

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 791
Committee Substitute Favorable 7/21/21

Short Title: Licensed Counselors Interstate Compact.

(Public)

Sponsors:

Referred to:

May 4, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AND ENTER INTO AN INTERSTATE COMPACT FOR THE
3 PRACTICE OF PROFESSIONAL COUNSELING AND TO APPROPRIATE FUNDS TO
4 ASSIST WITH THE ADMINISTRATIVE COSTS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 24A.

9 "Professional Counseling Licensure Compact.

10 "**§ 90-349.1. Purpose.**

11 The purpose of this Compact is to facilitate interstate practice of licensed professional
12 counselors with the goal of improving public access to professional counseling services. The
13 practice of professional counseling occurs in the state where the patient or client is located at the
14 time of the counseling services. The Compact preserves the regulatory authority of states to
15 protect public health and safety through the current system of state licensure. This Compact is
16 designed to achieve the following objectives:

- 17 (1) Increase public access to professional counseling services by providing for the
18 mutual recognition of other member state licenses.
19 (2) Enhance the states' ability to protect the public's health and safety.
20 (3) Encourage the cooperation of member states in regulating multistate licensed
21 professional counselors.
22 (4) Support spouses of relocating active duty military personnel.
23 (5) Enhance the exchange of licensure, investigative, and disciplinary information
24 among member states.
25 (6) Facilitate the use of telehealth technology in order to increase access to
26 professional counseling services.
27 (7) Support the uniformity of professional counseling licensure requirements
28 throughout the states to promote public safety and public health benefits.
29 (8) Invest all member states with the authority to hold a licensed professional
30 counselor accountable for meeting all state practice laws in the state in which
31 the client is located at the time care is rendered through the mutual recognition
32 of member state licenses.
33 (9) Eliminate the necessity for licenses in multiple states.
34 (10) Provide opportunities for interstate practice by licensed professional
35 counselors who meet uniform licensure requirements.

36 "**§ 90-349.2. Definitions.**



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

- 3 (1) Active duty military. – Full-time duty status in the active uniformed service
4 of the United States, including members of the National Guard and Reserve
5 on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C.
6 Chapter 1211.
- 7 (2) Adverse action. – Any administrative, civil, equitable, or criminal action
8 permitted by a state's laws which is imposed by a licensing board or other
9 authority against a licensed professional counselor, including actions against
10 an individual's license or privilege to practice, such as revocation, suspension,
11 probation, monitoring of the licensee, limitation on the licensee's practice, or
12 any other encumbrance on licensure affecting a licensed professional
13 counselor's authorization to practice, including issuance of a cease and desist
14 action.
- 15 (3) Alternative program. – A nondisciplinary monitoring or remediation process
16 approved by a professional counseling licensing board to address impaired
17 practitioners.
- 18 (4) Continuing competence/education. – A requirement, as a condition of license
19 renewal, to provide evidence of participation in, or completion of, educational
20 and professional activities relevant to practice or area of work.
- 21 (5) Counseling Compact Commission or Commission. – The national
22 administrative body whose membership consists of all states that have enacted
23 the Compact.
- 24 (6) Current significant investigative information. – Any of the following:
25 a. Investigative information that a licensing board, after a preliminary
26 inquiry that includes notification and an opportunity for the licensed
27 professional counselor to respond, if required by state law, has reason
28 to believe is not groundless and, if proved true, would indicate more
29 than a minor infraction.
- 30 b. Investigative information that indicates that the licensed professional
31 counselor represents an immediate threat to public health and safety
32 regardless of whether the licensed professional counselor has been
33 notified and had an opportunity to respond.
- 34 (7) Data system. – A repository of information about licensees, including, but not
35 limited to, continuing education, examination, licensure, investigative,
36 privilege to practice, and adverse action information.
- 37 (8) Encumbered license. – A license in which an adverse action restricts the
38 practice of professional counseling by the licensee and said adverse action has
39 been reported to the National Practitioners Data Bank (NPDB).
- 40 (9) Encumbrance. – A revocation or suspension of, or any limitation on, the full
41 and unrestricted practice of licensed professional counseling by a licensing
42 board.
- 43 (10) Executive Committee. – A group of directors elected or appointed to act on
44 behalf of, and within the powers granted to them by, the Commission.
- 45 (11) Home state. – The member state that is the licensee's primary state of
46 residence.
- 47 (12) Impaired practitioner. – An individual who has a condition that may impair
48 his or her ability to practice as a licensed professional counselor without some
49 type of intervention and may include, but is not limited to, alcohol and drug
50 dependence, mental health impairment, and neurological or physical
51 impairments.

- 1 (13) Investigative information. – Information, records, or documents received or
2 generated by a professional counseling licensing board pursuant to an
3 investigation.
- 4 (14) Jurisprudence requirement. – The assessment of an individual's knowledge of
5 the laws and rules governing the practice of professional counseling in a state,
6 if required by a member state.
- 7 (15) Licensed professional counselor. – A counselor licensed by a member state,
8 regardless of the title used by that state, to independently assess, diagnose, and
9 treat behavioral health conditions.
- 10 (16) Licensee. – An individual who currently holds an authorization from the state
11 to practice as a licensed professional counselor.
- 12 (17) Licensing board. – The agency of a state, or equivalent, that is responsible for
13 the licensing and regulation of licensed professional counselors.
- 14 (18) Member state. – A state that has enacted the Compact.
- 15 (19) Privilege to practice. – A legal authorization, which is equivalent to a license,
16 permitting the practice of professional counseling in a remote state.
- 17 (20) Professional counseling. – The assessment, diagnosis, and treatment of
18 behavioral health conditions by a licensed professional counselor.
- 19 (21) Remote state. – A member state other than the home state where a licensee is
20 exercising or seeking to exercise the privilege to practice.
- 21 (22) Rule. – A regulation promulgated by the Commission that has the force of
22 law.
- 23 (23) Single-state license. – A licensed professional counselor license issued by a
24 member state that authorizes practice only within the issuing state and does
25 not include a privilege to practice in any other member state.
- 26 (24) State. – Any state, commonwealth, district, or territory of the United States of
27 America that regulates the practice of professional counseling.
- 28 (25) Telehealth. – The application of telecommunication technology to deliver
29 professional counseling services remotely to assess, diagnose, and treat
30 behavioral health conditions.
- 31 (26) Unencumbered license. – A license that authorizes a licensed professional
32 counselor to engage in the full and unrestricted practice of professional
33 counseling.

34 "**§ 90-349.3. State participation in the Compact.**

- 35 (a) To participate in the Compact, a member state must currently do all of the following:
- 36 (1) License and regulate licensed professional counselors.
- 37 (2) Require licensees to pass a nationally recognized exam approved by the
38 Commission.
- 39 (3) Require licensees to have a 60-semester-hour or 90-quarter-hour master's
40 degree in counseling or 60-semester hours or 90-quarter hours of graduate
41 course work, including the following topic areas:
- 42 a. Professional counseling orientation and ethical practice.
- 43 b. Social and cultural diversity.
- 44 c. Human growth and development.
- 45 d. Career development.
- 46 e. Counseling and helping relationships.
- 47 f. Group counseling and group work.
- 48 g. Diagnosis and treatment; assessment and testing.
- 49 h. Research and program evaluation.
- 50 i. Other areas as determined by the Commission.

- 1 (4) Require licensees to complete a supervised postgraduate professional
2 experience as defined by the Commission.
- 3 (5) Have a mechanism in place for receiving and investigating complaints about
4 licensees.
- 5 (b) A member state shall do all of the following:
- 6 (1) Participate fully in the Commission's data system, including, but not limited
7 to, using the Commission's unique identifier as defined in rules.
- 8 (2) Notify the Commission, in compliance with the terms of the Compact and
9 rules, of any adverse action or the availability of investigative information
10 regarding a licensee.
- 11 (3) Implement or utilize procedures for considering the criminal history records
12 of applicants for an initial privilege to practice. These procedures shall include
13 the submission of fingerprints or other biometric-based information by
14 applicants for the purpose of obtaining an applicant's criminal history record
15 information from the Federal Bureau of Investigation and the agency
16 responsible for retaining that state's criminal records. The procedures must
17 comply with the following:
- 18 a. The member state must fully implement a criminal background check
19 requirement, within a time frame established by rule, by receiving the
20 results of the Federal Bureau of Investigation record search, and shall
21 use the results in making licensure decisions.
- 22 b. Communication between a member state, the Commission, and among
23 member states regarding the verification of eligibility for licensure
24 through the Compact shall not include any information received from
25 the Federal Bureau of Investigation relating to a federal criminal
26 records check performed by a member state under P.L. 92-544.
- 27 (4) Comply with the rules of the Commission.
- 28 (5) Require an applicant to obtain or retain a license in the home state and meet
29 the home state's qualifications for licensure or renewal of licensure, as well as
30 all other applicable state laws.
- 31 (6) Grant the privilege to practice to a licensee holding a valid unencumbered
32 license in another member state in accordance with the terms of the Compact
33 and rules.
- 34 (7) Provide for the attendance of the state's commissioner to the Counseling
35 Compact Commission meetings.
- 36 (c) Member states may charge a fee for granting a privilege to practice.
- 37 (d) Individuals not residing in a member state shall continue to be able to apply for a
38 member state's single-state license as provided under the laws of each member state. However,
39 the single-state license granted to these individuals shall not be recognized as granting the
40 privilege to practice professional counseling in any other member state.
- 41 (e) Nothing in this Compact shall affect the requirements established by a member state
42 for the issuance of a single-state license.
- 43 (f) A license issued to a licensed professional counselor by a home state to a resident in
44 that state shall be recognized by each member state as authorizing a licensed professional
45 counselor to practice professional counseling, under a privilege to practice, in each member state.
- 46 **§ 90-349.4. Privilege to practice.**
- 47 (a) To exercise the privilege to practice under the terms and provisions of the Compact,
48 the licensee shall meet all of the following requirements:
- 49 (1) Hold a license in the home state.
- 50 (2) Have a valid United States social security number or National Practitioner
51 Identifier.

- 1 (3) Be eligible for a privilege to practice in any member state in accordance with
2 subsections (d), (g), and (h) of this section.
- 3 (4) Have not had any encumbrance or restriction against any license or privilege
4 to practice within the previous two years.
- 5 (5) Notify the Commission that the licensee is seeking the privilege to practice
6 within a remote state.
- 7 (6) Pay any applicable fee, including any state fee, for the privilege to practice.
- 8 (7) Meet any continuing competence/education requirements established by the
9 home state.
- 10 (8) Meet any jurisprudence requirements established by the remote state in which
11 the licensee is seeking a privilege to practice.
- 12 (9) Report to the Commission any adverse action, encumbrance, or restriction on
13 a license taken by any nonmember state within 30 days from the date the
14 action is taken.

15 (b) The privilege to practice is valid until the expiration date of the home state license.
16 The licensee must comply with the requirements of subsection (a) of this section to maintain the
17 privilege to practice in the remote state.

18 (c) A licensee providing professional counseling in a remote state under the privilege to
19 practice shall adhere to the laws and regulations of the remote state.

20 (d) A licensee providing professional counseling services in a remote state is subject to
21 that state's regulatory authority. A remote state may, in accordance with due process and that
22 state's laws, remove a licensee's privilege to practice in the remote state for a specific period of
23 time, impose fines, and take any other necessary actions to protect the health and safety of its
24 citizens. The licensee may be ineligible for a privilege to practice in any member state until the
25 specific time for removal has passed and all fines are paid.

26 (e) If a home state license is encumbered, the licensee shall lose the privilege to practice
27 in any remote state until all of the following occur:

28 (1) The home state license is no longer encumbered.

29 (2) The licensee has not had any encumbrance or restriction against any license
30 or privilege to practice within the previous two years.

31 (f) Once an encumbered license in the home state is restored to good standing, the
32 licensee must meet the requirements of subsection (a) of this section to obtain a privilege to
33 practice in any remote state.

34 (g) If a licensee's privilege to practice in any remote state is removed, the individual may
35 lose the privilege to practice in all other remote states until all of the following occur:

36 (1) The specific period of time for which the privilege to practice was removed
37 has ended.

38 (2) All fines have been paid.

39 (3) The licensee has not had any encumbrance or restriction against any license
40 or privilege to practice within the previous two years.

41 (h) Once the requirements of subsection (g) of this section have been met, the licensee
42 must meet the requirements in subsection (a) of this section to obtain a privilege to practice in a
43 remote state.

44 **"§ 90-349.5. Obtaining a new home state license based on a privilege to practice.**

45 (a) A licensed professional counselor may hold a home state license, which allows for a
46 privilege to practice in other member states, in only one member state at a time.

47 (b) If a licensed professional counselor changes primary state of residence by moving
48 between two member states, the licensed professional counselor shall do all of the following:

49 (1) File an application for obtaining a new home state license by virtue of a
50 privilege to practice.

51 (2) Pay all applicable fees.

1 (3) Notify the current and new home state in accordance with applicable rules
2 adopted by the Commission.

3 (c) Upon receipt of an application for obtaining a new home state license by virtue of
4 privilege to practice, the new home state shall verify that the licensed professional counselor
5 meets the pertinent criteria outlined in G.S. 90-349.4 via the data system, without need for
6 primary source verification, except for the following:

7 (1) A Federal Bureau of Investigation fingerprint-based criminal background
8 check, if not previously performed or updated, pursuant to applicable rules
9 adopted by the Commission in accordance with P.L. 92-544.

10 (2) Other criminal background checks, as required by the new home state.

11 (3) Completion of any requisite jurisprudence requirements of the new home
12 state.

13 (d) The former home state shall convert the former home state license into a privilege to
14 practice once the new home state has activated the new home state license in accordance with
15 applicable rules adopted by the Commission.

16 (e) Notwithstanding any other provision of this Compact, if the licensed professional
17 counselor cannot meet the criteria in G.S. 90-349.4, the new home state may apply its
18 requirements for issuing a new single-state license.

19 (f) The licensed professional counselor shall pay all applicable fees to the new home state
20 in order to be issued a new home state license.

21 (g) If a licensed professional counselor changes primary state of residence by moving
22 from a member state to a nonmember state, or from a nonmember state to a member state, the
23 state criteria shall apply for issuance of a single-state license in the new state.

24 (h) Nothing in this Compact shall interfere with a licensee's ability to hold a single-state
25 license in multiple states; however, for the purposes of this Compact, a licensee shall have only
26 one home state license.

27 (i) Nothing in this Compact shall affect the requirements established by a member state
28 for the issuance of a single-state license.

29 **"§ 90-349.6. Active duty military personnel or their spouses.**

30 Active duty military personnel, or their spouses, shall designate a home state where the
31 individual has a current license in good standing. The individual may retain the home state
32 designation during the period the service member is on active duty. Subsequent to designating a
33 home state, the individual shall only change his or her home state through application for
34 licensure in the new state or through the process described in G.S. 90-349.5.

35 **"§ 90-349.7. Compact privilege to practice telehealth.**

36 (a) Member states shall recognize the right of a licensed professional counselor, licensed
37 by a home state in accordance with G.S. 90-349.3 and under the rules promulgated by the
38 Commission, to practice professional counseling in any member state via telehealth under a
39 privilege to practice as provided in the Compact and rules promulgated by the Commission.

40 (b) A licensee providing professional counseling services in a remote state under the
41 privilege to practice shall adhere to the laws and regulations of the remote state.

42 **"§ 90-349.8. Adverse actions.**

43 (a) In addition to the other powers conferred by state law, a remote state shall have the
44 authority, in accordance with existing state due process law, to do the following:

45 (1) Take adverse action against a licensed professional counselor's privilege to
46 practice within that member state.

47 (2) Issue subpoenas for both hearings and investigations that require the
48 attendance and testimony of witnesses as well as the production of evidence.
49 Subpoenas issued by a licensing board in a member state for the attendance
50 and testimony of witnesses or the production of evidence from another
51 member state shall be enforced in the latter state by any court of competent

1 jurisdiction, according to the practice and procedure of that court applicable
2 to subpoenas issued in proceedings pending before it. The issuing authority
3 shall pay any witness fees, travel expenses, mileage, and other fees required
4 by the service statutes of the state in which the witnesses or evidence are
5 located.

6 (3) A home state shall have exclusive power to impose adverse action against a
7 licensed professional counselor's license issued by the home state.

8 (b) For purposes of taking adverse action, the home state shall give the same priority and
9 effect to reported conduct received from a member state as it would if the conduct had occurred
10 within the home state. In doing so, the home state shall apply its own state laws to determine
11 appropriate action.

12 (c) The home state shall complete any pending investigations of a licensed professional
13 counselor who changes primary state of residence during the course of the investigations. The
14 home state shall also have the authority to take appropriate action and shall promptly report the
15 conclusions of the investigations to the data system. The data system administrator shall promptly
16 notify the new home state of any adverse actions.

17 (d) A member state, if otherwise permitted by state law, may recover from the affected
18 licensed professional counselor the costs of investigations and disposition of cases resulting from
19 any adverse action taken against that licensed professional counselor.

20 (e) A member state may take adverse action based on the factual findings of the remote
21 state, provided that the member state follows its own procedures for taking the adverse action.

22 (f) In addition to the authority granted to a member state by its respective state
23 professional counseling act or other applicable state law, any member state may participate with
24 other member states in joint investigations of licensees. Member states shall share any
25 investigative, litigation, or compliance materials in furtherance of any joint or individual
26 investigation initiated under the Compact.

27 (g) If an adverse action is taken by the home state against the license of a licensed
28 professional counselor, the licensed professional counselor's privilege to practice in all other
29 member states shall be deactivated until all encumbrances have been removed from the state
30 license. All home state disciplinary orders that impose adverse action against the license of a
31 licensed professional counselor shall include a statement that the licensed professional
32 counselor's privilege to practice is deactivated in all member states during the pendency of the
33 order.

34 (h) If a member state takes adverse action, it shall promptly notify the administrator of
35 the data system. The administrator of the data system shall promptly notify the home state of any
36 adverse actions by remote states.

37 (i) Nothing in this Compact shall override a member state's decision that participation in
38 an alternative program may be used in lieu of adverse action.

39 **"§ 90-349.9. Establishment of the Counseling Compact Commission.**

40 (a) Establishment. – The Compact member states hereby create and establish a joint
41 public agency known as the Counseling Compact Commission.

42 (1) The Commission is an instrumentality of the Compact states.

43 (2) Venue is proper, and judicial proceedings by or against the Commission shall
44 be brought solely and exclusively in a court of competent jurisdiction where
45 the principal office of the Commission is located. The Commission may waive
46 venue and jurisdictional defenses to the extent it adopts or consents to
47 participate in alternative dispute resolution proceedings.

48 (3) Nothing in this Compact shall be construed to be a waiver of sovereign
49 immunity.

50 (b) Membership; Voting; Meetings. – Each member state shall have and be limited to one
51 delegate selected by that member state's licensing board. The delegate shall be either (i) a current

1 member of the licensing board, who is a licensed professional counselor or public member, or
2 (ii) an administrator of the licensing board. Any delegate may be removed or suspended from
3 office as provided by the law of the state from which the delegate is appointed. The member state
4 board shall fill any vacancy occurring in the Commission within 60 days. Each delegate shall be
5 entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall
6 otherwise have an opportunity to participate in the business and affairs of the Commission. A
7 delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may
8 provide for delegates' participation in meetings by telephone or other means of communication.
9 The Commission shall meet at least once during each calendar year. Additional meetings shall
10 be held as set forth in the bylaws. The Commission shall establish by rule a term of office for
11 delegates and may by rule establish term limits.

12 (c) Powers; Duties. – The Commission shall have the following powers and duties:

- 13 (1) Establish the fiscal year of the Commission.
- 14 (2) Establish bylaws.
- 15 (3) Maintain its financial records in accordance with the bylaws.
- 16 (4) Meet and take such actions as are consistent with the provisions of this
17 Compact and the bylaws.
- 18 (5) Promulgate rules which shall be binding to the extent and in the manner
19 provided for in the Compact.
- 20 (6) Bring and prosecute legal proceedings or actions in the name of the
21 Commission, provided that the standing of any state professional counseling
22 licensing board to sue or be sued under applicable law shall not be affected.
- 23 (7) Purchase and maintain insurance and bonds.
- 24 (8) Borrow, accept, or contract for services of personnel, including, but not
25 limited to, employees of a member state.
- 26 (9) Hire employees, elect or appoint officers, fix compensation, define duties,
27 grant such individuals appropriate authority to carry out the purposes of the
28 Compact, and establish the Commission's personnel policies and programs
29 relating to conflicts of interest, qualifications of personnel, and other related
30 personnel matters.
- 31 (10) Accept any and all appropriate donations and grants of money, equipment,
32 supplies, materials and services, and receive, utilize, and dispose of the same,
33 provided that at all times the Commission shall avoid any appearance of
34 impropriety and conflict of interest.
- 35 (11) Lease, purchase, accept appropriate gifts or donations of, or otherwise own,
36 hold, improve, or use, any property, real, personal, or mixed, provided that at
37 all times the Commission shall avoid any appearance of impropriety.
- 38 (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
39 dispose of any property, real, personal, or mixed.
- 40 (13) Establish a budget and make expenditures.
- 41 (14) Borrow money.
- 42 (15) Appoint committees, including standing committees composed of members,
43 state regulators, state legislators or their representatives, and consumer
44 representatives, and such other interested persons as may be designated in this
45 Compact and the bylaws.
- 46 (16) Provide and receive information from, and cooperate with, law enforcement
47 agencies.
- 48 (17) Establish and elect an Executive Committee.
- 49 (18) Perform such other functions as may be necessary or appropriate to achieve
50 the purposes of this Compact consistent with the state regulation of
51 professional counseling licensure and practice.

- 1 (d) Executive Committee. – The Executive Committee shall have the power to act on
2 behalf of the Commission according to the terms of this Compact.
- 3 (1) The Executive Committee shall be composed of up to 11 members, as follows:
4 a. Seven voting members who are elected by the Commission from the
5 current membership of the Commission.
6 b. Up to four ex officio, nonvoting members from four recognized
7 national professional counselor organizations.
8 c. The ex officio members will be selected by their respective
9 organizations.
- 10 (2) The Commission may remove any member of the Executive Committee as
11 provided in bylaws.
- 12 (3) The Executive Committee shall meet at least annually.
- 13 (4) The Executive Committee shall have the following duties and responsibilities:
14 a. Recommend to the entire Commission changes to the rules or bylaws,
15 changes to this Compact legislation, fees paid by Compact member
16 states such as annual dues, and any Commission Compact fee charged
17 to licensees for the privilege to practice.
18 b. Ensure Compact administration services are appropriately provided,
19 contractual or otherwise.
20 c. Prepare and recommend the budget.
21 d. Maintain financial records on behalf of the Commission.
22 e. Monitor Compact compliance of member states and provide
23 compliance reports to the Commission.
24 f. Establish additional committees as necessary.
25 g. Perform other duties as provided in rules or bylaws.
- 26 (e) Meetings of the Commission. – All meetings shall be open to the public, and public
27 notice of meetings shall be given in the same manner as required under the rulemaking provisions
28 in G.S. 90-349.11. The Commission or the Executive Committee or other committees of the
29 Commission may convene in a closed, nonpublic meeting if the Commission or Executive
30 Committee or other committees of the Commission must discuss any of the following:
- 31 (1) Noncompliance of a member state with its obligations under the Compact.
32 (2) The employment, compensation, discipline or other matters, practices or
33 procedures related to specific employees, or other matters related to the
34 Commission's internal personnel practices and procedures.
35 (3) Current, threatened, or reasonably anticipated litigation.
36 (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or
37 real estate.
38 (5) Accusation of any person of a crime or formally censuring any person.
39 (6) Disclosure of trade secrets or commercial or financial information that is
40 privileged or confidential.
41 (7) Disclosure of information of a personal nature where disclosure would
42 constitute a clearly unwarranted invasion of personal privacy.
43 (8) Disclosure of investigative records compiled for law enforcement purposes.
44 (9) Disclosure of information related to any investigative reports prepared by or
45 on behalf of or for use of the Commission or other committee charged with
46 responsibility of investigation or determination of compliance issues pursuant
47 to the Compact.
48 (10) Matters specifically exempted from disclosure by federal or member state
49 statute.

50 If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's
51 legal counsel or designee shall certify that the meeting may be closed and shall reference each

1 relevant exempting provision. The Commission shall keep minutes that fully and clearly describe
2 all matters discussed in a meeting and shall provide a full and accurate summary of actions taken,
3 and the reasons therefor, including a description of the views expressed. All documents
4 considered in connection with an action shall be identified in such minutes. All minutes and
5 documents of a closed meeting shall remain under seal, subject to release by a majority vote of
6 the Commission or order of a court of competent jurisdiction.

7 (f) Financing of the Commission. – The Commission shall pay, or provide for the
8 payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
9 The Commission may accept any and all appropriate revenue sources, donations, and grants of
10 money, equipment, supplies, materials, and services.

11 The Commission may levy on and collect an annual assessment from each member state or
12 impose fees on other parties to cover the cost of the operations and activities of the Commission
13 and its staff, which must be in a total amount sufficient to cover its annual budget as approved
14 by the Commission each year for which revenue is not provided by other sources. The aggregate
15 annual assessment amount shall be allocated based upon a formula to be determined by the
16 Commission, which shall promulgate a rule binding upon all member states. The Commission
17 shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor
18 shall the Commission pledge the credit of any of the member states, except by and with the
19 authority of the member state.

20 The Commission shall keep accurate accounts of all receipts and disbursements. The receipts
21 and disbursements of the Commission shall be subject to the audit and accounting procedures
22 established under its bylaws. However, all receipts and disbursements of funds handled by the
23 Commission shall be audited yearly by a certified or licensed public accountant, and the report
24 of the audit shall be included in and become part of the annual report of the Commission.

25 (g) Qualified Immunity; Defense; Indemnification. – The members, officers, executive
26 director, employees, and representatives of the Commission shall be immune from suit and
27 liability, either personally or in their official capacity, for any claim for damage to or loss of
28 property or personal injury or other civil liability caused by or arising out of any actual or alleged
29 act, error, or omission that occurred, or that the person against whom the claim is made had a
30 reasonable basis for believing occurred, within the scope of Commission employment, duties, or
31 responsibilities, provided that nothing in this paragraph shall be construed to protect any such
32 person from suit or liability for any damage, loss, injury, or liability caused by the intentional or
33 willful or wanton misconduct of that person.

34 The Commission shall defend any member, officer, executive director, employee, or
35 representative of the Commission in any civil action seeking to impose liability arising out of
36 any actual or alleged act, error, or omission that occurred within the scope of Commission
37 employment, duties, or responsibilities, or that the person against whom the claim is made had a
38 reasonable basis for believing occurred within the scope of Commission employment, duties, or
39 responsibilities, provided that nothing herein shall be construed to prohibit that person from
40 retaining his or her own counsel, and provided further, that the actual or alleged act, error, or
41 omission did not result from that person's intentional or willful or wanton misconduct.

42 The Commission shall indemnify and hold harmless any member, officer, executive director,
43 employee, or representative of the Commission for the amount of any settlement or judgment
44 obtained against that person arising out of any actual or alleged act, error, or omission that
45 occurred within the scope of Commission employment, duties, or responsibilities, or that such
46 person had a reasonable basis for believing occurred within the scope of Commission
47 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
48 did not result from the intentional or willful or wanton misconduct of that person.

49 **"§ 90-349.10. Data system.**

1 (a) The Commission shall provide for the development, maintenance, and utilization of
2 a coordinated database and reporting system containing licensure, adverse action, and
3 investigative information on all licensed individuals in member states.

4 (b) Notwithstanding any other provision of law to the contrary, a member state shall
5 submit a uniform data set to the data system on all individuals to whom this Compact is
6 applicable, as required by the rules of the Commission, including:

7 (1) Identifying information.

8 (2) Licensure data.

9 (3) Adverse actions against a license or privilege to practice.

10 (4) Nonconfidential information related to alternative program participation.

11 (5) Any denial of application for licensure and the reasons for such denial.

12 (6) Current significant investigative information.

13 (7) Other information that may facilitate the administration of this Compact, as
14 determined by the rules of the Commission.

15 (c) Investigative information pertaining to a licensee in any member state will only be
16 available to other member states.

17 (d) The Commission shall promptly notify all member states of any adverse action taken
18 against a licensee or an individual applying for a license. Adverse action information pertaining
19 to a licensee in any member state will be available to any other member state.

20 (e) Member states contributing information to the data system may designate information
21 that may not be shared with the public without the express permission of the contributing state.

22 (f) Any information submitted to the data system that is subsequently required to be
23 expunged by the laws of the member state contributing the information shall be removed from
24 the data system.

25 **"§ 90-349.11. Rulemaking.**

26 (a) The Commission shall promulgate reasonable rules in order to effectively and
27 efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the
28 Commission exercises its rulemaking authority in a manner that is beyond the scope of the
29 purposes of the Compact, or the powers granted thereunder, then such an action by the
30 Commission shall be invalid and have no force and effect.

31 (b) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth
32 in this section and the rules adopted thereunder. Rules and amendments shall become binding as
33 of the date specified in each rule or amendment.

34 (c) If a majority of the legislatures of the member states rejects a rule, by enactment of a
35 statute or resolution in the same manner used to adopt the Compact within four years of the date
36 of adoption of the rule, then such rule shall have no further force and effect in any member state.

37 (d) Rules or amendments to the rules shall be adopted at a regular or special meeting of
38 the Commission.

39 (e) Prior to promulgation and adoption of a final rule by the Commission, and at least 30
40 days in advance of the meeting at which the rule will be considered and voted upon, the
41 Commission shall file a notice of proposed rulemaking on the website of the Commission or
42 other publicly accessible platform and on the website of each member state professional
43 counseling licensing board or other publicly accessible platform or the publication in which each
44 state would otherwise publish proposed rules.

45 (f) The notice of proposed rulemaking shall include all of the following:

46 (1) The proposed time, date, and location of the meeting in which the rule will be
47 considered and voted upon.

48 (2) The text of the proposed rule or amendment and the reason for the proposed
49 rule.

50 (3) A request for comments on the proposed rule from any interested person.

- 1 (4) The manner in which interested persons may submit notice to the Commission
2 of their intention to attend the public hearing and any written comments.
- 3 (g) Prior to adoption of a proposed rule, the Commission shall allow persons to submit
4 written data, facts, opinions, and arguments, which shall be made available to the public.
- 5 (h) The Commission shall grant an opportunity for a public hearing before it adopts a rule
6 or amendment if a hearing is requested by any of the following:
- 7 (1) At least 25 persons.
- 8 (2) A state or federal government subdivision or agency.
- 9 (3) An association or organization having at least 25 members.
- 10 (i) If a hearing is held on the proposed rule or amendment, the Commission shall publish
11 the place, time, and date of the scheduled public hearing. If the hearing is held via electronic
12 means, the Commission shall publish the mechanism for access to the electronic hearing.
13 Hearings shall be conducted as follows:
- 14 (1) All persons wishing to be heard at the hearing shall notify the executive
15 director of the Commission or other designated member in writing of their
16 desire to appear and testify at the hearing not less than five business days
17 before the scheduled date of the hearing.
- 18 (2) Hearings shall be conducted in a manner providing each person who wishes
19 to comment a fair and reasonable opportunity to comment orally or in writing.
- 20 (3) All hearings will be recorded. A copy of the recording shall be made available
21 on request.
- 22 (4) Nothing in this section shall be construed as requiring a separate hearing on
23 each rule. Rules may be grouped for the convenience of the Commission at
24 hearings required by this section.
- 25 (j) Following the scheduled hearing date, or by the close of business on the scheduled
26 hearing date if the hearing was not held, the Commission shall consider all written and oral
27 comments received.
- 28 (k) If no written notice of intent to attend the public hearing by interested parties is
29 received, the Commission may proceed with promulgation of the proposed rule without a public
30 hearing.
- 31 (l) The Commission shall, by majority vote of all members, take final action on the
32 proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking
33 record and the full text of the rule.
- 34 (m) Upon determination that an emergency exists, the Commission may consider and
35 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that
36 the usual rulemaking procedures provided in the Compact and in this section shall be
37 retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days
38 after the effective date of the rule. For the purposes of this provision, an emergency rule is one
39 that must be adopted immediately in order to (i) meet an imminent threat to public health, safety,
40 or welfare, (ii) prevent a loss of Commission or member state funds, (iii) meet a deadline for the
41 promulgation of an administrative rule that is established by federal law or rule, or (iv) protect
42 public health and safety.
- 43 (n) The Commission or an authorized committee of the Commission may direct revisions
44 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors
45 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be
46 posted on the website of the Commission. The revision shall be subject to challenge by any
47 person for a period of 30 days after posting. The revision may be challenged only on grounds
48 that the revision results in a material change to a rule. A challenge shall be made in writing and
49 delivered to the chair of the Commission prior to the end of the notice period. If no challenge is
50 made, the revision will take effect without further action. If the revision is challenged, the
51 revision may not take effect without the approval of the Commission.

1 **"§ 90-349.12. Oversight; dispute resolution; enforcement.**

2 (a) Oversight. – The executive, legislative, and judicial branches of state government in
3 each member state shall enforce this Compact and take all actions necessary and appropriate to
4 effectuate the Compact's purposes and intent. The provisions of this Compact and the rules
5 promulgated hereunder shall have standing as statutory law.

6 All courts shall take judicial notice of the Compact and the rules in any judicial or
7 administrative proceeding in a member state pertaining to the subject matter of this Compact
8 which may affect the powers, responsibilities, or actions of the Commission.

9 The Commission shall be entitled to receive service of process in any such proceeding and
10 shall have standing to intervene in such a proceeding for all purposes. Failure to provide service
11 of process to the Commission shall render a judgment or order void as to the Commission, this
12 Compact, or promulgated rules.

13 (b) Default; Technical Assistance; Termination. – If the Commission determines that a
14 member state has defaulted in the performance of its obligations or responsibilities under this
15 Compact or the promulgated rules, the Commission shall do all of the following:

16 (1) Provide written notice to the defaulting state and other member states of the
17 nature of the default, the proposed means of curing the default, and any other
18 action to be taken by the Commission.

19 (2) Provide remedial training and specific technical assistance regarding the
20 default.

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

26 Termination of membership in the Compact shall be imposed only after all other means of
27 securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given
28 by the Commission to the governor, the majority and minority leaders of the defaulting state's
29 legislature, and each of the member states.

30 A state that has been terminated is responsible for all assessments, obligations, and liabilities
31 incurred through the effective date of termination, including obligations that extend beyond the
32 effective date of termination.

33 The Commission shall not bear any costs related to a state that is found to be in default or
34 that has been terminated from the Compact, unless agreed upon in writing between the
35 Commission and the defaulting state.

36 The defaulting state may appeal the action of the Commission by petitioning the U.S. District
37 Court for the District of Columbia or the federal district where the Commission has its principal
38 offices. The prevailing member shall be awarded all costs of such litigation, including reasonable
39 attorneys' fees.

40 (c) Dispute Resolution. – Upon request by a member state, the Commission shall attempt
41 to resolve disputes related to the Compact that arise among member states and between member
42 and nonmember states. The Commission shall promulgate a rule providing for both mediation
43 and binding dispute resolution for disputes as appropriate.

44 (d) Enforcement. – The Commission, in the reasonable exercise of its discretion, shall
45 enforce the provisions and rules of this Compact. By majority vote, the Commission may initiate
46 legal action in the U.S. District Court for the District of Columbia or the federal district where
47 the Commission has its principal offices against a member state in default to enforce compliance
48 with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may
49 include both injunctive relief and damages. In the event judicial enforcement is necessary, the
50 prevailing member shall be awarded all costs of such litigation, including reasonable attorneys'

1 fees. The remedies herein shall not be the exclusive remedies of the Commission. The
2 Commission may pursue any other remedies available under federal or state law.

3 **"§ 90-349.13. Date of implementation of Counseling Compact Commission and associated**
4 **rules; withdrawal; amendment.**

5 (a) The Compact shall come into effect on the date on which the Compact statute is
6 enacted into law in the tenth member state. The provisions, which become effective at that time,
7 shall be limited to the powers granted to the Commission relating to assembly and the
8 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers
9 necessary to the implementation and administration of the Compact.

10 (b) Any state that joins the Compact subsequent to the Commission's initial adoption of
11 the rules shall be subject to the rules as they exist on the date on which the Compact becomes
12 law in that state. Any rule that has been previously adopted by the Commission shall have the
13 full force and effect of law on the day the Compact becomes law in that state.

14 (c) Any member state may withdraw from this Compact by enacting a statute repealing
15 the same. A member state's withdrawal shall not take effect until six months after enactment of
16 the repealing statute. Withdrawal shall not affect the continuing requirement of the withdrawing
17 state's professional counseling licensing board to comply with the investigative and adverse
18 action reporting requirements of this act prior to the effective date of withdrawal.

19 (d) Nothing contained in this Compact shall be construed to invalidate or prevent any
20 professional counseling licensure agreement or other cooperative arrangement between a
21 member state and a nonmember state that does not conflict with the provisions of this Compact.

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

25 **"§ 90-349.14. Construction and severability.**

26 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
27 provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision
28 of this Compact is declared to be contrary to the constitution of any member state or of the United
29 States or the applicability thereof to any government, agency, person, or circumstance is held
30 invalid, the validity of the remainder of this Compact and the applicability thereof to any
31 government, agency, person, or circumstance shall not be affected thereby. If this Compact shall
32 be held contrary to the constitution of any member state, the Compact shall remain in full force
33 and effect as to the remaining member states and in full force and effect as to the member state
34 affected as to all severable matters.

35 **"§ 90-349.15. Binding effect of Compact and other laws.**

36 (a) A licensee providing professional counseling services in a remote state under the
37 privilege to practice shall adhere to the laws and regulations, including scope of practice, of the
38 remote state.

39 (b) Nothing herein prevents the enforcement of any other law of a member state that is
40 not inconsistent with the Compact.

41 (c) Any laws in a member state in conflict with the Compact are superseded to the extent
42 of the conflict.

43 (d) Any lawful actions of the Commission, including all rules and bylaws properly
44 promulgated by the Commission, are binding upon the member states.

45 (e) All permissible agreements between the Commission and the member states are
46 binding in accordance with their terms.

47 (f) In the event any provision of the Compact exceeds the constitutional limits imposed
48 on the legislature of any member state, the provision shall be ineffective to the extent of the
49 conflict with the constitutional provision in question in that member state."

50 **SECTION 2.** There is appropriated from the General Fund to the North Carolina
51 Board of Licensed Clinical Mental Health Counselors the sum of twenty thousand dollars

1 (\$20,000) in nonrecurring funds for the 2021-2022 fiscal year for use by the Board to assist with
2 the administrative costs of this act.

3 **SECTION 3.** Section 1 of this act becomes effective when at least 10 states have
4 enacted the Professional Counseling Licensure Compact set forth in Section 1 of this act. The
5 North Carolina Board of Licensed Clinical Mental Health Counselors shall report to the Revisor
6 of Statutes when the Professional Counseling Licensure Compact set forth in Section 1 of this
7 act has been enacted by the 10 member states. Section 2 of this act is effective July 1, 2021. The
8 remainder of this act is effective when it becomes law.