

IN THE SENATE

SENATE BILL NO. 1136

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE RESPIRATORY CARE INTERSTATE COMPACT; AMENDING CHAPTER
2 43, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-4308A,
3 IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING THE RESPIRATORY CARE
4 INTERSTATE COMPACT, TO PROVIDE A TITLE AND PURPOSE, TO DEFINE TERMS,
5 TO PROVIDE FOR STATE PARTICIPATION IN THE COMPACT, TO PROVIDE COM-
6 PACT PRIVILEGE, TO PROVIDE FOR ACTIVE MILITARY MEMBERS AND SPOUSES, TO
7 PROVIDE FOR ADVERSE ACTIONS, TO PROVIDE FOR THE ESTABLISHMENT OF THE
8 RESPIRATORY CARE INTERSTATE COMPACT COMMISSION, TO PROVIDE FOR A DATA
9 SYSTEM, TO PROVIDE FOR RULEMAKING, TO PROVIDE FOR OVERSIGHT, DISPUTE
10 RESOLUTION, AND ENFORCEMENT, TO PROVIDE FOR THE EFFECTIVE DATE, WITH-
11 DRAWAL, AND AMENDMENT, TO PROVIDE FOR CONSTRUCTION AND SEVERABILITY,
12 AND TO PROVIDE FOR CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS;
13 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Chapter 43, Title 54, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 54-4308A, Idaho Code, and to read as follows:

19 54-4308A. RESPIRATORY CARE INTERSTATE COMPACT. The respiratory care
20 interstate compact is enacted and entered into law with all other jurisdic-
21 tions joining in the compact in the form substantially as follows:

22 RESPIRATORY CARE INTERSTATE COMPACT

23 SECTION 1
24 TITLE AND PURPOSE

25 A. The purpose of this compact is to facilitate interstate practice of
26 respiratory therapy with the goal of improving public access to respiratory
27 therapy services by providing respiratory therapists licensed in a member
28 state the ability to practice in other member states. This compact preserves
29 the regulatory authority of states to protect public health and safety
30 through the current system of state licensure.

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

32 1. Increase public access to respiratory therapy services by creating
33 a responsible, streamlined pathway for licensees to practice in member
34 states with the goal of improving outcomes for patients;

35 2. Enhance the states' ability to protect the public's health and
36 safety;

37 3. Promote the cooperation of member states in regulating the practice
38 of respiratory therapy with those member states;

- 1 4. Ease administrative burdens on states by encouraging the cooper-
2 ation of member states in regulating multistate respiratory therapy
3 practice;
4 5. Support relocating active military members and their spouses; and
5 6. Promote mobility and address workforce shortages.

6 SECTION 2
7 DEFINITIONS

8 As used in this compact, unless the context requires otherwise, the fol-
9 lowing definitions shall apply:

10 A. "Active military member" means any person with a full-time duty sta-
11 tus in the armed forces of the United States, including members of the na-
12 tional guard and reserve.

13 B. "Adverse action" means any administrative, civil, equitable, or
14 criminal action permitted by a state's laws that is imposed by any state
15 authority with regulatory authority over respiratory therapists, such as
16 license denial, censure, revocation, suspension, probation, monitoring of
17 the licensee, or restriction on the licensee's practice, not including par-
18 ticipation in an alternative program.

19 C. "Alternative program" means a non-disciplinary monitoring or prac-
20 tice remediation process applicable to a respiratory therapist approved by
21 any state authority with regulatory authority over respiratory therapists.
22 This includes but is not limited to programs to which licensees with sub-
23 stance abuse or addiction issues are referred in lieu of adverse action.

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

26 E. "Commission" or "respiratory care interstate compact commission"
27 means the government instrumentality and body politic whose membership con-
28 sists of all member states that have enacted the compact.

29 F. "Commissioner" means the individual appointed by a member state to
30 serve as the member of the commission for that member state.

31 G. "Compact" means the respiratory care interstate compact.

32 H. "Compact privilege" means the authorization granted by a remote
33 state to allow a licensee from another member state to practice as a respira-
34 tory therapist in the remote state under the remote state's laws and rules.
35 The practice of respiratory therapy occurs in the member state where the
36 patient is located at the time of the patient encounter.

37 I. "Criminal background check" means the submission by a member state
38 of fingerprints or other biometric-based information on license applicants
39 at the time of initial licensing for the purpose of obtaining that appli-
40 cant's criminal history record information, as defined in 28 CFR 20.3(d)
41 or successor provision, from the federal bureau of investigation and the
42 state's criminal history record repository, as defined in 28 CFR 20.3(f) or
43 successor provision.

44 J. "Data system" means the commission's repository of information
45 about licensees as further set forth in section 8 of this compact.

46 K. "Domicile" means the jurisdiction that is the licensee's principal
47 home for legal purposes.

1 L. "Encumbered license" means a license that a state's respiratory
2 therapy licensing authority has limited in any way.

3 M. "Executive committee" means a group of directors elected or ap-
4 pointed to act on behalf of, and within the powers granted to them by, the
5 commission.

6 N. "Home state," except as set forth in section 5 of this compact, means
7 the member state that is the licensee's primary domicile.

8 O. "Home state license" means an active license to practice respiratory
9 therapy in a home state that is not an encumbered license.

10 P. "Jurisprudence requirement" means an assessment of an individual's
11 knowledge of the state laws and regulations governing the practice of respi-
12 ratory therapy in such state.

13 Q. "Licensee" means an individual who currently holds an authorization
14 from the state to practice as a respiratory therapist.

15 R. "Member state" means a state that has enacted this compact and been
16 admitted to the commission in accordance with the provisions of this compact
17 and commission rules.

18 S. "Model compact" means the model for the respiratory care interstate
19 compact on file with the council of state governments or any other entity as
20 designated by the commission.

21 T. "Remote state" means a member state where a licensee is exercising or
22 seeking to exercise the compact privilege.

23 U. "Respiratory therapist" or "respiratory care practitioner" means
24 an individual who holds a credential issued by the national board for res-
25 piratory care, or its successor, and holds a license in a state to practice
26 respiratory therapy. For purposes of this compact, any other title or status
27 adopted by the state to replace the term "respiratory therapist" or "respi-
28 ratory care practitioner," as defined in section 54-4303, Idaho Code, shall
29 be deemed synonymous with "respiratory therapist" and shall confer the same
30 rights and responsibilities to the licensee under the provisions of this
31 compact at the time of its enactment.

32 V. "Respiratory therapy," "respiratory therapy practice," "respira-
33 tory care," "the practice of respiratory care," and "the practice of respi-
34 ratory therapy" mean the care and services provided by or under the direc-
35 tion and supervision of a respiratory therapist or respiratory care practi-
36 tioner.

37 W. "Respiratory therapy licensing authority" means the agency, board,
38 or other body of a state that is responsible for licensing and regulation of
39 respiratory therapists.

40 X. "Rule" means a regulation promulgated by an entity that has the force
41 and effect of law.

42 SECTION 3
43 STATE PARTICIPATION IN THIS COMPACT

44 A. In order to participate in this compact and thereafter continue as a
45 member state, a member state shall:

- 46 1. Enact a compact that is not materially different from the model com-
47 pact;
- 48 2. License respiratory therapists;

- 1 3. Participate in the commission's data system;
- 2 4. Have a mechanism in place for receiving and investigating complaints
- 3 against licensees and compact privilege holders;
- 4 5. Notify the commission, in compliance with the terms of this compact
- 5 and commission rules, of any adverse action against a licensee, a com-
- 6 pact privilege holder, or a license applicant;
- 7 6. Notify the commission, in compliance with the terms of this compact
- 8 and commission rules, of the existence of significant investigative in-
- 9 formation;
- 10 7. Comply with the rules of the commission;
- 11 8. Grant the compact privilege to a holder of an active home state li-
- 12 cense who otherwise meets the applicable requirements of section 4 of
- 13 this compact in a member state; and
- 14 9. Complete a criminal background check for each new licensee at the
- 15 time of initial licensure.

16 a. Where expressly authorized or permitted by federal law,

17 whether such federal law is in effect prior to, at, or after the

18 time of a member state's enactment of this compact, a member

19 state's enactment of this compact shall hereby authorize the mem-

20 ber state's respiratory therapy licensing authority to perform

21 criminal background checks as defined in this compact. The ab-

22 sence of such a federal law as described in this subparagraph shall

23 not prevent or preclude such authorization where it may be derived

24 or granted through means other than the enactment of this compact.

25 B. Nothing in this compact prohibits a member state from charging a fee

26 for granting and renewing the compact privilege.

27 SECTION 4

28 COMPACT PRIVILEGE

29 A. To exercise the compact privilege under the terms and provisions of

30 this compact, the licensee shall:

- 31 1. Hold and maintain an active home state license as a respiratory ther-
- 32 apist;
- 33 2. Hold and maintain an active credential from the national board for
- 34 respiratory care or its successor that would qualify the licensee for
- 35 licensure in the remote state in which the licensee is seeking the priv-
- 36 ilege;
- 37 3. Have not had any adverse action against a license within the previous
- 38 two (2) years;
- 39 4. Notify the commission that the licensee is seeking the compact priv-
- 40 ilege within a remote state;
- 41 5. Pay any applicable fees, including any state and commission fees and
- 42 renewal fees, for the compact privilege;
- 43 6. Meet any jurisprudence requirements established by the remote state
- 44 in which the licensee is seeking a compact privilege;
- 45 7. Report to the commission adverse action taken by any non-member
- 46 state within thirty (30) days from the date the adverse action is taken;
- 47 8. Report to the commission, when applying for a compact privilege,
- 48 the address of the licensee's domicile and thereafter promptly report

1 to the commission any change in the address of the licensee's domicile
2 within thirty (30) days of the effective date of the change in address;
3 and

4 9. Consent to accept service of process by mail at the licensee's domi-
5 cile on record with the commission with respect to any action brought
6 against the licensee by the commission of a member state and consent
7 to accept service of a subpoena by mail at the licensee's domicile on
8 record with the commission with respect to any action brought or inves-
9 tigation conducted by the commission of a member state.

10 B. The compact privilege is valid until the expiration date or revoca-
11 tion of the home state license, unless terminated pursuant to adverse ac-
12 tion. The licensee must comply with the requirements of subsection A. of
13 this section to maintain the compact privilege in a remote state. If those
14 requirements are met, no adverse actions are taken, and the licensee has paid
15 any applicable compact privilege renewal fees, then the licensee will main-
16 tain the licensee's compact privilege.

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

25 D. If a licensee's compact privilege in a remote state is removed by
26 the remote state, the individual shall lose or be ineligible for the compact
27 privilege in that remote state until the compact privilege is no longer lim-
28 ited or restricted by that state.

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

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

34 F. Once a licensee with a restricted or limited license meets the re-
35 quirements of subsection E. of this section, the licensee must also meet the
36 requirements of subsection A. of this section to obtain a compact privilege
37 in a remote state.

38 SECTION 5

39 ACTIVE MILITARY MEMBER OR MEMBER'S SPOUSE

40 A. An active military member or the member's spouse shall designate a
41 home state where the individual has a current license in good standing. The
42 individual may retain the home state designation during the period the ser-
43 vice member is on active duty.

44 B. An active military member and the member's spouse shall not be re-
45 quired to pay to the commission for a compact privilege any fee that may oth-
46 erwise be charged by the commission. If a remote state chooses to charge a
47 fee for a compact privilege, it may choose to charge a reduced fee or no fee to
48 an active military member and the member's spouse for a compact privilege.

SECTION 6
ADVERSE ACTIONS

1
2
3 A. A member state in which a licensee is licensed shall have authority
4 to impose adverse action against the license issued by that member state.

5 B. A member state may take adverse action based on significant inves-
6 tigative information of a remote state or the home state, as long as the mem-
7 ber state follows its own procedures for imposing adverse action.

8 C. Nothing in this compact shall override a member state's decision
9 that participation in an alternative program may be used in lieu of adverse
10 action and that such participation shall remain non-public if required by
11 the member state's laws.

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

13 1. Take adverse actions as set forth herein against a licensee's com-
14 pact privilege in that state;

15 2. Issue subpoenas for both hearings and investigations that require
16 the attendance and testimony of witnesses and the production of evi-
17 dence.

18 a. Subpoenas may be issued by a respiratory therapy licensing au-
19 thority in a member state for the attendance and testimony of wit-
20 nesses and the production of evidence.

21 b. Subpoenas issued by a respiratory therapy licensing author-
22 ity in a member state for the attendance and testimony of witnesses
23 shall be enforced in the latter state by any court of competent ju-
24 risdiction in the latter state, according to the practice and pro-
25 cedure of that court applicable to subpoenas issued in proceedings
26 pending before it.

27 c. Subpoenas issued by a respiratory therapy licensing authority
28 in a member state for production of evidence from another member
29 state shall be enforced in the latter state, according to the prac-
30 tice and procedure of that court applicable to subpoenas issued in
31 the proceedings pending before it.

32 d. The issuing authority shall pay any witness fees, travel ex-
33 penses, mileage, and other fees required by the service statutes
34 of the state where the witnesses or evidence are located;

35 3. Unless otherwise prohibited by state law, recover from the licensee
36 the costs of investigations and disposition of cases resulting from any
37 adverse action taken against that licensee;

38 4. Notwithstanding subsection D.2. of this section, a member state may
39 not issue a subpoena to gather evidence of conduct in another member
40 state that is lawful in such other member state for the purpose of taking
41 adverse action against a licensee's compact privilege or application
42 for compact privilege in that member state; and

43 5. Nothing in this compact authorizes a member state to impose dis-
44 cipline against a respiratory therapist's compact privilege in that
45 member state for the individual's otherwise lawful practice in another
46 state.

47 E. Joint investigations:

48 1. In addition to the authority granted to a member state by its respec-
49 tive respiratory therapy practice act or other applicable state law, a

1 member state may participate with other member states in joint inves-
2 tigations of licensees; provided, however, that a member state receiv-
3 ing such a request has no obligation to respond to any subpoena issued
4 regarding an investigation of conduct or practice that was lawful in a
5 member state at the time it was undertaken.

6 2. Member states shall share any significant investigative informa-
7 tion, litigation, or compliance materials in furtherance of any joint
8 or individual investigation initiated under the compact. In sharing
9 such information between member state respiratory therapy licensing
10 authorities, all information obtained shall be kept confidential, ex-
11 cept as otherwise mutually agreed on by the sharing and receiving member
12 states.

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

16 G. Nothing in this compact may permit a member state to take disci-
17 plinary action against a licensee or holder of a compact privilege for
18 conduct or practice that was legal in the member state at the time it was
19 undertaken.

20 SECTION 7

21 ESTABLISHMENT OF THE RESPIRATORY CARE INTERSTATE COMPACT COMMISSION

22 A. The compact member states hereby create and establish a joint gov-
23 ernment agency whose membership consists of all member states that have en-
24 acted the compact known as the respiratory care interstate commission. The
25 commission is an instrumentality of the compact member states acting jointly
26 and not an instrumentality of any one (1) state. The commission shall come
27 into existence on or after the effective date of the compact as set forth in
28 section 11 of this compact.

29 B. Membership, voting, and meetings:

30 1. Each member state shall have and be limited to one (1) commissioner
31 selected by that member state's respiratory therapy licensing author-
32 ity.

33 2. The commissioner shall be an administrator, or the administrator's
34 designated staff member, of the member state's respiratory therapy li-
35 censing authority.

36 3. The commission shall by rule or bylaw establish a term of office for
37 commissioners and may by rule or bylaw establish term limits.

38 4. The commission may recommend to a member state the removal or suspen-
39 sion of any commissioner from office.

40 5. A member state's respiratory therapy licensing authority shall
41 fill any vacancy of its commissioner occurring on the commission within
42 sixty (60) days of the vacancy.

43 6. Each commissioner shall be entitled to one (1) vote on all matters
44 before the commission requiring a vote by the commissioners.

45 7. A commissioner shall vote in person or by such other means as pro-
46 vided in the bylaws. The bylaws may provide for commissioners to meet by
47 telecommunication, video conference, or other means of communication.

- 1 8. The commission shall meet at least once during each calendar year.
2 Additional meetings may be held as set forth in the bylaws.
- 3 C. The commission shall have the power to:
- 4 1. Establish and amend the fiscal year of the commission;
5 2. Establish and amend bylaws and policies, including but not limited
6 to a code of conduct and conflict of interest;
7 3. Establish and amend rules, which shall be binding in all member
8 states;
9 4. Maintain its financial records in accordance with the bylaws;
10 5. Meet and take such actions as are consistent with the provisions of
11 this compact and the commission's rules and bylaws;
12 6. Initiate and conclude legal proceedings or actions in the name of the
13 commission, provided that the standing of any respiratory therapy li-
14 censing authority to sue or be sued under applicable law shall not be af-
15 fected;
16 7. Maintain and certify records and information provided to a member
17 state as the authenticated business records of the commission and des-
18 ignate an agent to do so on the commission's behalf;
19 8. Purchase and maintain insurance and bonds;
20 9. Accept or contract for services of personnel, including but not lim-
21 ited to employees of a member state;
22 10. Conduct an annual financial review;
23 11. Hire employees, elect or appoint officers, fix compensation, define
24 duties, grant such individuals appropriate authority to carry out the
25 purposes of the compact, and establish the commission's personnel poli-
26 cies and programs relating to conflicts of interest, qualifications of
27 personnel, and other related personnel matters;
28 12. Assess and collect fees;
29 13. Accept any and all appropriate gifts, donations, grants of money,
30 other sources of revenue, equipment, supplies, materials, and services
31 and receive, utilize, and dispose of the same; provided that at all
32 times:
33 a. The commission shall avoid any appearance of impropriety; and
34 b. The commission shall avoid any appearance of conflict of inter-
35 est;
- 36 14. Lease, purchase, retain, own, hold, improve, or use any property,
37 real, personal, or mixed, or any undivided interest therein;
38 15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or other-
39 wise dispose of any property, real, personal, or mixed;
40 16. Establish a budget and make expenditures;
41 17. Borrow money in a fiscally responsible manner;
42 18. Appoint committees, including standing committees, composed of
43 commissioners, state regulators, state legislators or their repre-
44 sentatives, and consumer representatives, and such other interested
45 persons as may be designated in this compact and the bylaws;
46 19. Provide and receive information from and cooperate with law en-
47 forcement agencies;
48 20. Establish and elect an executive committee, including a chair, vice
49 chair, secretary, treasurer, and such other offices as the commission
50 shall establish by rule or bylaw;

1 21. Enter into contracts or arrangements for the management of the af-
2 affairs of the commission;

3 22. Determine whether a state's adopted language is materially differ-
4 ent from the model compact language such that the state would not qual-
5 ify for participation in the compact; and

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

8 D. The executive committee:

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

12 a. Overseeing the day-to-day activities of the administration of
13 the compact, including enforcement and compliance with the provi-
14 sions of the compact, its rules and bylaws, and other such duties
15 as deemed necessary;

16 b. Recommending to the commission changes to the rules or bylaws,
17 changes to this compact legislation, fees charged to compact mem-
18 ber states, fees charged to licensees, and other fees;

19 c. Ensuring compact administration services are appropriately
20 provided, including by contract;

21 d. Preparing and recommending the budget;

22 e. Maintaining financial records on behalf of the commission;

23 f. Monitoring compact compliance of member states and providing
24 compliance reports to the commission;

25 g. Establishing additional committees as necessary;

26 h. Exercising the powers and duties of the commission during
27 the interim between commission meetings, except for adopting or
28 amending rules, adopting or amending bylaws, and exercising any
29 other powers and duties expressly reserved to the commission by
30 rule or bylaw; and

31 i. Performing other duties as provided in the rules or bylaws of
32 the commission.

33 2. The executive committee shall be composed of up to nine (9) members,
34 as further set forth in the bylaws of the commission:

35 a. Seven (7) voting members who are elected by the commission from
36 the current membership of the commission; and

37 b. Two (2) ex-officio non-voting members.

38 3. The commission may remove any member of the executive committee as
39 provided in the commission's bylaws.

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

41 a. Executive committee meetings shall be open to the public, ex-
42 cept that the executive committee may meet in a closed, non-public
43 meeting as provided in subsection F.4. of this section;

44 b. The executive committee shall give advance notice of its meet-
45 ings, posted on its website, and as determined to provide notice to
46 persons with an interest in the business of the commission; and

47 c. The executive committee may hold a special meeting as provided
48 in subsection F.2. of this section.

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

1 F. Meetings of the commission:

2 1. All meetings of the commission that are not closed pursuant to para-
3 graph 4. of this subsection shall be open to the public. Notice of pub-
4 lic meetings shall be posted on the commission's website at least thirty
5 (30) days prior to the public meeting.

6 2. Notwithstanding paragraph 1. of this subsection, the commission may
7 convene an emergency public meeting by providing at least twenty-four
8 (24) hours' prior notice on the commission's website, and any other
9 means as provided in the commission's rules, for any of the reasons it
10 may dispense with notice of proposed rulemaking under subsection G. of
11 section 9 of this compact. The commission's legal counsel shall certify
12 that one (1) of the reasons justifying an emergency public meeting has
13 been met.

14 3. Notice of all commission meetings shall provide the time, date, and
15 location of the meeting. If the meeting is to be held or accessible via
16 telecommunication, video conference, or other electronic means, the
17 notice shall include the mechanism for access to the meeting.

18 4. The commission or the executive committee may convene in a closed,
19 non-public meeting for the commission or executive committee to receive
20 legal advice or to discuss:

21 a. Non-compliance of a member state with its obligations under the
22 compact;

23 b. Employment, compensation, discipline, or other matters, prac-
24 tices, or procedures related to specific employees;

25 c. Current or threatened discipline of a licensee or compact priv-
26 ilege holder by the commission or by a member state's respiratory
27 therapy licensing authority;

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

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

31 f. Accusing any person of a crime or formally censuring any per-
32 son;

33 g. Trade secrets or commercial or financial information that is
34 privileged or confidential;

35 h. Information of a personal nature where disclosure would con-
36 stitute a clearly unwarranted invasion of personal privacy;

37 i. Investigative records compiled for law enforcement purposes;

38 j. Information related to any investigative reports prepared by
39 or on behalf of or for use of the commission or other committee
40 charged with responsibility of investigation or determination of
41 compliance issues pursuant to the compact;

42 k. Legal advice;

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

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

46 5. If a meeting, or portion of a meeting, is closed, the presiding offi-
47 cer shall state that the meeting will be closed and reference each rel-
48 evant exempting provision, and such reference shall be recorded in the
49 minutes.

1 6. The commission shall keep minutes in accordance with commission
2 rules and bylaws. All documents considered in connection with an ac-
3 tion shall be identified in such minutes. All minutes and documents of
4 a closed meeting shall remain under seal, subject to release only by a
5 majority vote of the commission or order of a court of competent juris-
6 diction.

7 G. Financing of the commission:

8 1. The commission shall pay, or provide for the payment of, the reason-
9 able expenses of its establishment, organization, and ongoing activi-
10 ties.

11 2. The commission may accept any and all appropriate revenue sources as
12 provided in this compact.

13 3. The commission may levy on and collect an annual assessment from each
14 member state and impose fees on licensees of member states to whom it
15 grants a compact privilege to cover the cost of the operations and ac-
16 tivities of the commission and its staff. The aggregate annual assess-
17 ment amount for member states, if any, shall be allocated based on a for-
18 mula that the commission shall promulgate by rule.

19 4. The commission shall not incur obligations of any kind prior to se-
20 curing the funds or a loan adequate to meet the same; nor shall the com-
21 mission pledge the credit of any of the member states, except by and with
22 the authority of the member state.

23 5. The commission shall keep accurate accounts of all receipts and dis-
24 bursements. The receipts and disbursements of the commission shall be
25 subject to the financial review and accounting procedures established
26 under its bylaws. However, all receipts and disbursements of funds han-
27 dled by the commission shall be subject to an annual financial review by
28 a certified or licensed public accountant, and the report of the finan-
29 cial review shall be included in and become part of the annual report of
30 the commission.

31 H. Qualified immunity, defense, and indemnification:

32 1. Nothing in this compact shall be construed as a limitation on the
33 liability of any licensee for professional malpractice or misconduct,
34 which shall be governed solely by any other applicable state laws.

35 2. The member states, commissioners, officers, executive directors,
36 employees, and agents of the commission shall be immune from suit and
37 liability, both personally and in their official capacity, for any
38 claim for damage to or loss of property or personal injury or other civil
39 liability caused by or arising out of any actual or alleged act, error,
40 or omission that occurred, or that the person against whom the claim is
41 made had a reasonable basis for believing occurred, within the scope
42 of commission employment, duties, or responsibilities; provided that
43 nothing in this paragraph shall be construed to protect any such person
44 from suit or liability for any damage, loss, injury, or liability caused
45 by the intentional or willful or wanton misconduct of that person. The
46 procurement of insurance of any type by the commission shall not in any
47 way compromise or limit the immunity granted hereunder.

48 3. The commission shall defend any commissioner, officer, executive
49 director, employee, or agent of the commission in any civil action seek-
50 ing to impose liability arising out of any actual or alleged act, er-

ror, 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 counsel at such person's 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, or 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 utilization of a coordinated database and reporting system containing licensure, adverse action, and the presence of significant investigative information.

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

1. Identifying information;
2. Licensure data;
3. Adverse actions against a licensee, license applicant, or compact privilege holder and information related thereto;
4. Non-confidential information related to alternative program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under member state law;
5. Any denial of application for licensure and the reasons for such denial;
6. The presence of current significant investigative information; and

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

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

8 1. On the website of the commission or other publicly accessible plat-
9 form;

10 2. To persons who have requested notice of the commission's notices of
11 proposed rulemaking; and

12 3. In such other ways as the commission may by rule specify.

13 H. The notice of proposed rulemaking shall include:

14 1. The time, date, and location of the public hearing at which the com-
15 mission will hear public comments on the proposed rule and, if differ-
16 ent, the time, date, and location of the meeting where the commission
17 will consider and vote on the proposed rule;

18 2. If the hearing is held via telecommunication, video conference, or
19 other means of communication, the mechanism for access to the hearing;

20 3. The text of the proposed rule and the reason therefor;

21 4. A request for comments on the proposed rule from any interested per-
22 son; and

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

24 I. All hearings will be recorded. A copy of the recording and all writ-
25 ten comments and documents received by the commission in response to the pro-
26 posed rule shall be available to the public.

27 J. Nothing in this section shall be construed as requiring a separate
28 hearing on each rule. Rules may be grouped for the convenience of the commis-
29 sion at hearings required by this section.

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

33 1. The commission may adopt changes to the proposed rule, provided the
34 changes are consistent with the original purpose of the proposed rule.

35 2. The commission shall provide an explanation of the reasons for sub-
36 stantive changes made to the proposed rule as well as reasons for sub-
37 stantive changes not made that were recommended by commenters.

38 3. The commission shall determine a reasonable effective date for the
39 rule. Except for an emergency as provided in subsection L. of this sec-
40 tion, the effective date of the rule shall be no sooner than thirty (30)
41 days after issuing the notice that it adopted or amended the rule.

42 L. Upon determination that an emergency exists, the commission may con-
43 sider and adopt an emergency rule with twenty-four (24) hours' notice, and
44 with opportunity to comment, provided that the usual rulemaking procedures
45 provided in the compact and in this section shall be retroactively applied
46 to the rule as soon as reasonably possible, but in no event later than ninety
47 (90) days after the effective date of the rule. For the purposes of this sub-
48 section, an emergency rule is a rule that must be adopted immediately in or-
49 der to:

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

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

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

16 N. No member state's rulemaking process or procedural requirements
17 shall apply to the commission.

- 18 1. The commission shall have no authority over any member state's rule-
19 making process or procedural requirements that do not pertain to the
20 compact.

21 O. Nothing in this compact, nor any rule or regulation of the commis-
22 sion, shall be construed to limit, restrict, or in any way reduce the ability
23 of a member state to enact and enforce laws, regulations, or other rules re-
24 lated to the practice of respiratory therapy in that state, where those laws,
25 regulations, or other rules are not inconsistent with the provisions of this
26 compact.

27 SECTION 10

28 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

29 A. Oversight:

30 1. The executive and judicial branches of state government in each mem-
31 ber state shall enforce this compact and take all actions necessary and
32 appropriate to implement this compact.

33 2. Venue is proper and judicial proceedings by or against the commis-
34 sion shall be brought solely and exclusively in a court of competent
35 jurisdiction where the principal office of the commission is located.
36 The commission may waive venue and jurisdictional defenses to the ex-
37 tent it adopts or consents to participate in alternative dispute reso-
38 lution proceedings. Nothing herein shall affect or limit the selection
39 or propriety of venue in any action against a licensee for professional
40 malpractice, misconduct, or any such similar matter.

41 3. The commission shall be entitled to receive service of process in any
42 proceeding regarding the enforcement or interpretation of the compact
43 and shall have standing to intervene in such a proceeding for all pur-
44 poses. Failure to provide the commission service of process shall ren-
45 der a judgment or order void as to the commission, this compact, or pro-
46 mulgated rules.

47 B. Default, technical assistance, and termination:

1 1. If the commission determines that a member state has defaulted in
2 the performance of its obligations or responsibilities under this com-
3 pact or the promulgated rules, the commission shall provide written no-
4 tice to the defaulting state. The notice of default shall describe the
5 default, the proposed means of curing the default, and any other action
6 that the commission may take and shall offer training and specific tech-
7 nical assistance regarding the default.

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

10 C. If a state in default fails to cure the default, the defaulting state
11 may be terminated from the compact upon an affirmative vote of a majority of
12 the commissioners of the member states, and all rights, privileges, and ben-
13 efits conferred on that state by this compact may be terminated on the ef-
14 fective date of termination. A cure of the default does not relieve the of-
15 fending state of obligations or liabilities incurred during the period of
16 default.

17 D. Termination of membership in the compact shall be imposed only after
18 all other means of securing compliance have been exhausted. Notice of in-
19 tent to suspend or terminate shall be given by the commission to the default-
20 ing state's governor, the majority and minority leaders of the defaulting
21 state's legislature, the defaulting state's respiratory therapy licensing
22 authority, and each of the member states' respiratory therapy licensing au-
23 thorities.

24 E. A state that has been terminated is responsible for all assessments,
25 obligations, and liabilities incurred through the effective date of termi-
26 nation, including obligations that extend beyond the effective date of ter-
27 mination, if necessary.

28 F. Upon the termination of a state's membership from this compact, that
29 state shall immediately provide notice to all licensees and compact privi-
30 lege holders of which the commission has a record within that state of such
31 termination. The terminated state shall continue to recognize all licenses
32 granted pursuant to this compact for a minimum of one hundred eighty (180)
33 days after the date of said notice of termination.

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

37 H. The defaulting state may appeal the action of the commission by peti-
38 tioning the United States district court for the District of Columbia or the
39 federal district where the commission has its principal offices. The pre-
40 vailing party shall be awarded all costs of such litigation, including rea-
41 sonable attorney's fees.

42 I. Dispute resolution:

43 1. Upon request by a member state, the commission shall attempt to re-
44 solve disputes related to the compact that arise among member states and
45 between member and non-member states.

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

48 J. Enforcement:

49 1. By a majority vote, as may be further provided by rule, the commis-
50 sion may initiate legal action against a member state in default in the

1 United States district court for the District of Columbia or the federal
2 district where the commission has its principal offices to enforce com-
3 pliance with the provisions of the compact and its promulgated rules. A
4 member state by enactment of this compact consents to venue and juris-
5 diction in such court for the purposes set forth in this section. The
6 relief sought may include both injunctive relief and damages. In the
7 event judicial enforcement is necessary, the prevailing party shall be
8 awarded all costs of such litigation, including reasonable attorney's
9 fees. The remedies herein shall not be the exclusive remedies of the
10 commission. The commission may pursue any other remedies available un-
11 der federal law or the defaulting member state's law.

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

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

22 SECTION 11

23 EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

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

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

31 a. A charter member state whose enactment is found to be materi-
32 ally different from the model compact shall be entitled to the de-
33 fault process set forth in section 10 of this compact.

34 b. If any member state is later found to be in default, is ter-
35 minated, or withdraws from the compact, the commission shall re-
36 main in existence and the compact shall remain in effect even if
37 the number of member states should be less than seven (7).

38 2. Member states enacting the compact subsequent to the seven (7) ini-
39 tial charter member states shall be subject to the process set forth in
40 this compact and commission rule to determine if their enactments are
41 materially different from the model compact and whether they qualify
42 for participation in the compact.

43 3. All actions taken for the benefit of the commission or in furtherance
44 of the purposes of the administration of the compact prior to the ef-
45 fective date of the compact or prior to the commission coming into exis-
46 tence shall be considered to be actions of the commission unless specif-
47 ically repudiated by the commission. The commission shall own and have
48 all rights to any intellectual property developed on behalf or in fur-

1 therance of the commission by individuals or entities involved in or-
2 ganizing or establishing the commission, as may be further set forth in
3 rules of the commission.

4 4. Any state that joins the compact subsequent to the commission's
5 initial adoption of the rules and bylaws shall be subject to the rules
6 and bylaws as they exist on the date on which the compact becomes law in
7 that state. Any rule that has been previously adopted by the commission
8 shall have the full force and effect of law on the day the compact be-
9 comes law in that state.

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

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

14 2. Withdrawal shall not affect the continuing requirement of the with-
15 drawing state's respiratory therapy licensing authority to comply with
16 the investigative and adverse action reporting requirements of this
17 compact prior to the effective date of withdrawal.

18 3. Upon the enactment of a statute withdrawing from this compact, a
19 state shall immediately provide notice of such withdrawal to all li-
20 censees and compact privilege holders of which the commission has a
21 record within that state. Notwithstanding any subsequent statutory
22 enactment to the contrary, such withdrawing state shall continue to
23 recognize all licenses granted pursuant to this compact for a minimum
24 of one hundred eighty (180) days after the date of such notice of with-
25 drawal.

26 C. Nothing contained in this compact shall be construed to invalidate
27 or prevent any licensure agreement or other cooperative arrangement between
28 a member state and a non-member state that does not conflict with the provi-
29 sions of this compact.

30 D. This compact may be amended by the member states. No amendment to
31 this compact shall become effective and binding on any member state until it
32 is enacted into the laws of all member states.

33 SECTION 12
34 CONSTRUCTION AND SEVERABILITY

35 A. This compact and the commission's rulemaking authority shall be lib-
36 erally construed so as to effectuate the purposes and the implementation and
37 administration of the compact. Provisions of the compact expressly autho-
38 rizing or requiring the promulgation of rules shall not be construed to limit
39 the commission's rulemaking authority solely for those purposes.

40 B. The provisions of this compact shall be severable, and if any phrase,
41 clause, sentence, or provision of this compact is held by a court of compe-
42 tent jurisdiction to be contrary to the constitution of any member state,
43 of any state seeking participation in the compact, or of the United States,
44 or the applicability thereof to any government, agency, person, or circum-
45 stance is held to be unconstitutional by a court of competent jurisdiction,
46 the validity of the remainder of this compact and the applicability thereof
47 to any other government, agency, person, or circumstance shall not be af-
48 fected thereby.

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

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SECTION 13
CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

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

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

17 C. All permissible agreements between the commission and the member
18 states are binding in accordance with their terms.

19 D. Other than as expressly set forth herein, nothing in this compact
20 will impact initial licensure.

21 SECTION 2. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after
23 July 1, 2025.