

7 (4) protect public health and safety.

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

19 (n) No member state's rulemaking requirements shall apply under this
20 compact.

21 § 5441. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1 (a)(1) The executive and judicial branches of state government in each
2 member state shall enforce this compact and take all actions necessary and
3 appropriate to implement the Compact.

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

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

17 (b)(1) If the Commission determines that a member state has defaulted in
18 the performance of its obligations or responsibilities under this compact or the
19 promulgated rules, the Commission shall provide written notice to the
20 defaulting state. The notice of default shall describe the default, the proposed
21 means of curing the default, and any other action that the Commission may

1 take, and shall offer training and specific technical assistance regarding the
2 default.

3 (2) The Commission shall provide a copy of the notice of default to the
4 other member states.

5 (c) If a state in default fails to cure the default, the defaulting state may be
6 terminated from the Compact upon an affirmative vote of a majority of the
7 delegates of the member states, and all rights, privileges, and benefits
8 conferred on that state by this compact may be terminated on the effective date
9 of termination. A cure of the default does not relieve the offending state of
10 obligations or liabilities incurred during the period of default.

11 (d) Termination of membership in the Compact shall be imposed only after
12 all other means of securing compliance have been exhausted. Notice of intent
13 to suspend or terminate shall be given by the Commission to the governor, the
14 majority and minority leaders of the defaulting state's legislature, the
15 defaulting state's state licensing authority and each of the member states' state
16 licensing authority.

17 (e) A state that has been terminated is responsible for all assessments,
18 obligations, and liabilities incurred through the effective date of termination,
19 including obligations that extend beyond the effective date of termination.

20 (f) Upon the termination of a state's membership from this compact, that
21 state shall immediately provide notice to all licensees who hold a multistate

1 license within that state of such termination. The terminated state shall
2 continue to recognize all licenses granted pursuant to this compact for a
3 minimum of 180 days after the date of said notice of termination.

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

7 (h) The defaulting state may appeal the action of the Commission by
8 petitioning the U.S. District Court for the District of Columbia or the Federal
9 District where the Commission has its principal offices. The prevailing party
10 shall be awarded all costs of such litigation, including reasonable attorney's
11 fees.

12 (i)(1) Upon request by a member state, the Commission shall attempt to
13 resolve disputes related to the Compact that arise among member states and
14 between member and non-member states.

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

17 (j)(1) The Commission, in the reasonable exercise of its discretion, shall
18 enforce the provisions of this compact and the Commission's rules.

19 (2) By majority vote as provided by Commission rule, the Commission
20 may initiate legal action against a member state in default in the U.S. District
21 Court for the District of Columbia or the Federal District where the

1 Commission has its principal offices to enforce compliance with the provisions
2 of the Compact and its promulgated rules. The relief sought may include both
3 injunctive relief and damages. In the event judicial enforcement is necessary,
4 the prevailing party shall be awarded all costs of such litigation, including
5 reasonable attorney's fees. The remedies herein shall not be the exclusive
6 remedies of the Commission. The Commission may pursue any other
7 remedies available under federal or the defaulting member state's law.

8 (3) A member state may initiate legal action against the Commission in
9 the U.S. District Court for the District of Columbia or the Federal District
10 where the Commission has its principal offices to enforce compliance with the
11 provisions of the Compact and its promulgated rules. The relief sought may
12 include both injunctive relief and damages. In the event judicial enforcement
13 is necessary, the prevailing party shall be awarded all costs of such litigation,
14 including reasonable attorney's fees.

15 (4) No individual or entity other than a member state may enforce this
16 compact against the Commission.

17 § 5442. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

18 (a) The Compact shall come into effect on the date on which the Compact
19 statute is enacted into law in the seventh member state.

20 (1) On or after the effective date of the Compact, the Commission shall
21 convene and review the enactment of each of the charter member states to

1 determine if the statute enacted by each such charter member state is materially
2 different than the model Compact statute.

3 (A) A charter member state whose enactment is found to be
4 materially different from the model Compact statute shall be entitled to the
5 default process set forth in section 5440 of this title.

6 (B) If any member state is later found to be in default, or is
7 terminated or withdraws from the Compact, the Commission shall remain in
8 existence and the Compact shall remain in effect even if the number of
9 member states should be less than seven.

10 (2) Member states enacting the Compact subsequent to the charter
11 member states shall be subject to the process set forth in subdivision
12 5437(c)(24) of this title to determine if their enactments are materially different
13 from the model Compact statute and whether they qualify for participation in
14 the Compact.

15 (3) All actions taken for the benefit of the Commission or in furtherance
16 of the purposes of the administration of the Compact prior to the effective date
17 of the Compact or the Commission coming into existence shall be considered
18 to be actions of the Commission unless specifically repudiated by the
19 Commission.

20 (4) Any state that joins the Compact shall be subject to the
21 Commission's rules and bylaws as they exist on the date on which the

1 Compact becomes law in that state. Any rule that has been previously adopted
2 by the Commission shall have the full force and effect of law on the day the
3 Compact becomes law in that state.

4 (b) Any member state may withdraw from this compact by enacting a
5 statute repealing that state's enactment of the Compact.

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

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

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

18 (c) Nothing contained in this compact shall be construed to invalidate or
19 prevent any licensure agreement or other cooperative arrangement between a
20 member state and a non-member state that does not conflict with the provisions
21 of this compact.

1 (d) This compact may be amended by the member states. No amendment
2 to this compact shall become effective and binding upon any member state
3 until it is enacted into the laws of all member states.

4 § 5443. CONSTRUCTION AND SEVERABILITY

5 (a) This compact and the Commission's rulemaking authority shall be
6 liberally construed so as to effectuate the purposes, and the implementation
7 and administration, of the Compact. Provisions of the Compact expressly
8 authorizing or requiring the promulgation of rules shall not be construed to
9 limit the Commission's rulemaking authority solely for those purposes.

10 (b) The provisions of this compact shall be severable and if any phrase,
11 clause, sentence, or provision of this compact is held by a court of competent
12 jurisdiction to be contrary to the constitution of any member state, a state
13 seeking participation in the Compact, or of the United States, or the
14 applicability thereof to any government, agency, person, or circumstance is
15 held to be unconstitutional by a court of competent jurisdiction, the validity of
16 the remainder of this compact and the applicability thereof to any other
17 government, agency, person, or circumstance shall not be affected thereby.

18 (c) Notwithstanding subsection (b) of this section, the Commission may
19 deny a state's participation in the Compact or, in accordance with the
20 requirements of subsection 5440(b) of this title, terminate a member state's
21 participation in the Compact, if it determines that a constitutional requirement

1 of a member state is a material departure from the Compact. Otherwise, if this
2 compact shall be held to be contrary to the constitution of any member state,
3 the Compact shall remain in full force and effect as to the remaining member
4 states and in full force and effect as to the member state affected as to all
5 severable matters.

6 § 5444. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE

7 LAWS

8 Nothing herein shall prevent or inhibit the enforcement of any other law of
9 a member state that is not inconsistent with the Compact. Any laws, statutes,
10 regulations, or other legal requirements in a member state in conflict with the
11 Compact are superseded to the extent of the conflict. All permissible
12 agreements between the Commission and the member states are binding in
13 accordance with their terms.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on passage.