COUNSELORS/MENTAL HEALTH: Joins Louisiana to the licensed professional counselors interstate compact

AN ACT

To amend and reenact R.S. 37:1103(introductory paragraph) and to enact R.S. 37:1131 through 1145, relative to adding the state of Louisiana to the Licensed Professional Counselors Interstate Compact; to provide for the increase of public access to professional counseling services; to provide for the enhancement of public health and safety; to provide for multistate practice regulations; to provide for spousal support for relocating active duty military personnel; to provide for the exchange of licensure among member states; to provide for use of telehealth technology; to provide for uniformity of professional counseling licensure requirements; to eliminate the requirement for licenses in multiple states, to provide for opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:1103(introductory paragraph) is hereby amended and reenacted and R.S. 37:1131 through 1145 are hereby enacted to read as follows:

§1103. Definitions

As used in this Chapter Part, the following terms have the meaning ascribed to them in this Section:
§1131. Purpose

A. The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

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

(1) Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses.

(2) Enhance the states’ ability to protect the public’s health and safety.

(3) Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors.

(4) Support spouses of relocating active duty military personnel.

(5) Enhance the exchange of licensure, investigative and disciplinary information among member states.

(6) Allow for the use of telehealth technology to facilitate increased access to professional counseling services.

(7) Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits.

(8) Invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses.

(9) Eliminate the necessity for licenses in multiple states.

(10) Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.
§1132. Definitions

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

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

(2) "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual’s license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any other encumbrance on licensure affecting a licensed professional counselor’s authorization to practice, including issuance of a cease and desist action.

(3) "Alternative program" means a non disciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.

(4) "Continuing competence" or "continuing education" means a requirement, as a condition of license renewal, to provide evidence of completion of educational and professional activities relevant to practice or area of work.

(5) "Counseling Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(6) "Criminal history background check" means all state records of arrest, prosecution, and conviction, including those which have been expunged or dismissed pursuant to Code of Criminal Procedure Articles 893 or 894, as well as national records which shall include fingerprints of the applicant, biometrics, and other identifying information, if so requested by the licensing board.

(7) "Current significant investigative information" means either of the following:

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
(a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(b) Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.

(8) "Data system" means a repository of information about licensees, including but not limited to continuing education, examination, licensure, investigative, privilege to practice, and adverse action information.

(9) "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioners Data Bank (NPDB).

(10) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.

(11) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(12) "Home state" means the member state that is the licensee’s primary state of residence.

(13) "Impaired practitioner" means an individual who has a condition(s) that may impair their ability to practice as a licensed professional counselor without some type of intervention and may include but are not limited to alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

(14) "Investigative information" means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation.
(15) "Jurisprudence requirement", if required by a member state, means the assessment of an individual’s knowledge of the laws and rules governing the practice of professional counseling in a state.

(16) "Licensed professional counselor" means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.

(17) "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.

(18) "Licensing board" means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors.

(19) "Member state" means a state that has enacted the compact.

(20) "Privilege to practice" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.

(21) "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

(22) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.

(23) "Rule" means a regulation promulgated by the commission that has the force of law.

(24) "Single state license" means a licensed professional counselor license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

(25) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of professional counseling.

(26) "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.
(27) "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

§1133. State participation in the compact

A. To participate in the compact, a state shall currently:

(1) License and regulate licensed professional counselors.

(2) Require licensees to pass a nationally recognized exam approved by the commission.

(3) Require licensees to have a sixty-semester-hour or ninety quarter-hour master’s degree in counseling or sixty semester-hours or ninety quarter-hours of graduate course work in the following areas:

(a) Professional counseling orientation and ethical practice.

(b) Social and cultural diversity.

(c) Human growth and development.

(d) Career development.

(e) Counseling and helping relationships.

(f) Group counseling and group work.

(g) Diagnosis, treatment, assessment, and testing.

(h) Research and program evaluation.

(i) Other areas as determined by the commission.

(4) Require licensees to complete a supervised postgraduate professional experience as defined by the commission.

(5) Have a mechanism in place for receiving and investigating complaints about licensees.

B. A member state shall:

(1) Participate fully in the commission’s data system, including using the commission’s unique identifier as defined in rules.
(2) Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

(3)(a) Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice.

(b) The licensing board shall be entitled to the criminal history record and identification files of the Louisiana Bureau of Criminal Identification and Information located within the Department of Public Safety and Corrections, referred to hereafter in this Subparagraph as the "bureau", of any person who is required to be licensed as a licensed professional counselor. Fingerprints, biometrics, and other identifying information of the applicant shall be submitted to the bureau for qualification and registry, and the bureau shall, upon request of the licensing board and after receipt of such fingerprint card and other identifying information from the applicant, make available to the licensing board all arrest and conviction information contained in the bureau's criminal history record and identification files which pertain to the applicant for licensure. In addition, the fingerprints shall be forwarded by the bureau to the Federal Bureau of Investigation for a national criminal history record check. In accordance with the authority provided for in this Chapter, the costs of providing the information required pursuant to this Section shall be charged by the bureau, as specified in R.S. 15:587(B), to the licensing board for furnishing information contained in the bureau's criminal history record and identification files, including any additional cost of providing the national criminal history records check, which pertains to the applicant. The licensing board may impose any or all such fees or costs on the applicant.

(c) A member state shall fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.
(d) Communication between a member state, the commission, and among
member states regarding the verification of eligibility for licensure through the
compact shall not include any information received from the Louisiana Bureau of
Criminal Identification and Information and from the Federal Bureau of
Investigation relating to a federal criminal records check performed by a member
state under Public Law 92-544.

(4) Comply with the rules of the commission.

(5) Require an applicant to obtain or retain a license in the home state and
meet the home state’s qualifications for licensure or renewal of licensure, as well as
all other applicable state laws.

(6) Grant the privilege to practice to a licensee holding a valid
unencumbered license in another member state in accordance with the terms of the
compact and rules.

(7) Provide for the state commissioner's attendance of the Counseling
Compact Commission meetings.

C. Member states may charge a fee for granting the privilege to practice.

D. Individuals not residing in a member state shall remain eligible to apply
for a member state’s single state license as provided under the laws of each member
state. However, the single state license granted to these individuals shall not be
recognized as granting a privilege to practice professional counseling in any other
member state.

E. Nothing in this compact shall affect the requirements established by a
member state for the issuance of a single state license.

F. A license issued to a licensed professional counselor by a home state to
a resident in that state shall be recognized by each member state as authorizing a
licensed professional counselor to practice professional counseling, under a privilege
to practice, in each member state.
§1134. Privilege to practice

A. To exercise the privilege to practice under the terms and provisions of the compact, the licensee shall do all of the following:

1. Hold a license in the home state.

2. Have a valid United States Social Security Number or National Practitioner Identifier.

3. Be eligible for a privilege to practice in any member state in accordance with Subsections D, G, and H of this Section.

4. Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

5. Notify the commission that the licensee is seeking the privilege to practice within a remote state.

6. Meet any continuing competence or continuing education requirements established by the home state.

7. Pay any applicable fees, including any state fee, for the privilege to practice.

8. Meet any jurisprudence requirements established by any remote state in which the licensee is seeking a privilege to practice.

9. Report to the commission any adverse action, encumbrance, or restriction on license taken by any nonmember state within thirty days from the date the action is taken.

B. The privilege to practice is valid until the expiration date of the home license. The licensee shall comply with the requirements of Subsection A of this Section to maintain the privilege to practice in the remote state.

C. A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

D. A licensee providing professional counseling services in a remote state is subject to that state’s regulatory authority. A remote state may, in accordance with due process and that state’s laws, remove a licensee’s privilege to practice in the
remote state for a specific period of time, impose fines, and take any other necessary
actions to protect the health and safety of its citizens. The licensee is not eligible for
a privilege to practice in any member state until the specific time for removal has
passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the privilege
to practice in any remote state until all of the following occur:

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

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

F. Once an encumbered license in the home state is restored to good
standing, the licensee shall meet the requirements of Subsection A of this Section to
obtain a privilege to practice in any remote state.

G. If a licensee’s privilege to practice in any remote state is removed, the
licensee shall lose the privilege to practice in all other remote states until all of the
following have occurred:

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

(2) All fines have been paid.

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

H. Once the requirements of Subsection G of this Section have been met, the
licensee shall meet the requirements in Subsection A of this Section to obtain a
privilege to practice in a remote state.

§1135. Obtaining a new home state license based upon the privilege to practice

A. A licensed professional counselor may hold a license issued by the home
state, which allows for a privilege to practice, in only one member state at a time.

B. If a licensed professional counselor changes his primary state of residence
by moving between two member states:
(1) The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.

(2) Upon receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in R.S. 37:1134 via the data system, without need for primary source verification except for:

(a) A Federal Bureau of Investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544.

(b) Other criminal background checks as required by the new home state.

(c) Completion of any requisite jurisprudence requirements of the new home state.

(3) The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(4) If a licensed professional counselor does not meet the criteria for a privilege to practice described in R.S. 37:1134, the new home state for the licensed professional counselor shall apply its requirements for issuing a new single-state license.

(5) The licensed professional counselor who obtains a new home state license by the criteria described in this Section shall pay all applicable fees to the new home state in order to be issued a new home state license.

C. If a licensed professional counselor changes his primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.
D. Nothing in this compact shall interfere with a licensee’s ability to hold a single-state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state license.

E. Nothing in this Section shall affect the requirements established by a member state for the issuance of a single-state license.

§1136. Active duty military personnel or his spouses

Active duty military personnel, or the spouse of an active duty member of the military, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change his home state through application for licensure in the new state or through the process outlined in R.S. 37:1135.

§1137. Compact privilege to practice telehealth

A. Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with R.S. 37:1133 and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

B. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

§1138. Adverse actions

A.(1) In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with the existing state due process law, to:

(a) Take adverse action against a licensed professional counselor’s privilege to practice within that member state.

(b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence.

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

    (2) Only the home state shall have the power to take adverse action against a licensed professional counselor’s license issued by the home state.

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

C. The home state shall complete any pending investigations of a licensed professional counselor who changes his primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.

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

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

F. Joint investigations:

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

G. If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor’s privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor shall include a statement that the licensed professional counselor’s privilege to practice is deactivated in all member states during the pendency of the order.

H. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

I. Nothing in this compact shall override a member state’s decision that participation in an alternative program may be used in lieu of adverse action.

§1139. Establishment of Counseling Compact Commission

A.(1) The compact member states hereby create and establish a joint public agency known as the Counseling Compact Commission.

(2) The commission is an instrumentality of the compact states.

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

(4) Nothing in this Section shall be construed to be a waiver of sovereign immunity.

B. All of the following provisions shall apply to the membership, voting, and meeting of the commission:
(1) Each member state shall have and be limited to one delegate selected by that member state’s licensing board.

(2) The delegate shall be a current member of the licensing board or the board administrator.

(3) Any delegate may be removed or suspended from office as provided by the laws of the state from which the delegate is appointed.

(4) The member state licensing board shall fill any vacancy occurring on the commission within sixty days.

(5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(6) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates’ participation in meetings by telephone or other means of communication.

(7) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(8) The commission shall by rule establish a term of office for delegates and may by rule establish term limits.

C. The commission shall have power to carry out all of the following duties:

(1) Establish the fiscal year of the commission.

(2) Establish bylaws.

(3) Maintain its financial records in accordance with the bylaws.

(4) Meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(5) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact.

(6) Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state counselor licensing board to sue or be sued under applicable law shall not be affected.
(7) Purchase and maintain insurance and bonds.

(8) Borrow, accept, or contract for services of personnel including but not limited to employees of a member state.

(9) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(10) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest.

(11) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety.

(12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed.

(13) Establish a budget and make expenditures.

(14) Borrow money.

(15) Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws.

(16) Provide and receive information from, and cooperate with, law enforcement agencies.

(17) Establish and elect an executive committee.

(18) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of professional counseling licensure and practice.
D. The executive committee shall have the power to act on behalf of the commission according to the terms of this Section, including all of the following terms:

(1) (a) The executive committee shall be composed of up to eleven members.

(b) Seven voting members shall be elected by the commission from the current membership of the commission.

(c) Up to four ex-officio, nonvoting members shall be from four recognized national professional counselor organizations.

(d) The ex-officio members will be selected by their respective organizations.

(2) The commission may remove any member of the executive committee as provided in bylaws.

(3) The executive committee shall meet at least annually.

(4) The executive committee shall have the following duties and responsibilities:

(a) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice.

(b) Ensure compact administration services are appropriately provided, contractual or otherwise.

(c) Prepare and recommend the budget.

(d) Maintain financial records on behalf of the commission.

(e) Monitor compact compliance of member states and provide compliance reports to the commission.

(f) Establish additional committees as necessary.

(g) Other duties, as provided in rules or bylaws.

(5) Meetings of the commission.
(a) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in R.S. 37:1141.

(b) The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission discuss any of the following:

(i) Noncompliance of a member state with its obligations under the compact.

(ii) The employment, compensation, discipline or other matters, practices, or procedures related to specific employees or other matters related to the commission’s internal personnel practices and procedures.

(iii) Current, threatened, or reasonably anticipated litigation.

(iv) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.

(v) Accusations against any person of a crime or formally censuring any person.

(vi) Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(vii) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(viii) Disclosure of investigative records compiled for law enforcement purposes.

(ix) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to this Section.

(x) Matters specifically exempted from disclosure by federal or member state statute.

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(c) If a meeting, or portion of a meeting, is closed pursuant to this Paragraph, the commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

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

(6) Financing of the commission.

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

(b) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(c) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which shall be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

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

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

(7) All of the following provisions relating to qualified immunity, defense,
and indemnification shall apply to the commission:

(a) The members, officers, executive director, employees, and
representatives of the commission shall be immune from suit and liability, either
personally or in their official capacity, for any claim for damage to or loss of
property or personal injury or other civil liability caused by or arising out of any
actual or alleged act, error, or omission that occurred, or 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
in this Subparagraph shall be construed to protect any such person from suit or
liability for any damage, loss, injury, or liability caused by the intentional, willful,
or wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director,
employee, or representative of the commission in any civil action seeking to impose
liability arising out of any actual or alleged act, error, or omission that occurred
within the scope of commission employment, duties, or responsibilities, or 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 in this Subparagraph shall be construed to prohibit that person from
retaining his own counsel; 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.

(c) The commission shall indemnify and hold harmless any member, officer,
executive director, employee, or representative 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, willful, or wanton misconduct of that person.

§1140. Data system

A. The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including all of the following:

(1) Identifying information.
(2) Licensure data.
(3) Adverse actions against a license or privilege to practice.
(4) Non-confidential information related to alternative program participation.
(5) Any denial of application for licensure, and the reason for such denial.
(6) Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
(7) Current significant investigative information.

C. Investigative information pertaining to a licensee in any member state shall only be available to other member states.

D. The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.

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

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F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

§1141. Rulemaking

A. The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force or effect.

B. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted in accordance with this Section. Rules and amendments shall become binding as of the date specified in each rule or amendment.

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

D. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

E. Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking in all of the following areas:

(1) On the website of the commission or other publicly accessible platform.

(2) On the website of each member state's professional counseling licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

F. The notice of proposed rulemaking shall include all of the following:
(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.

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

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

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following parties:

(1) At least twenty-five persons.

(2) A state or federal governmental subdivision or agency.

(3) An association having at least twenty-five members.

I. (1) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(2) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing no less than five business days before the scheduled date of the hearing.

(3) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(4) All hearings shall be recorded. A copy of the recording shall be made available on request.
(5) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

M. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this Section shall be retroactively applied to the rule as soon as reasonably possible, but in no event later than ninety days after the effective date of the rule. For the purposes of this Subsection, an emergency rule is one that shall be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare.

(2) Prevent a loss of commission or member state funds.

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(4) Protect public health and safety.

N. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after
posting. The revision may be challenged only on grounds that the revision results
in a material change to a rule. A challenge shall be made in writing and delivered
to the chair of the commission prior to the end of the notice period. If no challenge
is made, the revision shall take effect without further action. If the revision is
challenged, the revision may not take effect without the approval of the commission.
§1142. Oversight; dispute resolution; enforcement

A. All of the following provisions shall apply with respect to the compact:

(1) The executive, legislative, and judicial branches of state government in
each member state shall enforce this compact and take all actions necessary and
appropriate to effectuate the compact’s purposes and intent. The provisions of this
compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any
judicial or administrative proceeding in a member state pertaining to the subject
matter of this compact which may affect the powers, responsibilities, or actions of
the commission.

(3) The commission shall be entitled to receive service of process in any
such proceeding and shall have standing to intervene in the proceeding for all
purposes. Failure to provide service of process to the commission shall render a
judgment or order void as to the commission, this compact, or promulgated rules.

B.(1) All of the following provisions relative to default, technical assistance,
and termination shall apply with respect to default, technical assistance, and
termination:

(2) If the commission determines that a member state has defaulted in the
performance of its obligations or responsibilities under this compact or the
promulgated rules, the commission shall do all of the following:

(a) Provide written notice to the defaulting state and other member states of
the nature of the default, the proposed means of curing the default, and any other
action to be taken by the commission.
(b) Provide remedial training and specific technical assistance regarding the default.

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

D. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states.

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

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

G. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

H. All of the following dispute resolution requirements shall apply to the commission:

   (1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.
(2) The commission shall promulgate a rule providing for both mediation
and binding dispute resolution for disputes as appropriate.

I. All of the following provisions relating to enforcement shall apply with
respect to the commission and the compact:

   (1) The commission, in the reasonable exercise of its discretion, shall enforce
the provisions and rules of this compact.

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

   (3) The remedies herein shall not be the exclusive remedies of the
commission. The commission may pursue any other remedies available under
federal or state law.

§1143. Date of implementation of the commission for counseling profession
compact, practice and associate rules, withdrawal, and amendment

A. The compact shall come into effect on the date on which the compact
statute is enacted into law in the tenth member state. The provisions, which become
effective at that time, shall be limited to the powers granted to the commission
relating to assembly and the promulgation of rules. Thereafter, the commission shall
meet and exercise rulemaking powers necessary for the implementation and
administration of the compact.

B. Any state that joins the compact subsequent to the commission’s initial
adoption of the rules shall be subject to the rules as they exist on the date on which
the compact becomes law in that state. Any rule that has been previously adopted
by the commission shall have the full force and effect of law on the day the compact
becomes law in that state.
C. (1) Any member state may withdraw from this compact by enacting a statute repealing the statute.

(2) A member state’s withdrawal shall not take effect until six months after enactment of the repealing statute.

(3) Withdrawal shall not affect the continuing requirement of the withdrawing state’s professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

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

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

§1144. Construction and severability

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.
§1145. Binding effect of compact and other laws

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

B. Nothing in this Part shall prevent the enforcement of any other law of a member state that is not inconsistent with the compact.

C. Any laws of a member state in conflict with the compact are superseded to the extent of the conflict.

D. Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

E. All agreements between the commission and the member states are binding in accordance with their terms.

F. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Section 2. (A) The Louisiana State Law Institute is hereby directed to designate R.S. 37:1101 and 1102 as Part I of Chapter 13 of Title 37 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Part the heading "Short title and purpose".

(B) The Louisiana State Law Institute is hereby directed to designate R.S. 37:1103 through 1123 as Part II of Chapter 13 of Title 37 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Part the heading "Mental Health Counselor Licensing - General Provisions".

(C) The Louisiana State Law Institute is hereby directed to designate R.S. 37:1131 through 1145, as enacted by Section 1 of this Act, as Part III of Chapter 13 of the Louisiana Revised Statutes of 1950, and is further directed to apply to the Part the heading "Mental Health Counselor Licensure Compact".
DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 582 Reengrossed 2022 Regular Session Stagni

Abstract: Adds Louisiana to the Licensed Professional Counselor Interstate Compact.

Proposed law allows Louisiana to join the Licensed Professional Counselor Interstate Compact.

Proposed law provides for Louisiana, as a participating state, to adopt the same uniform professional counseling licensure requirements as the states in the Licensed Professional Counselor Interstate Compact.

Proposed law eliminates the requirement for licenses in multiple states.

Proposed law provides for multistate practice regulations and the exchange of licensure among member states.

Proposed law provides for spousal support for relocating active duty military personnel.

Proposed law establishes telehealth technology for states in the Licensed Professional Counselor Interstate Compact.

Proposed law requires certain hourly requirements of counseling experience and graduate course work for licensees in specific areas of study.


Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Define "criminal history background check" to include all state records of arrest, prosecution, and conviction, including those which have been expunged or dismissed pursuant to Code of Criminal Procedure, as well as national records which shall include fingerprints of the applicant, biometrics, and other identifying information.

2. Provide standard criminal background check provisions that are common to health professional licensing boards and regulated by the state.

3. Prohibit communications between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact from including any information received from the Federal Bureau of Investigation and the La. Bureau of Criminal Identification and Information relative to any federal criminal records check performed by a member state.

The House Floor Amendments to the engrossed bill:

1. Require licensees to have a certain amount of semester-hours or quarter-hours in counseling or graduate course work.

2. Expand assessment provisions to include diagnosis and treatment.

3. Allow the commission to determine other areas of study to include in the course work and hours required.

4. Require delegates to be current members of the licensing board or the board administrator.

5. Make technical corrections.