

ASSEMBLY, No. 5311

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MARCH 20, 2023

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblywoman MICHELE MATSIKLOUDIS

District 21 (Morris, Somerset and Union)

Senator JEAN STANFIELD

District 8 (Atlantic, Burlington and Camden)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Assemblymen Umba, Torrissi, Benson, Assemblywomen Speight, Jasey, Reynolds-Jackson, Assemblyman Stanley, Assemblywoman Lampitt, Assemblymen Wimberly, Tully, Assemblywomen Swain, Lopez, Park, Carter, Assemblyman Sampson, Senators O'Scanlon, Schepisi, A.M.Bucco, Diegnan and Gopal

SYNOPSIS

Enters New Jersey into Counseling Compact.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2024)

1 AN ACT concerning counseling services and supplementing Title 45
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The State of New Jersey enacts and enters into the Counseling
8 Compact with all other jurisdictions that legally join the compact in
9 the form substantially as follows:

10

11 Section 1. Purpose

12

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

21

a. increase public access to professional counseling services by
22 providing for the mutual recognition of other member state licenses;

23

b. enhance the states' ability to protect the public's health and
24 safety;

25

c. encourage the cooperation of member states in regulating
26 multistate practice for licensed professional counselors;

27

d. support spouses of relocating active duty military personnel;

28

e. enhance the exchange of licensure, investigative, and
29 disciplinary information among member states;

30

f. allow for the use of telehealth technology to facilitate
31 increased access to professional counseling services;

32

g. support the uniformity of professional counseling licensure
33 requirements throughout the states to promote public safety and
34 public health benefits;

35

h. invest all member states with the authority to hold a licensed
36 professional counselor accountable for meeting all state practice
37 laws in the state in which the client is located at the time care is
38 rendered through the mutual recognition of member state licenses;

39

i. eliminate the necessity for licenses in multiple states; and

40

j. provide opportunities for interstate practice by licensed
41 professional counselors who meet uniform licensure requirements.

42

43 Section 2. Definitions

44

45 As used in this compact, and except as otherwise provided:

46

“Active duty military” means full-time duty status in the active
47 uniformed service of the United States, including members of the

1 National Guard and Reserve on active duty orders pursuant to 10
2 U.S.C. chapters 1209 and 1211.

3 “Adverse action” means any administrative, civil, equitable, or
4 criminal action permitted by a State’s laws which is imposed by a
5 licensing board or other authority against a licensed professional
6 counselor, including actions against an individual’s license or
7 privilege to practice such as revocation, suspension, probation,
8 monitoring of the licensee, limitation on the licensee’s practice, or
9 any other encumbrance on licensure affecting a licensed
10 professional counselor’s authorization to practice, including
11 issuance of a cease and desist action.

12 “Alternative program” means a non-disciplinary monitoring or
13 practice remediation process approved by a professional counseling
14 licensing board to address impaired practitioners.

15 “Continuing competence/education” means a requirement, as a
16 condition of license renewal, to provide evidence of participation
17 in, or completion of, educational, and professional activities
18 relevant to practice or area of work.

19 “Counseling compact commission” or “commission” means the
20 national administrative body whose membership consists of all
21 states that have enacted the compact.

22 “Current significant investigative information” means:

23 (1) investigative information that a licensing board, after a
24 preliminary inquiry that includes notification and an opportunity for
25 the licensed professional counselor to respond, if required by state
26 law, has reason to believe is not groundless and, if proved true,
27 would indicate more than a minor infraction; or

28 (2) investigative information that indicates that the licensed
29 professional counselor represents an immediate threat to public
30 health and safety regardless of whether the licensed professional
31 counselor has been notified and had an opportunity to respond.

32 “Data system” means a repository of information about
33 licensees, including, but not limited to, continuing education,
34 examination, licensure, investigative, privilege to practice, and
35 adverse action information.

36 “Encumbered license” means a license in which an adverse
37 action restricts the practice of licensed professional counseling by
38 the licensee and the adverse action has been reported to the national
39 practitioners data bank.

40 “Encumbrance” means a revocation or suspension of, or any
41 limitation on, the full and unrestricted practice of licensed
42 professional counseling by a licensing board.

43 “Executive committee” means a group of directors elected or
44 appointed to act on behalf of, and within the powers granted to them
45 by, the commission.

46 “Home state” means the member state that is the licensee’s
47 primary state of residence.

1 “Impaired practitioner” means an individual who has a condition
2 that may impair the individual’s ability to practice as a licensed
3 professional counselor without some type of intervention, which
4 conditions may include, but are not limited to, alcohol and drug
5 dependence, mental health impairment, and neurological or physical
6 impairments.

7 “Investigative information” means information, records, and
8 documents received or generated by a professional counseling
9 licensing board pursuant to an investigation.

10 “Jurisprudence requirement,” if required by a member state,
11 means the assessment of an individual’s knowledge of the laws and
12 rules governing the practice of professional counseling in a state.

13 “Licensed professional counselor” means a counselor licensed by
14 a member state, regardless of the title used by that state, to
15 independently assess, diagnose, and treat behavioral health
16 conditions.

17 “Licensee” means an individual who currently holds an
18 authorization from the state to practice as a licensed professional
19 counselor.

20 “Licensing board” means the agency of a state, or an equivalent
21 entity, that is responsible for the licensing and regulation of
22 licensed professional counselors.

23 “Member state” means a state that has enacted the compact.

24 “Privilege to practice” means a legal authorization, which is
25 equivalent to a license, permitting the practice of professional
26 counseling in a remote state.

27 “Professional counseling” means the assessment, diagnosis, and
28 treatment of behavioral health conditions by a licensed professional
29 counselor.

30 “Remote state” means a member state other than the home state,
31 where a licensee is exercising or seeking to exercise the privilege to
32 practice.

33 “Rule” means a regulation promulgated by the commission that
34 has the force of law.

35 “Single state license” means a licensed professional counselor
36 license issued by a member state that authorizes practice only
37 within the issuing state and does not include a privilege to practice
38 in any other member state.

39 “State” means any state, commonwealth, district, or territory of
40 the United States of America that regulates the practice of
41 professional counseling.

42 “Telehealth” means the application of telecommunication
43 technology to deliver professional counseling services remotely to
44 assess, diagnose, and treat behavioral health conditions.

45 “Unencumbered license” means a license that authorizes a
46 licensed professional counselor to engage in the full and
47 unrestricted practice of professional counseling.

1 Section 3. State participation in the Compact

2

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

4 (1) license and regulate licensed professional counselors;

5 (2) require licensees to pass a nationally recognized exam
6 approved by the commission;

7 (3) require licensees to have a 60 semester-hour, or 90 quarter-
8 hour, master's degree in counseling or 60 semester-hours, or 90
9 quarter-hours, of graduate course work including the following
10 topic areas:

11 (a) professional counseling orientation and ethical practice;

12 (b) social and cultural diversity;

13 (c) human growth and development;

14 (d) career development;

15 (e) counseling and helping relationships;

16 (f) group counseling and group work;

17 (g) diagnosis and treatment; assessment and testing;

18 (h) research and program evaluation; and

19 (i) other areas as determined by the commission;

20 (4) require licensees to complete a supervised postgraduate
21 professional experience as defined by the commission; and

22 (5) have a mechanism in place for receiving and investigating
23 complaints about licensees.

24 b. A member state shall:

25 (1) participate fully in the commission's data system, including
26 using the commission's unique identifier as defined in rules;

27 (2) notify the commission, in compliance with the terms of the
28 compact and rules, of any adverse action or the availability of
29 investigative information regarding a licensee;

30 (3) implement or utilize procedures for considering the criminal
31 history records of applicants for an initial privilege to practice.
32 these procedures shall include the submission of fingerprints or
33 other biometric-based information by applicants for the purpose of
34 obtaining an applicant's criminal history record information from
35 the Federal Bureau of Investigation and the agency responsible for
36 retaining that state's criminal records;

37 (a) A member state shall fully implement a criminal background
38 check requirement, within a time frame established by rule, by
39 receiving the results of the Federal Bureau of Investigation record
40 search and shall use the results in making licensure decisions; and

41 (b) Communication between a member state, the commission
42 and among member states regarding the verification of eligibility
43 for licensure through the compact shall not include any information
44 received from the Federal Bureau of Investigation relating to a
45 federal criminal records check performed by a member state under
46 the federal public law 92-544;

47 (4) comply with the rules of the commission;

1 (5) require an applicant to obtain or retain a license in the home
2 state and meet the home state's qualifications for licensure or
3 renewal of licensure, as well as all other applicable state laws;

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

7 (7) provide for the attendance of the state's commissioner to the
8 counseling compact commission meetings.

9 c. Member states may charge a fee for granting the privilege to
10 practice.

11 d. Individuals not residing in a member state shall continue to
12 be able to apply for a member state's single state license as
13 provided under the laws of each member state; however, the single
14 state license granted to these individuals shall not be recognized as
15 granting a privilege to practice professional counseling in any other
16 member state.

17 e. Nothing in this compact shall affect the requirements
18 established by a member state for the issuance of a single state
19 license.

20 f. A license issued to a licensed professional counselor by a
21 home state to a resident in that state shall be recognized by each
22 member state as authorizing a licensed professional counselor to
23 practice professional counseling, under a privilege to practice, in
24 each member state.

25

26 Section 4. Privilege to Practice

27

28 a. To exercise the privilege to practice under the terms and
29 provisions of the compact, the licensee shall:

30 (1) hold a license in the home state;

31 (2) have a valid United States social security number or national
32 practitioner identifier;

33 (3) be eligible for a privilege to practice in any member state in
34 accordance with subsections d., g., and h. of this section;

35 (4) have not had any encumbrance or restriction against any
36 license or privilege to practice within the previous two years;

37 (5) notify the commission that the licensee is seeking the
38 privilege to practice within a remote state;

39 (6) pay any applicable fees, including any state fee, for the
40 privilege to practice;

41 (7) meet any continuing competence/education requirements
42 established by the home state;

43 (8) meet any jurisprudence requirements established by the
44 remote state in which the licensee is seeking a privilege to practice;
45 and

46 (9) report to the commission any adverse action, encumbrance,
47 or restriction on license taken by any non-member state within 30
48 days from the date the action is taken.

1 b. The privilege to practice is valid until the expiration date of
2 the home state license. The licensee shall comply with the
3 requirements of subsection a. of this section to maintain the
4 privilege to practice in the remote state.

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

8 d. A licensee providing professional counseling services in a
9 remote state is subject to that state's regulatory authority. A remote
10 state may, in accordance with due process and that state's laws,
11 remove a licensee's privilege to practice in the remote state for a
12 specific period of time, impose fines, or take any other necessary
13 actions to protect the health and safety of its citizens. The licensee
14 may be ineligible for a privilege to practice in any member state
15 until the specific time for removal has passed and all fines are paid.

16 e. If a home state license is encumbered, the licensee shall lose
17 the privilege to practice in any remote state until the following
18 occur:

19 (1) the home state license is no longer encumbered; and

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

23 f. Once an encumbered license in the home state is restored to
24 good standing, the licensee shall meet the requirements of
25 subsection a. of this section to obtain a privilege to practice in any
26 remote state.

27 g. If a licensee's privilege to practice in any remote state is
28 removed, the individual may lose the privilege to practice in all
29 other remote states until the following occur:

30 (1) the specific period of time for which the privilege to practice
31 was removed has ended;

32 (2) all fines have been paid; and

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

36 h. Once the requirements of subsection g. of this section have
37 been met, the licensee shall meet the requirements in subsection a.
38 of this section to obtain a privilege to practice in a remote state.

39

40 Section 5. Obtaining a New Home State License Based on a
41 Privilege to Practice

42

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

46 b. If a licensed professional counselor changes primary state of
47 residence by moving between two member states:

1 (1) the licensed professional counselor shall file an application
2 for obtaining a new home state license based on a privilege to
3 practice, pay all applicable fees, and notify the current and new
4 home state in accordance with applicable rules adopted by the
5 commission; and

6 (2) upon receipt of an application for obtaining a new home state
7 license by virtue of a privilege to practice, the new home state shall
8 verify that the licensed professional counselor meets the pertinent
9 criteria outlined in section 4 of this compact via the data system,
10 without need for primary source verification, except for:

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

15 (b) other criminal background checks as required by the new
16 home state; and

17 (c) completion of any requisite jurisprudence requirements of
18 the new home state.

19 (3) the former home state shall convert the former home state
20 license into a privilege to practice once the new home state has
21 activated the new home state license in accordance with applicable
22 rules adopted by the commission;

23 (4) notwithstanding any other provision of this compact, if the
24 licensed professional counselor cannot meet the criteria in provided
25 in section 4 of this compact, the new home state may apply its
26 requirements for issuing a new single state license; and

27 (5) the licensed professional counselor shall pay all applicable
28 fees to the new home state in order to be issued a new home state
29 license.

30 c. If a licensed professional counselor changes primary state of
31 residence by moving from a member state to a non-member state, or
32 from a non-member state to a member state, the state criteria shall
33 apply for issuance of a single state license in the new state.

34 d. Nothing in this compact shall interfere with a licensee's
35 ability to hold a single state license in multiple states; however for
36 the purposes of this compact, a licensee shall have only one home
37 state license.

38 e. Nothing in this compact shall affect the requirements
39 established by a member state for the issuance of a single state
40 license.

41
42 Section 6. Active Duty Military Personnel or their Spouses
43

44 Active Duty Military personnel, or their spouses, shall designate
45 a home state where the service member or spouse has a current
46 license in good standing. The service member or spouse may retain
47 the home state designation during the period the service member is
48 on active duty. Subsequent to designating a home state, the service

1 member or spouse shall only change the service member's or
2 spouse's home state through application for licensure in the new
3 state, or through the process outlined in section 5 of this compact.

4

5 Section 7. Compact Privilege to Practice Telehealth

6

7 a. Member states shall recognize the right of a licensed
8 professional counselor, licensed by a home state in accordance with
9 section 3 of this compact and under rules promulgated by the
10 commission, to practice professional counseling in any member
11 state via telehealth under a privilege to practice as provided in the
12 compact and rules promulgated by the commission.

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

16

17 Section 8. Adverse Actions

18

19 a. In addition to the other powers conferred by state law, a
20 remote state shall have the authority, in accordance with existing
21 state due process law, to:

22 (1) take adverse action against a licensed professional
23 counselor's privilege to practice within that member state;

24 (2) issue subpoenas for both hearings and investigations that
25 require the attendance and testimony of witnesses as well as the
26 production of evidence. Subpoenas issued by a licensing board in a
27 member state for the attendance and testimony of witnesses or the
28 production of evidence from another member state shall be enforced
29 in the latter state by any court of competent jurisdiction, according
30 to the practice and procedure of that court applicable to subpoenas
31 issued in proceedings pending before it. The issuing authority shall
32 pay any witness fees, travel expenses, mileage, and other fees
33 required by the service statutes of the state in which the witnesses
34 or evidence are located; and

35 (3) only the home state shall have the power to take adverse
36 action against a licensed professional counselor's license issued by
37 the home state.

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

43 c. The home state shall complete any pending investigation of
44 a licensed professional counselor who changes primary state of
45 residence during the course of the investigation. The home state
46 shall also have the authority to take appropriate action and shall
47 promptly report the conclusion of any investigation to the
48 administrator of the data system. The administrator of the

1 coordinated licensure information system shall promptly notify the
2 new home state of any adverse actions.

3 d. A member state, if otherwise permitted by state law, may
4 recover from the affected licensed professional counselor the costs
5 of investigations and dispositions of cases resulting from any
6 adverse action taken against that licensed professional counselor.

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

10 f. In addition to the authority granted to a member state by its
11 respective professional counseling practice act or other applicable
12 state law, any member state may participate with other member
13 states in joint investigations of licensees. Member states shall share
14 any investigative, litigation, or compliance materials in furtherance
15 of any joint or individual investigation initiated under this compact.

16 g. If adverse action is taken by a home state against the license
17 of a licensed professional counselor, the licensed professional
18 counselor's privilege to practice in all other member states shall be
19 deactivated until all encumbrances have been removed from the
20 state license. All home state disciplinary orders that impose
21 adverse action against the license of a licensed professional
22 counselor shall include a statement that the licensed professional
23 counselor's privilege to practice is deactivated in all member states
24 during the pendency of the order.

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

29 i. Nothing in this compact shall override a member state's
30 decision that participation in an alternative program may be used in
31 lieu of adverse action.

32

33 Section 9. Establishment of Counseling Compact Commission

34

35 a. The compact member states hereby create and establish a
36 joint public agency known as the Counseling Compact Commission.

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

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

44 (3) Nothing in this compact shall be construed to be a waiver of
45 sovereign immunity.

46 b. (1) Each member state shall have and be limited to one
47 delegate selected by that member state's licensing board.

48 (2) The delegate shall be either:

- 1 (a) a current member of the licensing board at the time of
2 appointment, who is a licensed professional counselor or public
3 member; or
- 4 (b) an administrator of the licensing board.
- 5 (3) Any delegate may be removed or suspended from office as
6 provided by the law of the state from which the delegate is
7 appointed.
- 8 (4) The member state licensing board shall fill any vacancy
9 occurring on the commission within 60 days.
- 10 (5) Each delegate shall be entitled to one vote with regard to the
11 promulgation of rules and the creation of bylaws and shall
12 otherwise have an opportunity to participate in the business and
13 affairs of the commission.
- 14 (6) A delegate shall vote in person or by such other means as
15 provided in the bylaws. The bylaws may provide for delegates'
16 participation in meetings by telephone or other means of
17 communication.
- 18 (7) The commission shall meet at least once during each calendar
19 year. Additional meetings shall be held as set forth in the bylaws.
- 20 (8) The commission shall by rule establish a term of office for
21 delegates and may by rule establish term limits.
- 22 c. The commission shall have the following powers and duties:
- 23 (1) establish the fiscal year of the commission;
- 24 (2) establish bylaws;
- 25 (3) maintain its financial records in accordance with the bylaws;
- 26 (4) meet and take such actions as are consistent with the
27 provisions of this compact and the bylaws;
- 28 (5) promulgate rules which shall be binding to the extent and in
29 the manner provided for in the compact;
- 30 (6) bring and prosecute legal proceedings or actions in the name
31 of the commission, provided that the standing of any state licensing
32 board to sue or be sued under applicable law shall not be affected;
- 33 (7) purchase and maintain insurance and bonds;
- 34 (8) borrow, accept, or contract for services of personnel,
35 including, but not limited to, employees of a member state;
- 36 (9) hire employees, elect or appoint officers, fix compensation,
37 define duties, grant such individuals appropriate authority to carry
38 out the purposes of the compact, and establish the commission's
39 personnel policies and programs relating to conflicts of interest,
40 qualifications of personnel, and other related personnel matters;
- 41 (10) accept any and all appropriate donations and grants of
42 money, equipment, supplies, materials, and services, and to receive,
43 utilize, and dispose of the same; provided that at all times the
44 commission shall avoid any appearance of impropriety or conflict
45 of interest;
- 46 (11) lease, purchase, accept appropriate gifts or donations of, or
47 otherwise own, hold, improve or use, any property, real, personal,

- 1 or mixed; provided that at all times the commission shall avoid any
2 appearance of impropriety;
- 3 (12) sell convey, mortgage, pledge, lease, exchange, abandon, or
4 otherwise dispose of any property real, personal, or mixed;
- 5 (13) establish a budget and make expenditures;
- 6 (14) borrow money;
- 7 (15) appoint committees, including standing committees
8 composed of members, state regulators, state legislators or their
9 representatives, and consumer representatives, and such other
10 interested persons as may be designated in this compact and the
11 bylaws;
- 12 (16) provide and receive information from, and cooperate with,
13 law enforcement agencies;
- 14 (17) establish and elect an executive committee consistent with
15 the requirements of subsection d. of this section; and
- 16 (18) perform such other functions as may be necessary or
17 appropriate to achieve the purposes of this compact consistent with
18 the state regulation of professional counseling licensure and
19 practice.
- 20 d. (1) The executive committee shall have the power to act on
21 behalf of the commission according to the terms of this compact.
- 22 (2) The executive committee shall be composed of up to 11
23 members, as follows:
- 24 (a) seven voting members who shall be elected by the
25 commission from the current membership of the commission; and
- 26 (b) up to four ex-officio, nonvoting members from four
27 recognized national professional counselor organizations, who shall
28 be selected by their respective organizations.
- 29 (3) The commission may remove any member of the executive
30 committee as provided in bylaws.
- 31 (4) The executive committee shall meet at least annually.
- 32 (5) The executive committee shall have the following duties and
33 responsibilities:
- 34 (a) recommending to the entire commission changes to the rules
35 or bylaws, changes to this compact legislation, fees paid by
36 compact member states such as annual dues, and any commission
37 compact fee charged to licensees for the privilege to practice;
- 38 (b) ensuring compact administration services are appropriately
39 provided, contractual or otherwise;
- 40 (c) preparing and recommending the budget;
- 41 (d) maintaining financial records on behalf of the commission;
- 42 (e) monitoring compact compliance of member states and
43 providing compliance reports to the commission;
- 44 (f) establishing additional committees as necessary; and
- 45 (g) performing other duties as provided in rules or bylaws.
- 46 e. (1) All meetings of the commission shall be open to the
47 public, and public notice of meetings shall be given in the same

1 manner as required under the rulemaking provisions in section 11 of
2 this compact.

3 (2) The commission or the executive committee or other
4 committees of the commission may convene in a closed, non-public
5 meeting in order for the commission, executive committee, or other
6 committee of the commission to discuss:

7 (a) non-compliance of a member state with its obligations under
8 the compact;

9 (b) the employment, compensation, discipline, or other matters,
10 practices, or procedures related to specific employees or other
11 matters related to the commission's internal personnel practices and
12 procedures;

13 (c) current, threatened, or reasonably anticipated litigation;

14 (d) negotiation of contracts for the purchase, lease, or sale of
15 goods, services, or real estate;

16 (e) accusing any person of a crime or formally censuring any
17 person;

18 (f) disclosure of trade secrets or commercial or financial
19 information that is privileged or confidential;

20 (g) disclosure of information of a personal nature where
21 disclosure would constitute a clearly unwarranted invasion of
22 personal privacy;

23 (h) disclosure of investigative records compiled for law
24 enforcement purposes;

25 (i) disclosure of information related to any investigative reports
26 prepared by or on behalf of or for use of the commission or other
27 committee charged with responsibility of investigation or
28 determination of compliance issues pursuant to the compact; and

29 (j) matters specifically exempted from disclosure by federal or
30 member state statute.

31 (3) If a meeting, or portion of a meeting, is closed pursuant to
32 paragraph (2) of this subsection, the commission's legal counsel or
33 designee shall certify that the meeting may be closed and shall
34 reference each relevant exempting provision.

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

43 f. (1) The commission shall pay, or provide for the payment of,
44 the reasonable expenses of its establishment, organization, and
45 ongoing activities.

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

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

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

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

22 g. (1) The members, officers, executive director, employees
23 and representatives of the commission shall be immune from suit
24 and liability, either personally or in their official capacity, for any
25 claim for damage to or loss of property or personal injury or other
26 civil liability caused by or arising out of any actual or alleged act,
27 error, or omission that occurred, or that the person against whom
28 the claim is made had a reasonable basis for believing occurred
29 within the scope of commission employment, duties, or
30 responsibilities; provided that nothing in this paragraph shall be
31 construed to protect any such person from suit or liability for any
32 damage, loss, injury, or liability caused by the intentional, willful,
33 or wanton misconduct of that person.

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

46 (3) The commission shall indemnify and hold harmless any
47 member, officer, executive director, employee, or representative of
48 the commission for the amount of any settlement or judgment

1 obtained against that person arising out of any actual or alleged act,
2 error, or omission that occurred within the scope of commission
3 employment, duties, or responsibilities, or that such person had a
4 reasonable basis for believing occurred within the scope of
5 commission employment, duties, or responsibilities, provided that
6 the actual or alleged act, error, or omission did not result from the
7 intentional or willful or wanton misconduct of that person.

8
9 Section 10. Data System

10
11 a. The commission shall provide for the development,
12 maintenance, operation, and utilization of a coordinated database
13 and reporting system containing licensure, adverse action, and
14 investigative information on all licensed individuals in member
15 states.

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

- 20 (1) identifying information;
21 (2) licensure data;
22 (3) adverse actions against a license or privilege to practice;
23 (4) non-confidential information related to alternative program
24 participation;
25 (5) any denial of an application for licensure, and the reason for
26 such denial;
27 (6) current significant investigative information; and
28 (7) other information that may facilitate the administration of
29 this compact, as determined by the rules of the commission.

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

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

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

40 f. Any information submitted to the data system that is
41 subsequently required to be expunged by the laws of the member
42 state contributing the information shall be removed from the data
43 system.

44
45 Section 11. Rulemaking

46
47 a. The commission shall promulgate reasonable rules in order
48 to effectively and efficiently achieve the purpose of the compact.

1 Notwithstanding the foregoing, in the event the commission
2 exercises its rulemaking authority in a manner that is beyond the
3 scope of the purposes of the compact, or the powers granted
4 hereunder, then such an action by the commission shall be invalid
5 and have no force or effect.

6 b. The commission shall exercise its rulemaking powers
7 pursuant to the criteria set forth in this section and the rules adopted
8 thereunder. Rules and amendments shall become binding as of the
9 date specified in each rule or amendment.

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

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

17 e. Prior to promulgation and adoption of a final rule or rules by
18 the commission, and at least 30 days in advance of the meeting at
19 which the rule will be considered and voted upon, the commission
20 shall file a notice of proposed rulemaking:

21 (1) on the website of the commission or other publicly accessible
22 platform; and

23 (2) on the website of each member state professional counseling
24 licensing board or other publicly accessible platform or the
25 publication in which each state would otherwise publish proposed
26 rules.

27 f. The notice of proposed rulemaking shall include:

28 (1) the proposed time, date, and location of the meeting in which
29 the rule will be considered and voted upon;

30 (2) the text of the proposed rule or amendment and the reason
31 for the proposed rule;

32 (3) a request for comments on the proposed rule from any
33 interested person; and

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

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

40 h. The commission shall grant an opportunity for a public
41 hearing before it adopts a rule or amendment if a hearing is
42 requested by:

43 (1) at least 25 persons;

44 (2) a state or federal governmental subdivision or agency; or

45 (3) an association having at least 25 members.

46 i. If a hearing is held on a proposed rule or amendment
47 pursuant to subsection h. of this section, the commission shall
48 publish the place, time, and date of the scheduled public hearing. If

1 the hearing is held via electronic means, the commission shall
2 publish the mechanism for access to the electronic hearing.

3 (1) All persons wishing to be heard at the hearing shall notify the
4 executive director of the commission or other designated member in
5 writing of their desire to appear and testify at the hearing not less
6 than five business days before the scheduled date of the hearing.

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

10 (3) All hearings shall be recorded. A copy of the recording shall
11 be made available on request.

12 (4) Nothing in this section shall be construed as requiring a
13 separate hearing on each rule. Rules may be grouped for the
14 convenience of the commission at hearings required by this section.

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

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

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

26 m. Upon determination that an emergency exists, the
27 commission may consider and adopt an emergency rule without
28 prior notice, opportunity for comment, or hearing, provided that the
29 usual rulemaking procedures provided in the compact and in this
30 section shall be retroactively applied to the rule as soon as
31 reasonably possible, but in no event later than 90 days after the
32 effective date of the rule. For the purposes of this subsection, an
33 emergency rule is one that shall be adopted immediately in order to:

- 34 (1) meet an imminent threat to public health, safety, or welfare;
35 (2) prevent a loss of commission or member state funds;
36 (3) meet a deadline for the promulgation of an administrative
37 rule that is established by federal law or rule; or
38 (4) protect public health and safety.

39 n. The commission or an authorized committee of the
40 commission may direct revisions to a previously adopted rule or
41 amendment for purposes of correcting typographical errors, errors
42 in format, errors in consistency, or grammatical errors. Public
43 notice of any revisions shall be posted on the website of the
44 commission. The revision shall be subject to challenge by any
45 person for a period of 30 days after posting. The revision may be
46 challenged only on grounds that the revision results in a material
47 change to a rule. A challenge shall be made in writing and
48 delivered to the chair of the commission prior to the end of the

1 notice period. If no challenge is made, the revision shall take effect
2 without further action. If the revision is challenged, the revision
3 may not take effect without the approval of the commission.
4

5 Section 12. Oversight, Dispute Resolution, and Enforcement
6

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

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

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

22 b. (1) If the commission determines that a member state has
23 defaulted in the performance of its obligations or responsibilities
24 under this compact or the promulgated rules, the commission shall:

25 (a) provide written notice to the defaulting state and other
26 member states of the nature of the default, the proposed means of
27 curing the default, or any other action to be taken by the
28 commission; and

29 (b) provide remedial training and specific technical assistance
30 regarding the default.

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

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

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

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

5 g. The defaulting State may appeal the action of the
6 commission by petitioning the U.S. District Court for the District of
7 Columbia or the federal district where the commission has its
8 principal offices. The prevailing member shall be awarded all costs
9 of the litigation, including reasonable attorney's fees.

10 h. (1) Upon request by a member state, the commission shall
11 attempt to resolve disputes related to the compact that arise among
12 member states and between member and non-member states.

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

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

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

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

30
31 Section 13. Date of Implementation of the Counseling Compact
32 Commission and Associated Rules, Withdrawal, and Amendment.

33
34 a. The compact shall come into effect on the date on which the
35 compact statute is enacted into law in the 10th member state. The
36 provisions, which become effective at that time, shall be limited to
37 the powers granted to the commission relating to assembly and the
38 promulgation of rules. Thereafter, the commission shall meet and
39 exercise rulemaking powers necessary to the implementation and
40 administration of the compact.

41 b. Any state that joins the compact subsequent to the
42 commission's initial adoption of the rules shall be subject to the
43 rules as they exist on the date on which the compact becomes law in
44 that state. Any rule that has been previously adopted by the
45 commission shall have the full force and effect of law on the day
46 the compact becomes law in that state.

47 c. Any member state may withdraw from this compact by
48 enacting a statute repealing the same.

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

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

8 d. Nothing contained in this compact shall be construed to
9 invalidate or prevent any professional counseling licensure
10 agreement or other cooperative arrangement between a member
11 state and a non-member state that does not conflict with the
12 provisions of this compact.

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

17

18 Section 14. Construction and Severability

19

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

32

33 Section 15. Binding Effect of Compact and Other Laws

34

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

38 b. Nothing herein prevents the enforcement of any other law of
39 a member state that is not inconsistent with the compact.

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

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

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

47 f. In the event any provision of the compact exceeds the
48 constitutional limits imposed on the legislature of any member

1 state, the provision shall be ineffective to the extent of the conflict
2 with the constitutional provision in question in that member state.

3

4 2. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill enters New Jersey into the Counseling Compact. The
10 Counseling Compact (compact) is an interstate compact, or a
11 contract among states, allowing professional counselors licensed
12 and residing in a compact member state to practice in other compact
13 member states without need for multiple licenses.

14 The purpose of this compact is to facilitate interstate practice of
15 licensed professional counselors with the goal of improving public
16 access to professional counseling services. The practice of
17 professional counseling occurs in the state where the client is
18 located at the time of the counseling services. The compact
19 preserves the regulatory authority of states to protect public health
20 and safety through the current system of state licensure. In
21 addition, the compact is designed to achieve the following
22 objectives: 1) increase public access to professional counseling
23 services by providing for the mutual recognition of other member
24 state licenses; 2) enhance the states' ability to protect the public's
25 health and safety; 3) encourage the cooperation of member states in
26 regulating multistate practice for licensed professional counselors;
27 4) support spouses of relocating active duty military personnel; 5)
28 enhance the exchange of licensure, investigative, and disciplinary
29 information among member states; 6) allow for the use of telehealth
30 technology to facilitate increased access to professional counseling
31 services; 7) support the uniformity of professional counseling
32 licensure requirements throughout the states to promote public
33 safety and public health benefits; 8) invest all member states with
34 the authority to hold a licensed professional counselor accountable
35 for meeting all state practice laws in the state in which the client is
36 located at the time care is rendered through the mutual recognition
37 of member state licenses; 9) eliminate the necessity for licenses in
38 multiple states; and 10) provide opportunities for interstate practice
39 by licensed professional counselors who meet uniform licensure
40 requirements.

41 The compact is administered by a commission comprising
42 representatives of each of the member states. The commission has
43 certain powers to promulgate rules and bylaws, create a budget,
44 conduct investigations, assess member fees, and to generally
45 enforce the provisions of the compact. The compact sets forth
46 procedures for investigating and disciplining professional
47 counselors for misconduct, as well as for communicating to member
48 states information concerning a professional counselor who is under

1 investigation, has lost the right to practice under the compact, or
2 who has regained the right to practice under the compact.

3 The compact provides that it takes effect when it has been
4 adopted in 10 states. Currently, 16 states have joined the compact:
5 Alabama, Colorado, Florida, Georgia, Kentucky, Louisiana, Maine,
6 Maryland, Mississippi, Nebraska, New Hampshire, North Carolina,
7 Ohio, Tennessee, Utah, and West Virginia.