

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Engrossed

Senate Bill 213

BY SENATORS TAKUBO, BALDWIN, LINDSAY, AND PLYMALE

[Introduced January 12, 2022; referred
to the Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §30-31A-1, §30-31A-2, §30-31A-3, §30-31A-4, §30-31A-5, §30-31A-6, §30-
3 31A-7, §30-31A-8, §30-31A-9, §30-31A-10, §30-31A-11, §30-31A-12, §30-31A-13, §30-
4 31A-14, and §30-31A-15, all relating to establishing a licensed professional counseling
5 compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31A. LICENSED PROFESSIONAL COUNSELING COMPACT.

§30-31A-1. Purpose.

1 The purpose of this compact is to facilitate interstate practice of licensed professional
2 counselors with the goal of improving public access to professional counseling services and the
3 practice of professional counseling occurs in the state where the client is located at the time of
4 counseling services. The compact preserves the regulatory authority of states to protect public
5 health and safety through the current system of state licensure. This compact is designed to
6 achieve the following objectives:

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

9 (2) Enhance the states' ability to protect the public's health and safety;

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

12 (4) Support spouses of relocating active-duty military personnel;

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

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

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

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

22 (9) Eliminate the necessity for licenses in multiple states; and

23 (10) Provide opportunities for interstate practice by licensed professional counselors who
24 meet uniform licensure requirements.

§30-31A-2. Definitions.

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

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

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

12 (3) “Alternative program” means a nondisciplinary monitoring or practice remediation
13 process approved by a professional counseling licensing board to address impaired practitioners;

14 (4) “Continuing competence or education” means a requirement, as a condition of license,
15 renewal, to provide evidence of participation in, or completion of, educational and professional
16 activities relevant to practice or area of work;

17 (5) “Counseling Compact Commission” or “Commission” means the national
18 administrative body whose membership consists of all states that have enacted the compact;

19 (6) “Current significant investigative information” means:

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

24 (B) Investigative information that indicates the licensed professional counselor represents
25 an immediate threat to public health and safety, regardless of whether the licensed professional
26 counselor has been notified and had an opportunity to respond;

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

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

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

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

37 (11) "Home state" means the member state that is the licensee's primary state of
38 residence;

39 (12) "Impaired practitioner" means an individual who has a condition or conditions that
40 may impair his or her ability to practice as a licensed professional counselor without some type of
41 intervention and may include, but are not limited to, alcohol and drug dependence, mental health
42 impairment, and neurological or physical impairment;

43 (13) "Investigative information" means information, records, and documents received or
44 generated by a professional counseling licensing board pursuant to an investigation;

45 (14) “Jurisprudence requirement” if required by the member state, means the assessment
46 of an individual’s knowledge of the laws and rules governing the practice of professional
47 counseling in a state;

48 (15) “Licensed professional counselor” means a counselor licensed by a member state,
49 regardless of the title used by that state, to independently assess, diagnose, and treat behavioral
50 health conditions;

51 (16) “Licensee” means an individual who currently holds an authorization from the state to
52 practice as a licensed professional counselor;

53 (17) “Licensing board” means the agency of a state, or equivalent, that is responsible for
54 the licensing and regulation of licensed professional counselors;

55 (18) “Member state” means a state that has enacted the compact;

56 (19) “Privilege to practice” means a legal authorization, which is equivalent to a license,
57 permitting the practice of professional counseling in a remote state;

58 (20) “Professional counseling” means the assessment, diagnosis, and treatment of
59 behavioral health conditions by a licensed professional counselor;

60 (21) “Remote state” means a member state other than the home state, where a licensee
61 is exercising or seeking to exercise the privilege to practice;

62 (22) “Rule” means a regulation promulgated by the commission that has the force of law;

63 (23) “Single-state license” means a licensed professional counselor license issued by a
64 member state that authorizes practice only within the issuing state and does not include a privilege
65 to practice in any other member state;

66 (24) “State” means any state, commonwealth, district, or territory of the United States of
67 America that regulates the practice of professional counseling;

68 (25) “Telehealth” means the application of telecommunication technology to deliver
69 professional counseling services remotely to assess, diagnose, and treat behavioral health
70 conditions; and

71 (26) “Unencumbered license” means a license that authorizes a licensed professional
72 counselor to engage in the full and unrestricted practice of professional counseling.

§30-31A-3. State participation in the compact.

1 (a) To participate in the compact, a state shall currently:

2 (1) License and regulate licensed professional counselors;

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

4 (3) Require licensees to have a 60 semester-hour (or 90 quarter-hour) master’s degree in
5 counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the
6 following topic areas:

7 (A) Professional counseling orientation and ethical practice;

8 (B) Social and cultural diversity;

9 (C) Human growth and development;

10 (D) Career development;

11 (E) Counseling and helping relationships;

12 (F) Group counseling and group work;

13 (G) Diagnosis and treatment; assessment and testing;

14 (H) Research and program evaluation; and

15 (I) Other areas as determined by the commission.

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

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

19 (b) A member state shall:

20 (1) Participate fully in the commission’s data system, including using the commission’s
21 unique identifier as defined in rules;

22 (2) Notify the commission, in compliance with the terms of the compact and rules, of any
23 adverse action or the availability of investigative information regarding a licensee;

24 (3) Implement or utilize procedures for considering the criminal history records of
25 applicants for an initial privilege to practice. These procedures shall include the submission of
26 fingerprints or other biometric-based information by applicants for the purpose of obtaining an
27 applicant's criminal history record information from the Federal Bureau of Investigation and the
28 agency responsible for retaining that state's criminal records;

29 (A) A member state shall fully implement a criminal background check requirement, within
30 a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation
31 record search and shall use the results in making licensure decisions.

32 (B) Communication between a member state, the commission, and among member states
33 regarding the verification of eligibility for licensure through the compact may not include any
34 information received from the Federal Bureau of Investigation relating to a federal criminal records
35 check performed by a member state under Public Law 92-544.

36 (4) Comply with rules of the commission;

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

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

42 (7) Provide for the attendance of the state's commissioner to the counseling compact
43 commission meetings.

44 (c) Member states may charge a fee for granting the privilege to practice.

45 (d) Individuals not residing in a member state shall continue to be able to apply for a
46 member state's single state licensure as provided under the laws of each member state. However,
47 the single state licensure granted to these individuals may not be recognized as granting a
48 privilege to practice professional counseling in any other member state.

49 (e) Nothing in this compact may affect the requirements established by a member state
50 for the issuance of a single state license.

51 (f) A licensure issued to a licensed professional counselor by a home state to a resident
52 in that state shall be recognized by each member state as authorizing a licensed professional
53 counselor to practice professional counseling, under a privilege to practice, in each member state.

§30-31A-4. Privilege to practice.

1 (a) To exercise the privilege to practice under the terms and provisions of the compact,
2 the licensee shall:

3 (1) Hold a license in the home state;

4 (2) Have a valid United States Social Security Number or National Practitioner Identifier;

5 (3) Be eligible for a privilege to practice in any member state in accordance with §30-31A-
6 4(d), §30-31A-4(g), and §30-31A-4(h) of this code;

7 (4) Have not had any encumbrance or restriction against any license or privilege to
8 practice within the previous two years;

9 (5) Notify the commission that the licensee is seeking the privilege to practice within a
10 remote state or states;

11 (6) Pay any applicable fees, including any state fee, for the privilege to practice;

12 (7) Meet any continuing competence or education requirements established by the home
13 state;

14 (8) Meet any jurisprudence requirements established by the remote state or states in
15 which the licensee is seeking a privilege to practice; and

16 (9) Report to the commission adverse action, encumbrance, or restriction on license taken
17 by any non-member state within 30 days from the date of the action is taken.

18 (b) The privilege to practice is valid until the expiration date of the home state license. The
19 licensee must comply with the requirements of §30-31A-4(a) of this code to maintain the privilege
20 to practice in the remote state.

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

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

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

31 (1) The home state license is no longer encumbered; and

32 (2) Have not had any encumbrance or restriction against any license or privilege to
33 practice within the previous two years.

34 (f) Once an encumbered license in the home state is restored to good standing, the
35 licensee shall meet the requirements of §30-31A-4(a) of this code to obtain a privilege to practice
36 in any remote state.

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

39 (1) The specific period for which the privilege to practice was removed has ended;

40 (2) All fines have been paid; and

41 (3) Have not had any encumbrance or restriction against any license or privilege to
42 practice within the previous two years.

43 (h) Once the requirements of §30-31A-4(g) of this code have been met, the licensee shall
44 meet the requirements in §30-31A-4(a) of this code to obtain a privilege to practice in a remote
45 state.

§30-31A-5. Obtaining a new home state license based on a privilege to practice.

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

3 (b) If a licensed professional counselor changes primary state of residence by moving
4 between two member states:

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

8 (2) Upon receipt of an application for obtaining a new home state license by virtue of
9 privilege to practice, the new home state shall verify that the licensed professional counselor
10 meets the pertinent criteria outlined in §30-31A-4 of this code via the data system, without need
11 for primary source verification except for:

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

15 (B) Other criminal background check as required by the new home state; and

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

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

20 (4) Notwithstanding any other provision of this compact, if the licensed professional
21 counselor cannot meet the criteria in §30-31A-4 of this code, the new home state shall apply its
22 requirements for issuing a new single-state license.

23 (5) The licensed professional counselor shall pay all applicable fees to the new home state
24 in order to be issued a new home state license.

25 (c) If a licensed professional counselor changes primary state of residence by moving from
26 a member state to a non-member state, or from a non-member state to a member state, the state
27 criteria shall apply for issuance of a single-state license in the new state.

28 (d) Nothing in this compact may interfere with a licensee's ability to hold a single-state
29 license in multiple states; however, for the purposes of this compact, a licensee shall have only
30 one home state license.

31 (e) Nothing in this compact may affect the requirements established by a member state
32 for the issuance of a single-state license.

§30-31A-6. Active-duty military personnel or their spouses.

1 Active-duty military personnel, or their spouses, shall designate a home state where the
2 individual has a current license in good standing. The individual may retain the home state
3 designation during the period the service member is on active duty. After designating a home
4 state, the individual shall only change his or her home state through application for licensure in
5 the new state, or through the process described in §30-31A-5 of this code.

§30-31A-7. Compact privilege to practice telehealth.

1 (a) Member states shall recognize the right of a licensed professional counselor, licensed
2 by a home state in accordance with §30-31A-3 of this code and under the rules promulgated by
3 the commission, to practice professional counseling in any member state via telehealth under a
4 privilege to practice as provided in the compact and rules promulgated by the commission.

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

§30-31A-8. Adverse actions.

1 (a) In addition to the other powers conferred by state law, a remote state may, in
2 accordance with existing state due process law:

3 (1) Take adverse action against a licensed professional counselor's privilege to practice
4 within that member state; and

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

13 (3) Only the home state may take adverse action against a licensed professional
14 counselor's license issued by the home state.

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

19 (c) The home state shall complete any pending investigations of a licensed professional
20 counselor who changes primary state of residence during the investigations. The home state may
21 take appropriate action or actions and shall promptly report the conclusions of the investigations
22 to the administrator of the data system. The administrator of the coordinated licensure information
23 system shall promptly notify the new home state of any adverse actions.

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

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

29 (f) Joint investigations. —

30 (1) In addition to the authority granted to a member state by its respective professional
31 counseling practice act or other applicable state law, any member state may participate with other
32 member states in joint investigations of licensees.

33 (2) Member states shall share any investigative, litigation, or compliance materials in
34 furtherance or any joint or individual investigation initiated under the compact.

35 (g) If adverse action is taken by the home state against the license of a licensed
36 professional counselor, the licensed professional counselor's privilege to practice in all other
37 member states shall be deactivated until all encumbrances have been removed from the state
38 license. All home state disciplinary orders that impose adverse action against the license of a
39 licensed professional counselor shall include a statement that the licensed professional
40 counselor's privilege to practice is deactivated in all member states during the pendency of the
41 order.

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

45 (i) Nothing in this compact may override a member state's decision that participation in an
46 alternative program may be used in lieu of adverse action.

§30-31A-9. Establishment of counseling compact commission.

1 (a) The compact member states hereby create and establish a joint public agency known
2 as the counseling compact commission:

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

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

8 (3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

9 (b) Membership, voting, and meetings. —

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

12 (2) The delegate shall be either:

13 (A) A current member of the licensing board at the time of appointment, who is a licensed
14 professional counselor or public member; or

15 (B) An administrator of the licensing board.

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

18 (4) The member state licensing board shall fill any vacancy occurring on the commission
19 within 60 days.

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

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

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

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

30 (c) The commission may:

31 (1) Establish the fiscal year of the commission;

32 (2) Establish bylaws;

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

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

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

38 (6) Bring and prosecute legal proceedings or actions in the name of the commission:
39 Provided, That the standing of any state licensing board to sue or be sued under applicable law
40 may not be affected;

41 (7) Purchase and maintain insurance and bonds;

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

44 (9) Hire employees, elect, or appoint officers, fix compensation, define duties, grant these
45 individuals appropriate authority to carry out the purposes of the compact, and establish the
46 commission's personnel policies and programs relating to conflicts of interest, qualifications of
47 personnel, and other related personnel matters;

48 (10) Accept any and all appropriate donations and grants of money, equipment, supplies,
49 materials, and services, and to receive, utilize and dispose of the same: Provided, That at all times
50 the commission shall avoid any appearance of impropriety or conflict of interest;

51 (11) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,
52 improve or use, any property, real, personal or mixed: Provided, That at all times the commission
53 shall avoid any appearance of impropriety;

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

56 (13) Establish a budget and make expenditures;

57 (14) Borrow money;

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

61 (16) Provide and receive information from, and cooperate with, law-enforcement agencies;

62 (17) Establish and elect and executive committee; and

63 (18) Perform such other functions as may be necessary or appropriate to achieve the
64 purposes of this compact consistent with the state regulation of professional counseling licensure
65 and practice.

66 (d) The executive committee. —

67 (1) The executive committee may act on behalf of the commission according to the terms
68 of this compact.

69 (2) The executive committee shall be composed of up to 11 members:

70 (A) Seven voting members who are elected by the commission from the current
71 membership of the commission;

72 (B) Up to four ex-officio, nonvoting members from four recognized national professional
73 counselor organizations;

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

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

77 (4) The executive committee shall meet at least annually;

78 (5) The executive committee may:

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

82 (B) Ensure compact administration services are appropriately provided, contractual or
83 otherwise;

84 (C) Prepare and recommend the budget;

85 (D) Maintain financial records on behalf of the commission;

86 (E) Monitor compact compliance of member states and provide compliance reports to the
87 commission;

88 (F) Establish additional committees as necessary; and

89 (G) Other duties as provided in rules or bylaws.

90 (e) Meetings of the commission. —

91 (1) All meetings shall be open to the public, and public notice of the meetings shall be
92 given in the same manner as required under the rule-making provisions in §30-31A-11 of this
93 code.

94 (2) The commission or the executive committee or other committees of the commission
95 may convene in a closed, non-public meeting if the commission or executive committee or other
96 committees of the commission must discuss:

97 (A) Non-compliance of a member state with its obligations under the compact;

98 (B) The employment, compensation, discipline or other matters, practice or procedures
99 related to specific employees or other matters related to the commission's internal personnel
100 practices and procedures;

101 (C) Current, threatened, or reasonably anticipated litigation;

102 (D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
103 estate;

104 (E) Accusing any person of a crime or formally censuring any person;

105 (F) Disclosure of trade secrets or commercial or financial information that is privileged or
106 confidential;

107 (G) Disclosure of information of a personal nature where disclosure would constitute a
108 clearly unwarranted invasion of personal privacy;

109 (H) Disclosure of investigative records compiled for law-enforcement purposes;

110 (I) Disclosure of information related to any investigative reports prepared by or on behalf
111 of or for use of the commission or other committee charged with responsibility of investigation or
112 determination of compliance issues pursuant to the compact; or

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

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

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

123 (f) Financing of the commission. —

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

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

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

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

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

143 (g) Qualified immunity, defense, and indemnification. —

144 (1) The members, officers, executive director, employees, and representatives of the
145 commission shall be immune from suit and liability, either personally or in their official capacity,
146 for any claims for damage to or loss of property or personal injury or other civil liability caused by
147 or arising out of any actual or alleged act, error or omission that occurred, or that the person
148 against whom the claim is made had a reasonable basis for believing occurred within the scope
149 of commission employment, duties or responsibilities: *Provided*, That nothing in this paragraph
150 may be construed to protect any such person from suit or liability for any damage, loss, injury, or
151 liability caused by the intentional or willful or wanton misconduct of that person.

152 (2) The commission shall defend any member, officer, executive director, employee, or
153 representative of the commission in any civil action seeking to impose liability arising out of any
154 actual or alleged act, error, or omission that occurred within the scope of commission
155 employment, duties, or responsibilities, or that the person against whom the claim is made had a
156 reasonable basis for believing occurred within the scope of commission employment, duties, or
157 responsibilities: *Provided*, That nothing herein may be construed to prohibit that person from
158 retaining his or her own counsel: *Provided, however*, That the actual or alleged act, error, or
159 omission did not result from that person's intentional or willful or wanton misconduct.

160 (3) The commission shall indemnify and hold harmless any member, officer, executive
161 director, employee, or representative of the commission for the amount of any settlement or
162 judgment obtained against that person arising out of any actual or alleged act, error or omission
163 that occurred within the scope of commission employment, duties, or responsibilities, or that such
164 person had a reasonable basis for believing occurred within the scope of commission
165 employment, duties, or responsibilities: *Provided*, That the actual or alleged act, error, or
166 omission did not result from the intentional or willful or wanton misconduct of that person.

§30-31A-10. Data System.

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

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

7 (1) Identifying information;

8 (2) Licensure data;

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

10 (4) Non-confidential information related to alternative program participation;

11 (5) Any denial of application for licensure, and the reason or reasons for such denial;

12 (6) Current significant investigative information; and

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

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

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

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

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

§30-31A-11. Rulemaking.

1 (a) The commission shall promulgate reasonable rules to achieve the purposes of the
2 compact. Notwithstanding the foregoing, if the commission exercises its rule-making authority in
3 a manner that is beyond the scope of the purposes of the compact, or the powers granted
4 hereunder, then such an action by the commission shall be invalid and have no force and effect.

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

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

11 (d) Rules or amendments to the rules shall be adopted at a regular or special meeting of
12 the commission.

13 (e) Prior to promulgation and adoption of a final rule or rules by the commission, and at
14 least 30 days in advance of the meeting at which the rule will be considered and voted upon, the
15 commission shall file a notice of proposed rulemaking:

16 (1) On the website of the commission or other publicly accessible platform; and

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

20 (f) The notice of proposed rulemaking shall include:

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

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

24 (3) A request for comments on the proposed rule from any interested person; and

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

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

29 (h) The commission shall grant an opportunity for a public hearing before it adopts a rule
30 or amendment if a hearing is requested by:

31 (1) At least 25 persons;

32 (2) A state or federal governmental subdivision or agency; or

33 (3) An association or organization having at least 25 members.

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

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

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

42 (3) All hearings will be recorded. A copy of the recording will be available on request.

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

45 (j) Following the scheduled hearing date, or by the close of business on the scheduled
46 hearing date if the hearing was not held, the commission shall consider all written and oral
47 comments received.

48 (k) If no written notice of intent to attend the public hearing by interested parties is received,
49 the commission may proceed with promulgation of the proposed rules without a public hearing.

50 (l) The commission shall, by majority vote of all members, take final action on the proposed
51 rule and shall determine the effective date of the rule, if any, based on the rule-making record and
52 the full text of the rule.

53 (m) Upon determination that an emergency exists, the commission may consider and
54 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that
55 the usual rule-making procedures provided in the compact and in this section shall be retroactively
56 applied to the rule as soon as reasonably possible, in no event later than 90 days after the
57 effective date of the rule. For the purposes of this provision, an emergency rule is one that must
58 be adopted immediately in order to:

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

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

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

63 (4) Protect public health and safety.

64 (n) The commission or an authorized committee of the commission may direct revisions
65 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors
66 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be
67 posted on the website of the commission. The revision shall be subject to challenge by any person
68 for a period of 30 days after posting. The revision may be challenged only on grounds that the

69 revision results in a material change to a rule. A challenge shall be made in writing and delivered
70 to the chair of the commission prior to the end of the notice period. If no challenge is made, the
71 revision will take effect without further action. If the revision is challenged, the revision may not
72 take effect without the approval of the commission.

§30-31A-12. Oversight, dispute resolution, and enforcement.

1 (a) Oversight. —

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

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

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

13 (b) Default, technical assistance, and termination. —

14 (1) If the commission determines that a member state has defaulted in the performance
15 of its obligations or responsibilities under this compact or the promulgated rules, the commission
16 shall:

17 (A) Provide written notice to the defaulting state and other member states of the nature of
18 the default, the proposed means of curing the default or any other action to be taken by the
19 commission; and

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

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

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

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

33 (f) The commission may not bear any costs related to a state that is found to be in default
34 or that has been terminated from the compact, unless agreed upon in writing between the
35 commission and the defaulting state.

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

40 (h) *Dispute resolution.* —

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

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

46 (i) *Enforcement.* —

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

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

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

§30-31A-13. Date of implementation of the counseling compact commission and associated rules, withdrawal, and amendment.

1 (a) The compact shall come into effect on the date on which the compact statute is enacted
2 into law in the 10th member state. The provisions, which become effective at that time, shall be
3 limited to the powers granted to the commission relating to assembly and the promulgation of
4 rules. Thereafter, the commission shall meet and exercise rule-making powers necessary to the
5 implementation and administration of the compact.

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

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

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

14 (2) Withdrawal shall not affect the continuing requirement of the withdrawing state's
15 professional counseling licensing board to comply with the investigative and adverse action
16 reporting requirements of this act prior to the effective date of withdrawal.

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

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

§30-31A-14. Construction and severability.

1 This compact shall be liberally construed so as to effectuate the purposes thereof. The
2 provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of
3 this compact is declared to be contrary to the constitution of any member state or of the United
4 States or the applicability thereof to any government, agency, person, or circumstance is held
5 invalid, the validity of the remainder of this compact and the applicability thereof to any
6 government, agency, person, or circumstance shall not be affected thereby. If this compact shall
7 be held contrary to the constitution of any member state, the compact shall remain in full force
8 and effect as to the remaining member states and in full force and effect as to the member state
9 affected as to all severable matters.

§30-31A-15. Binding effect of compact and other laws.

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

4 (b) Nothing herein prevents the enforcement of any other law of a member state that is
5 not inconsistent with the compact.

6 (c) Any laws in a member state in conflict with the compact are superseded to the extent
7 of the conflict: *Provided*, That any rule or bylaw promulgated by the Counseling Compact
8 Commission shall not alter, amend, abolish, or contravene, the scope of practice or standard of
9 care in the state of West Virginia for licensed professional counselors.

10 (d) Any lawful actions of the commission, including all rules and bylaws properly
11 promulgated by the commission, are binding upon member states.

12 (e) All permissible agreements between the commission and the member states are
13 binding in accordance with their terms.

14 (f) If any provision of the compact exceeds the constitutional limits imposed on the
15 legislature of any member state, the provision shall be ineffective to the extent of the conflict with
16 the constitutional provision in question in that member state.