

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 54.1-2954.2, relating to Respiratory*
 3 *Care Interstate Compact authorized.*

4 [H 575]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 54.1-2954.2 as follows:**8 **§ 54.1-2954.2. Respiratory Care Interstate Compact.**

9 *The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the*
 10 *Respiratory Care Interstate Compact with any and all states legally joining therein according to its terms, in*
 11 *the form substantially as follows:*

12 **RESPIRATORY CARE INTERSTATE COMPACT**13 *Section 1. Title and Purpose.*

14 *A. The purpose of this Compact is to facilitate the interstate Practice of Respiratory Therapy with the goal*
 15 *of improving public access to Respiratory Therapy services by providing Respiratory Therapists licensed in a*
 16 *Member State the ability to practice in other Member States. The Compact preserves the regulatory authority*
 17 *of states to protect public health and safety through the current system of State licensure.*

18 *B. This Compact is designed to achieve the following objectives:*

19 *1. Increase public access to Respiratory Therapy services by creating a responsible, streamlined pathway*
 20 *for Licensees to practice in Member States with the goal of improving outcomes for patients;*

21 *2. Enhance States' ability to protect the public's health and safety;*

22 *3. Promote the cooperation of Member States in regulating the Practice of Respiratory Therapy within*
 23 *those Member States;*

24 *4. Ease administrative burdens on States by encouraging the cooperation of Member States in regulating*
 25 *multi-state Respiratory Therapy practice;*

26 *5. Support relocating Active Military Members and their spouses; and*27 *6. Promote mobility and address workforce shortages.*28 *Section 2. Definitions.*29 *As used in this Compact, unless the context requires otherwise, the following definitions shall apply:*

30 *"Active Military Member" means any person with a full-time duty status in the Armed Forces of the*
 31 *United States, including members of the National Guard and Reserve.*

32 *"Adverse Action" means any administrative, civil, equitable, or criminal action permitted by a State's laws*
 33 *that is imposed by any State authority with regulatory authority over Respiratory Therapists, such as license*
 34 *denial, censure, revocation, suspension, probation, monitoring of the Licensee, or restriction on the*
 35 *Licensee's practice, not including participation in an Alternative Program.*

36 *"Alternative Program" means a nondisciplinary monitoring or practice remediation process applicable to*
 37 *a Respiratory Therapist approved by any State authority with regulatory authority over Respiratory*
 38 *Therapists. This includes, but is not limited to, programs to which Licensees with substance abuse or*
 39 *addiction issues are referred in lieu of an Adverse Action.*

40 *"Charter Member States" means those Member States who were the first seven states to enact the*
 41 *Compact into the laws of their State.*

42 *"Commission" or "Respiratory Care Interstate Compact Commission" means the government*
 43 *instrumentality and body politic whose membership consists of all Member States that have enacted the*
 44 *Compact.*

45 *"Commissioner" means the individual appointed by a Member State to serve as the member of the*
 46 *Commission for that Member State.*

47 *"Compact" means the Respiratory Care Interstate Compact.*

48 *"Compact Privilege" means the authorization granted by a Remote State to allow a Licensee from another*
 49 *Member State to practice as a Respiratory Therapist in the Remote State under the Remote State's laws and*
 50 *Rules. The Practice of Respiratory Therapy occurs in the Member State where the patient is located at the*
 51 *time of the patient encounter.*

52 *"Criminal Background Check" means the submission by the Member State of fingerprints or other*
 53 *biometric-based information on license applicants at the time of initial licensing for the purpose of obtaining*
 54 *that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d) or successor provision,*
 55 *from the Federal Bureau of Investigation and the State's criminal history record repository, as defined in 28*
 56 *C.F.R. § 20.3(f) or successor provision.*

57 "Data System" means the Commission's repository of information about Licensees as further set forth in
58 Section 8.

59 "Domicile" means the jurisdiction that is the Licensee's principal home for legal purposes.

60 "Encumbered License" means a license that a State's Respiratory Therapy Licensing Authority has limited
61 in any way.

62 "Executive Committee" means a group of directors elected or appointed to act on behalf of and within the
63 powers granted to them by the Commission.

64 "Home State," except as set forth in Section 5, means the Member State that is the Licensee's primary
65 Domicile.

66 "Home State License" means an active license to practice Respiratory Therapy in a Home State that is not
67 an Encumbered License.

68 "Jurisprudence Requirement" means an assessment of an individual's knowledge of the State laws and
69 regulations governing the Practice of Respiratory Therapy in such State.

70 "Licensee" means an individual who currently holds an authorization from the State to practice as a
71 Respiratory Therapist.

72 "Member State" means a State that has enacted the Compact and been admitted to the Commission in
73 accordance with the provisions herein and Commission Rules.

74 "Model Compact" means the model for the Respiratory Care Interstate Compact on file with The Council
75 of State Governments or other entity as designated by the Commission.

76 "Remote State" means a Member State where a Licensee is exercising or seeking to exercise the Compact
77 Privilege.

78 "Respiratory Therapist" or "Respiratory Care Practitioner" means an individual who holds a credential
79 issued by the National Board for Respiratory Care (or its successor) and holds a license in a State to practice
80 Respiratory Therapy. For purposes of this Compact, any other title or status adopted by a State to replace the
81 term "Respiratory Therapist" or "Respiratory Care Practitioner" shall be deemed synonymous with
82 "Respiratory Therapist" and shall confer the same rights and responsibilities to the Licensee under the
83 provisions of this Compact at the time of its enactment.

84 "Respiratory Therapy," "Respiratory Therapy Practice," "Respiratory Care," "the Practice of Respiratory
85 Care," and "the Practice of Respiratory Therapy" means the care and services provided by or under the
86 direction and supervision of a Respiratory Therapist or Respiratory Care Practitioner.

87 "Respiratory Therapy Licensing Authority" means the agency, board, or other body of a State that is
88 responsible for the licensing and regulation of Respiratory Therapists.

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

90 "Scope of Practice" means the procedures, actions, and processes a Respiratory Therapist licensed in a
91 State or practicing under a Compact Privilege in a State is permitted to undertake in that State and the
92 circumstances under which the Respiratory Therapist is permitted to undertake those procedures, actions,
93 and processes. Such procedures, actions, and processes, and the circumstances under which they may be
94 undertaken may be established through means, including, but not limited to, statute, regulations, case law,
95 and other processes available to the State Respiratory Therapy Licensing Authority or other government
96 agency.

97 "Significant Investigative Information" means information, records, and documents received or generated
98 by a State Respiratory Therapy Licensing Authority pursuant to an investigation for which a determination
99 has been made that there is probable cause to believe that the Licensee has violated a statute or regulation
100 that is considered more than a minor infraction for which the State Respiratory Therapy Licensing Authority
101 could pursue Adverse Action against the Licensee.

102 "State" means any state, commonwealth, district, or territory of the United States.

103 Section 3. State Participation in this Compact.

104 A. In order to participate in this Compact and thereafter continue as a Member State, a Member State
105 shall:

106 1. Enact a Compact that is not materially different from the Model Compact;

107 2. License Respiratory Therapists;

108 3. Participate in the Commission's Data System;

109 4. Have a mechanism in place for receiving and investigating complaints against Licensees and Compact
110 Privilege holders;

111 5. Notify the Commission, in compliance with the terms of this Compact and Commission Rules, of any
112 Adverse Action against a Licensee, a Compact Privilege holder, or a license applicant;

113 6. Notify the Commission, in compliance with the terms of this Compact and Commission Rules, of the
114 existence of Significant Investigative Information;

115 7. Comply with the Rules of the Commission;

116 8. Grant the Compact Privilege to a holder of an active Home State License and otherwise meet the
117 applicable requirements of Section 4 in a Member State; and

118 9. Complete a Criminal Background Check for each new Licensee at the time of initial licensure.

119 Where expressly authorized or permitted by federal law, whether such federal law is in effect prior to, at,
 120 or after the time of a Member State's enactment of this Compact, a Member State's enactment of this Compact
 121 shall hereby authorize the Member State's Respiratory Therapy Licensing Authority to perform Criminal
 122 Background Checks as defined herein. The absence of such a federal law as described in this subsection shall
 123 not prevent or preclude such authorization where it may be derived or granted through means other than the
 124 enactment of this Compact.

125 B. Nothing in this Compact prohibits a Member State from charging a fee for granting and renewing the
 126 Compact Privilege.

127 Section 4. Compact Privilege.

128 A. To exercise the Compact Privilege under the terms and provisions of the Compact, the Licensee shall:

129 1. Hold and maintain an active Home State License as a Respiratory Therapist;

130 2. Hold and maintain an active credential from the National Board for Respiratory Care (or its successor)
 131 that would qualify them for licensure in the Remote State in which they are seeking the privilege;

132 3. Have not had any Adverse Action against a license within the previous two years;

133 4. Notify the Commission that the Licensee is seeking the Compact Privilege within a Remote State(s);

134 5. Pay any applicable fees, including any State and Commission fees and renewal fees, for the Compact
 135 Privilege;

136 6. Meet any Jurisprudence Requirements established by the Remote State in which the Licensee is seeking
 137 a Compact Privilege;

138 7. Report to the Commission Adverse Action taken by any non-Member State within 30 days from the date
 139 the Adverse Action is taken;

140 8. Report to the Commission, when applying for a Compact Privilege, the address of the Licensee's
 141 Domicile and thereafter promptly report to the Commission any change in the address of the Licensee's
 142 Domicile within 30 days of the effective date of the change in address; and

143 9. Consent to accept service of process by mail at the Licensee's Domicile on record with the Commission
 144 with respect to any action brought against the Licensee by the Commission or a Member State, and consent
 145 to accept service of a subpoena by mail at the Licensee's Domicile on record with the Commission with
 146 respect to any action brought or investigation conducted by the Commission or a Member State.

147 B. The Compact Privilege is valid until the expiration date or revocation of the Home State License unless
 148 terminated pursuant to Adverse Action. The Licensee must comply with all of the requirements of Subsection
 149 A to maintain the Compact Privilege in a Remote State. If those requirements are met, no Adverse Actions
 150 are taken, and the Licensee has paid any applicable Compact Privilege renewal fees, then the Licensee will
 151 maintain the Licensee's Compact Privilege.

152 C. A Licensee providing Respiratory Therapy in a Remote State under the Compact Privilege shall
 153 function within the Scope of Practice authorized by the Remote State for the type of Respiratory Therapist
 154 license the Licensee holds. Such procedures, actions, processes, and the circumstances under which they may
 155 be undertaken may be established through means, including, but not limited to, statute, regulations, case law,
 156 and other processes available to the State Respiratory Therapy Licensing Authority or other government
 157 agency.

158 D. If a Licensee's Compact Privilege in a Remote State is removed by the Remote State, the individual
 159 shall lose or be ineligible for the Compact privilege in that Remote State until the Compact Privilege is no
 160 longer limited or restricted by that State.

161 E. If a Home State License is encumbered, the Licensee shall lose the Compact Privilege in all Remote
 162 States until the following occur:

163 1. The Home State License is no longer encumbered; and

164 2. Two years have elapsed from the date on which the license is no longer encumbered due to the Adverse
 165 Action.

166 F. Once a Licensee with a restricted or limited license meets the requirements of subdivisions E 1 and 2,
 167 the Licensee must also meet the requirements of subsection A to obtain a Compact Privilege in a Remote
 168 State.

169 Section 5. Active Military Member or Their Spouse.

170 A. An Active Military Member, or their spouse, shall designate a Home State where the individual has a
 171 current license in good standing. The individual may retain the Home State designation during the period the
 172 service member is on active duty.

173 B. An Active Military Member and their spouse shall not be required to pay to the Commission for a
 174 Compact Privilege any fee that may otherwise be charged by the Commission. If a Remote State chooses to
 175 charge a fee for a Compact Privilege, it may choose to charge a reduced fee or no fee to an Active Military
 176 Member and their spouse for a Compact Privilege.

177 Section 6. Adverse Actions.

178 A. A Member State in which a Licensee is licensed shall have authority to impose Adverse Action against
 179 the license issued by that Member State.

180 B. A Member State may take Adverse Action based on Significant Investigative Information of a Remote

181 *State or the Home State, so long as the Member State follows its own procedures for imposing Adverse*
182 *Action.*

183 *C. Nothing in this Compact shall override a Member State's decision that participation in an Alternative*
184 *Program may be used in lieu of Adverse Action and that such participation shall remain nonpublic if*
185 *required by the Member State's laws.*

186 *D. A Remote State shall have the authority to:*

187 *1. Take Adverse Actions as set forth herein against a Licensee's Compact Privilege in that State;*

188 *2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of*
189 *witnesses, and the production of evidence.*

190 *a. Subpoenas may be issued by a Respiratory Therapy Licensing Authority in a Member State for the*
191 *attendance and testimony of witnesses and the production of evidence.*

192 *b. Subpoenas issued by a Respiratory Therapy Licensing Authority in a Member State for the attendance*
193 *and testimony of witnesses shall be enforced in the latter State by any court of competent jurisdiction in the*
194 *latter State, according to the practice and procedure of that court applicable to subpoenas issued in*
195 *proceedings pending before it.*

196 *c. Subpoenas issued by a Respiratory Therapy Licensing Authority in a Member State for production of*
197 *evidence from another Member State shall be enforced in the latter State, according to the practice and*
198 *procedure of that court applicable to subpoenas issued in the proceedings pending before it.*

199 *d. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by*
200 *the service statutes of the State where the witnesses or evidence are located;*

201 *3. Unless otherwise prohibited by State law, recover from the Licensee the costs of investigations and*
202 *disposition of cases resulting from any Adverse Action taken against that Licensee;*

203 *4. Notwithstanding subdivision 2, a Member State may not issue a subpoena to gather evidence of conduct*
204 *in another Member State that is lawful in such other Member State for the purpose of taking Adverse Action*
205 *against a Licensee's Compact Privilege or application for a Compact Privilege in that Member State; and*

206 *5. Nothing in this Compact authorizes a Member State to impose discipline against a Respiratory*
207 *Therapist's Compact Privilege in that Member State for the individual's otherwise lawful practice in another*
208 *State.*

209 *E. Joint Investigations.*

210 *1. In addition to the authority granted to a Member State by its respective Respiratory Therapy Practice*
211 *act or other applicable state law, a Member State may participate with other Member States in joint*
212 *investigations of Licensees, provided, however, that a Member State receiving such a request has no*
213 *obligation to respond to any subpoena issued regarding an investigation of conduct or practice that was*
214 *lawful in a Member State at the time it was undertaken.*

215 *2. Member States shall share any Significant Investigative Information, litigation, or compliance*
216 *materials in furtherance of any joint or individual investigation initiated under the Compact. In sharing such*
217 *information between Member State Respiratory Therapy Licensing Authorities, all information obtained shall*
218 *be kept confidential, except as otherwise mutually agreed upon by the sharing and receiving Member*
219 *State(s).*

220 *F. Nothing in this Compact may permit a Member State to take any Adverse Action against a Licensee or*
221 *holder of a Compact Privilege for conduct or practice that was legal in the Member State at the time it was*
222 *undertaken.*

223 *G. Nothing in this Compact may permit a Member State to take disciplinary action against a Licensee or*
224 *holder of a Compact Privilege for conduct or practice that was legal in the Member State at the time it was*
225 *undertaken.*

226 *Section 7. Establishment of the Respiratory Care Interstate Compact Commission.*

227 *A. The Compact Member States hereby create and establish a joint government agency whose*
228 *membership consists of all Member States that have enacted the Compact known as the Respiratory Care*
229 *Interstate Compact. The Commission is an instrumentality of the Compact Member States acting jointly and*
230 *not an instrumentality of any one State. The Commission shall come into existence on or after the effective*
231 *date of the Compact, as set forth in Section 11.*

232 *B. Membership, Voting, and Meetings.*

233 *1. Each Member State shall have and be limited to one Commissioner selected by that Member State's*
234 *Respiratory Therapy Licensing Authority.*

235 *2. The Commissioner shall be an administrator or their designated staff member of the Member State's*
236 *Respiratory Therapy Licensing Authority.*

237 *3. The Commission shall by Rule or bylaw establish a term of office for Commissioners and may by Rule*
238 *or bylaw establish term limits.*

239 *4. The Commission may recommend to a Member State the removal or suspension of any Commissioner*
240 *from office.*

241 *5. A Member State's Respiratory Therapy Licensing Authority shall fill any vacancy of its Commissioner*
242 *occurring on the Commission within 60 days of the vacancy.*

243 6. Each Commissioner shall be entitled to one vote on all matters before the Commission requiring a vote
244 by Commissioners.

245 7. A Commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws
246 may provide for Commissioners to meet by telecommunication, videoconference, or other means of
247 communication.

248 8. The Commission shall meet at least once during each calendar year. Additional meetings may be held
249 as set forth in the bylaws.

250 C. The Commission shall have the following powers:

251 1. Establish and amend the fiscal year of the Commission;

252 2. Establish and amend bylaws and policies, including, but not limited to, a code of conduct and conflict
253 of interest;

254 3. Establish and amend Rules, which shall be binding in all Member States;

255 4. Maintain its financial records in accordance with the bylaws;

256 5. Meet and take such actions as are consistent with the provisions of this Compact, the Commission's
257 Rules, and the bylaws;

258 6. Initiate and conduct legal proceedings or actions in the name of the Commission, provided that the
259 standing of any Respiratory Therapy Licensing Authority to sue or be sued under applicable law shall not be
260 affected;

261 7. Maintain and certify records and information provided to a Member State as the authenticated business
262 records of the Commission, and designate an agent to do so on the Commission's behalf;

263 8. Purchase and maintain insurance and bonds;

264 9. Accept or contract for services of personnel, including, but not limited to, employees of a Member
265 State;

266 10. Conduct an annual financial review;

267 11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals
268 appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel
269 policies and programs relating to conflicts of interest, qualifications of personnel, and other related
270 personnel matters;

271 12. Assess and collect fees;

272 13. Accept any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment,
273 supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times:

274 a. The Commission shall avoid any appearance of impropriety; and

275 b. The Commission shall avoid any appearance of conflict of interest;

276 14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any
277 undivided interest therein;

278 15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real,
279 personal, or mixed;

280 16. Establish a budget and make expenditures;

281 17. Borrow money in a fiscally responsible manner;

282 18. Appoint committees, including standing committees, composed of Commissioners, State regulators,
283 State legislators or their representatives, and consumer representatives, and such other interested persons as
284 may be designated in this Compact and the bylaws;

285 19. Provide and receive information from, and cooperate with, law-enforcement agencies;

286 20. Establish and elect an Executive Committee, including a chair, vice-chair, secretary, treasurer, and
287 such other offices as the Commission shall establish by Rule or bylaw;

288 21. Enter into contracts or arrangements for the management of the affairs of the Commission;

289 22. Determine whether a State's adopted language is materially different from the Model Compact
290 language such that the State would not qualify for participation in the Compact; and

291 23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this
292 Compact.

293 D. The Executive Committee.

294 1. The Executive Committee shall have the power to act on behalf of the Commission according to the
295 terms of this Compact. The powers, duties, and responsibilities of the Executive Committee shall include:

296 a. Overseeing the day-to-day activities of the administration of the Compact, including enforcement and
297 compliance with the provisions of the Compact, its Rules and bylaws, and other such duties as deemed
298 necessary;

299 b. Recommending to the Commission changes to the Rules or bylaws, changes to this Compact legislation,
300 fees charged to Compact Member States, fees charged to Licensees, and other fees;

301 c. Ensuring Compact administration services are appropriately provided, including by contract;

302 d. Preparing and recommending the budget;

303 e. Maintaining financial records on behalf of the Commission;

304 f. Monitoring Compact compliance of Member States and providing compliance reports to the

305 Commission;

306 g. Establishing additional committees as necessary;

307 h. Exercising the powers and duties of the Commission during the interim between Commission meetings,

308 except for adopting or amending Rules, adopting or amending bylaws, and exercising any other powers and

309 duties expressly reserved to the Commission by Rule or bylaw; and

310 i. Performing other duties as provided in the Rules or bylaws of the Commission.

311 2. The Executive Committee shall be composed of up to nine members, as further set forth in the bylaws of

312 the Commission:

313 a. Seven voting members who are elected by the Commission from the current membership of the

314 Commission; and

315 b. Two ex officio, nonvoting members.

316 3. The Commission may remove any member of the Executive Committee as provided in the Commission's

317 bylaws.

318 4. The Executive Committee shall meet at least annually.

319 a. Executive Committee meetings shall be open to the public, except that the Executive Committee may

320 meet in a closed, nonpublic meeting as provided in subdivision F 4;

321 b. The Executive Committee shall give advance notice of its meetings, posted on its website and as

322 determined to provide notice to persons with an interest in the business of the Commission; and

323 c. The Executive Committee may hold a special meeting in accordance with subdivision F 2.

324 E. The Commission shall adopt and provide to the Member States an annual report.

325 F. Meetings of the Commission.

326 1. All meetings of the Commission that are not closed pursuant to subdivision 4 shall be open to the

327 public. Notice of public meetings shall be posted on the Commission's website at least 30 days prior to the

328 public meeting.

329 2. Notwithstanding subdivision 1, the Commission may convene an emergency public meeting by

330 providing at least 24 hours prior notice on the Commission's website, and any other means as provided in the

331 Commission's Rules, for any of the reasons it may dispense with notice of proposed rulemaking under

332 subsection G of Section 9. The Commission's legal counsel shall certify that one of the reasons justifying an

333 emergency public meeting has been met.

334 3. Notice of all Commission meetings shall provide the time, date, and location of the meeting, and if the

335 meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the

336 notice shall include the mechanism for access to the meeting.

337 4. The Commission or the Executive Committee may convene in a closed, nonpublic meeting for the

338 Commission or Executive Committee to receive or solicit legal advice or to discuss:

339 a. Noncompliance of a Member State with its obligations under the Compact;

340 b. The employment, compensation, discipline or other matters, practices, or procedures related to specific

341 employees;

342 c. Current or threatened discipline of a Licensee or Compact Privilege holder by the Commission or by a

343 Member State's Respiratory Therapy Licensing Authority;

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

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

346 f. Accusing any person of a crime or formally censuring any person;

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

348 h. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of

349 personal privacy;

350 i. Investigative records compiled for law-enforcement purposes;

351 j. Information related to any investigative reports prepared by or on behalf of or for use of the

352 Commission or other committee charged with responsibility of investigation or determination of compliance

353 issues pursuant to the Compact;

354 k. Legal advice;

355 l. Matters specifically exempted from disclosure by federal or Member State law; or

356 m. Other matters as promulgated by the Commission by Rule.

357 5. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be

358 closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

359 6. The Commission shall keep minutes in accordance with Commission Rules and bylaws. All documents

360 considered in connection with an action shall be identified in such minutes. All minutes and documents of a

361 closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order

362 of a court of competent jurisdiction.

363 G. Financing of the Commission.

364 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment,

365 organization, and ongoing activities.

366 2. The Commission may accept any and all appropriate revenue sources as provided herein.

367 3. The Commission may levy on and collect an annual assessment from each Member State and impose
 368 fees on Licensees of Member States to whom it grants a Compact Privilege to cover the cost of the operations
 369 and activities of the Commission and its staff. The aggregate annual assessment amount for Member States, if
 370 any, shall be allocated based upon a formula that the Commission shall promulgate by Rule.

371 4. The Commission shall not incur obligations of any kind prior to securing the funds or a loan adequate
 372 to meet the same, nor shall the Commission pledge the credit of any of the Member States, except by and with
 373 the authority of the Member State.

374 5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and
 375 disbursements of the Commission shall be subject to the financial review and accounting procedures
 376 established under its bylaws. However, all receipts and disbursements of funds handled by the Commission
 377 shall be subject to an annual financial review by a certified or licensed public accountant, and the report of
 378 the financial review shall be included in and become part of the annual report of the Commission.

379 H. Qualified Immunity, Defense, and Indemnification.

380 1. Nothing herein shall be construed as a limitation on the liability of any Licensee for professional
 381 malpractice or misconduct, which shall be governed solely by any other applicable state laws.

382 2. The Member States, Commissioners, officers, executive directors, employees, and agents of the
 383 Commission shall be immune from suit and liability, both personally and in their official capacity, for any
 384 claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of
 385 any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is
 386 made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or
 387 responsibilities, provided that nothing in this subsection shall be construed to protect any such person from
 388 suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton
 389 misconduct of that person. The procurement of insurance of any type by the Commission shall not in any way
 390 compromise or limit the immunity granted hereunder.

391 3. The Commission shall defend any Commissioner, officer, executive director, employee, and agent of the
 392 Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or
 393 omission that occurred within the scope of Commission employment, duties, or responsibilities, or as
 394 determined by the Commission that the person against whom the claim is made had a reasonable basis for
 395 believing occurred within the scope of Commission employment, duties, or responsibilities, provided that
 396 nothing herein shall be construed to prohibit that person from retaining their own counsel at their own
 397 expense, and provided further, that the actual or alleged act, error, or omission did not result from that
 398 person's intentional or willful or wanton misconduct.

399 4. The Commission shall indemnify and hold harmless any Commissioner, member, officer, executive
 400 director, employee, and agent of the Commission for the amount of any settlement or judgment obtained
 401 against that person arising out of any actual or alleged act, error, or omission that occurred within the scope
 402 of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for
 403 believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the
 404 actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of
 405 that person.

406 5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a Member State's state
 407 action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act,
 408 Clayton Act, or any other State or federal antitrust or anticompetitive law or regulation.

409 6. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the Member States
 410 or by the Commission.

411 Section 8. Data System.

412 A. The Commission shall provide for the development, maintenance, operation, and utilization of a
 413 coordinated database and reporting system containing licensure, Adverse Action, and the presence of
 414 Significant Investigative Information.

415 B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a
 416 uniform data set to the Data System as required by the Rules of the Commission, including but not limited to:

417 1. Identifying information;

418 2. Licensure data;

419 3. Adverse Actions against a Licensee, license applicant, or Compact Privilege holder and information
 420 related thereto;

421 4. Nonconfidential information related to Alternative Program participation, the beginning and ending
 422 dates of such participation, and other information related to such participation not made confidential under
 423 Member State law;

424 5. Any denial of application for licensure, and the reason(s) for such denial;

425 6. The presence of current Significant Investigative Information; and

426 7. Other information that may facilitate the administration of this Compact or the protection of the public,
 427 as determined by the Rules of the Commission.

428 C. No Member State shall submit any information that constitutes criminal history record information, as

429 defined by applicable federal law, to the Data System established hereunder.

430 D. The records and information provided to a Member State pursuant to this Compact or through the
431 Data System, when certified by the Commission or an agent thereof, shall constitute the authenticated
432 business records of the Commission and shall be entitled to any associated hearsay exception in any relevant
433 judicial, quasi-judicial, or administrative proceedings in a Member State.

434 E. Significant Investigative Information pertaining to a Licensee in any Member State will only be
435 available to other Member States.

436 F. It is the responsibility of the Member States to report any Adverse Action against a Licensee and to
437 monitor the database to determine whether Adverse Action has been taken against a Licensee. Adverse
438 Action information pertaining to a Licensee in any Member State will be available to any other Member
439 State.

440 G. Member States contributing information to the Data System may designate information that may not be
441 shared with the public without the express permission of the contributing State.

442 H. Any information submitted to the Data System that is subsequently expunged pursuant to federal law or
443 the laws of the Member State contributing the information shall be removed from the Data System.

444 Section 9. Rulemaking.

445 A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently implement
446 and administer the purposes and provisions of the Compact. A Rule shall be invalid and have no force or
447 effect only if a court of competent jurisdiction holds that the Rule is invalid because the Commission
448 exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the
449 powers granted hereunder, or based upon another applicable standard of review.

450 B. For purposes of the Compact, the Rules of the Commission shall have the force of law in each Member
451 State.

452 C. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section
453 and the Rules adopted thereunder. Rules shall become binding as of the date specified in each Rule.

454 D. If a majority of the legislatures of the Member States rejects a Rule or portion of a Rule, by enactment
455 of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of
456 adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

457 E. Rules shall be adopted at a regular or special meeting of the Commission.

458 F. Prior to adoption of a proposed Rule, the Commission shall hold a public hearing and allow persons to
459 provide oral and written comments, data, facts, opinions, and arguments.

460 G. Prior to adoption of a proposed Rule by the Commission, and at least 30 days in advance of the
461 meeting at which the Commission will hold a public hearing on the proposed Rule, the Commission shall
462 provide a notice of proposed rulemaking:

- 463 1. On the website of the Commission or other publicly accessible platform;
- 464 2. To persons who have requested notice of the Commission's notices of proposed rulemaking; and
- 465 3. In such other way(s) as the Commission may by Rule specify.

466 H. The notice of proposed rulemaking shall include:

467 1. The time, date, and location of the public hearing at which the Commission will hear public comments
468 on the proposed Rule and, if different, the time, date, and location of the meeting where the Commission will
469 consider and vote on the proposed Rule;

470 2. If the hearing is held via telecommunication, video conference, or other electronic means, the
471 Commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking;

472 3. The text of the proposed Rule and the reason therefor;

473 4. A request for comments on the proposed Rule from any interested person; and

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

475 I. All hearings will be recorded. A copy of the recording and all written comments and documents
476 received by the Commission in response to the proposed Rule shall be available to the public.

477 J. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be
478 grouped for the convenience of the Commission at hearings required by this section.

479 K. The Commission shall, by majority vote of all Commissioners, take final action on the proposed Rule
480 based on the rulemaking record and the full text of the Rule.

481 1. The Commission may adopt changes to the proposed Rule provided the changes are consistent with the
482 original purpose of the proposed Rule.

483 2. The Commission shall provide an explanation of the reasons for substantive changes made to the
484 proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

485 3. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as
486 provided in subsection L, the effective date of the Rule shall be no sooner than thirty (30) days after issuing
487 the notice that it adopted or amended the Rule.

488 L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency
489 Rule with 24 hours' notice, and with opportunity to comment, provided that the usual rulemaking procedures
490 provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably

491 possible, in no event later than 90 days after the effective date of the Rule. For the purposes of this provision,
492 an emergency Rule is one that must be adopted immediately in order to:

- 493 1. Meet an imminent threat to public health, safety, or welfare;
- 494 2. Prevent a loss of Commission or Member State funds;
- 495 3. Meet a deadline for the promulgation of a Rule that is established by federal law or Rule; or
- 496 4. Protect public health and safety.

497 M. The Commission or an authorized committee of the Commission may direct revisions to a previously
498 adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or
499 grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The
500 revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be
501 challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be
502 made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is
503 made, the revision will take effect without further action. If the revision is challenged, the revision may not
504 take effect without the approval of the Commission.

505 N. No Member State's rulemaking process or procedural requirements shall apply to the Commission.

506 1. The Commission shall have no authority over any Member State's rulemaking process or procedural
507 requirements that do not pertain to the Compact.

508 O. Nothing in this Compact, nor any Rule or regulation of the Commission, shall be construed to limit,
509 restrict, or in any way reduce the ability of a Member State to enact and enforce laws, regulations, or other
510 Rules related to the Practice of Respiratory Therapy in that State, where those laws, regulations, or other
511 Rules are not inconsistent with the provisions of this Compact.

512 Section 10. Oversight, Dispute Resolution, and Enforcement.

513 A. Oversight.

514 1. The executive and judicial branches of State government in each Member State shall enforce this
515 Compact and take all actions necessary and appropriate to implement the Compact.

516 2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and
517 exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The
518 Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in
519 alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of
520 venue in any action against a Licensee for professional malpractice, misconduct or any such similar matter.

521 3. The Commission shall be entitled to receive service of process in any proceeding regarding the
522 enforcement or interpretation of the Compact and shall have standing to intervene in such a proceeding for
523 all purposes. Failure to provide the Commission service of process shall render a judgment or order void as
524 to the Commission, this Compact, or promulgated Rules.

525 B. Default, Technical Assistance, and Termination.

526 1. If the Commission determines that a Member State has defaulted in the performance of its obligations
527 or responsibilities under this Compact or the promulgated Rules, the Commission shall provide written notice
528 to the defaulting State. The notice of default shall describe the default, the proposed means of curing the
529 default, and any other action that the Commission may take and shall offer training and specific technical
530 assistance regarding the default.

531 2. The Commission shall provide a copy of the notice of default to the other Member States.

532 C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact
533 upon an affirmative vote of a majority of the Commissioners of the Member States, and all rights, privileges,
534 and benefits conferred on that State by this Compact may be terminated on the effective date of termination.
535 A cure of the default does not relieve the offending State of obligations or liabilities incurred during the
536 period of default.

537 D. Termination of membership in the Compact shall be imposed only after all other means of securing
538 compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission
539 to the governor, the majority and minority leaders of the defaulting State's legislature, the defaulting State's
540 Respiratory Therapy Licensing Authority, and each of the Member States' Respiratory Therapy Licensing
541 Authorities.

542 E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred
543 through the effective date of termination, including obligations that extend beyond the effective date of
544 termination, if necessary.

545 F. Upon the termination of a State's membership from this Compact, that State shall immediately provide
546 notice to all Licensees and Compact Privilege holders (of which the Commission has a record) within that
547 State of such termination. The terminated State shall continue to recognize all licenses granted pursuant to
548 this Compact for a minimum of 180 days after the date of said notice of termination.

549 G. The Commission shall not bear any costs related to a State that is found to be in default or that has
550 been terminated from the Compact, unless agreed upon in writing between the Commission and the
551 defaulting State.

552 H. The defaulting State may appeal the action of the Commission by petitioning the United States District

553 Court for the District of Columbia or the federal district where the Commission has its principal offices. The
 554 prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

555 I. Dispute Resolution.

556 1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the
 557 Compact that arise among Member States and between Member and non-Member States.

558 2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution
 559 for disputes, as appropriate.

560 J. Enforcement.

561 1. By majority vote, as may be further provided by Rule, the Commission may initiate legal action against
 562 a Member State in default in the United States District Court for the District of Columbia or the federal
 563 district where the Commission has its principal offices to enforce compliance with the provisions of the
 564 Compact and its promulgated Rules. A Member State by enactment of this Compact consents to venue and
 565 jurisdiction in such court for the purposes set forth herein. The relief sought may include both injunctive
 566 relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all
 567 costs of such litigation, including reasonable attorney fees. The remedies herein shall not be the exclusive
 568 remedies of the Commission. The Commission may pursue any other remedies available under federal or the
 569 defaulting Member State's law.

570 2. A Member State may initiate legal action against the Commission in the United States District Court
 571 for the District of Columbia or the federal district where the Commission has its principal offices to enforce
 572 compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both
 573 injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be
 574 awarded all costs of such litigation, including reasonable attorney fees.

575 3. No person other than a Member State shall enforce this Compact against the Commission.

576 Section 11. Effective Date, Withdrawal, and Amendment.

577 A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the
 578 seventh Member State (Effective Date).

579 1. On or after the Effective Date of the Compact, the Commission shall convene and review the enactment
 580 of each of the first seven Member States (Charter Member States) to determine if the statute enacted by each
 581 such Charter Member State is materially different from the Model Compact.

582 a. A Charter Member State whose enactment is found to be materially different from the Model Compact
 583 shall be entitled to the default process set forth in Section 10.

584 b. If any Member State is later found to be in default, or is terminated or withdraws from the Compact, the
 585 Commission shall remain in existence and the Compact shall remain in effect even if the number of Member
 586 States should be less than seven.

587 2. Member States enacting the Compact subsequent to the seven initial Charter Member States shall be
 588 subject to the process set forth herein and Commission Rule to determine if their enactments are materially
 589 different from the Model Compact and whether they qualify for participation in the Compact.

590 3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the
 591 administration of the Compact prior to the Effective Date of the Compact or the Commission coming into
 592 existence shall be considered to be actions of the Commission unless specifically repudiated by the
 593 Commission. The Commission shall own and have all rights to any intellectual property developed on behalf
 594 or in furtherance of the Commission by individuals or entities involved in organizing or establishing the
 595 Commission, as may be further set forth in Rules of the Commission.

596 4. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules and
 597 bylaws shall be subject to the Rules and bylaws as they exist on the date on which the Compact becomes law
 598 in that State. Any Rule that has been previously adopted by the Commission shall have the full force and
 599 effect of law on the date the Compact becomes law in that State.

600 B. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

601 1. A Member State's withdrawal shall not take effect until 180 days after enactment of the repealing
 602 statute.

603 2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Respiratory Therapy
 604 Licensing Authority to comply with the investigative and Adverse Action reporting requirements of this
 605 Compact prior to the effective date of withdrawal.

606 3. Upon the enactment of a statute withdrawing from this Compact, a State shall immediately provide
 607 notice of such withdrawal to all Licensees and Compact Privilege holders (of which the Commission has a
 608 record) within that State. Notwithstanding any subsequent statutory enactment to the contrary, such
 609 withdrawing State shall continue to recognize all licenses granted pursuant to this Compact for a minimum of
 610 180 days after the date of such notice of withdrawal.

611 C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure agreement
 612 or other cooperative arrangement between a Member State and a non-Member State that does not conflict
 613 with the provisions of this Compact.

614 D. This Compact may be amended by the Member States. No amendment to this Compact shall become

615 *effective and binding upon any Member State until it is enacted into the laws of all Member States.*

616 *Section 12. Construction and Severability.*

617 *A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to*
618 *effectuate the purposes and the implementation and administration of the Compact. Provisions of the*
619 *Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the*
620 *Commission's rulemaking authority solely for those purposes.*

621 *B. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of*
622 *this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member*
623 *State, a State seeking participation in the Compact, or of the United States, or the applicability thereof to any*
624 *government, agency, person, or circumstance is held to be unconstitutional by a court of competent*
625 *jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other*
626 *government, agency, person, or circumstance shall not be affected thereby.*

627 *C. Notwithstanding subsection B, the Commission may deny a State's participation in the Compact or, in*
628 *accordance with the requirements of Section 10, terminate a Member State's participation in the Compact, if*
629 *it determines that a constitutional requirement of a Member State is a material departure from the Compact.*
630 *Otherwise, if this Compact shall be held to be contrary to the constitution of any Member State, the Compact*
631 *shall remain in full force and effect as to the remaining Member States and in full force and effect as to the*
632 *Member State affected as to all severable matters.*

633 *Section 13. Consistent Effect and Conflict With Other State Laws.*

634 *A. Nothing herein shall prevent or inhibit the enforcement of any other law of a Member State that is not*
635 *inconsistent with this Compact.*

636 *B. Any laws, statutes, regulations, or other legal requirements in a Member State in conflict with the*
637 *Compact are superseded to the extent of the conflict, including any subsequently enacted State laws.*

638 *C. All permissible agreements between the Commission and the Member States are binding in accordance*
639 *with their terms.*

640 *D. Other than as expressly set forth herein, nothing in this Compact will impact initial licensure.*

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