

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2288

As Amended by House Committee on Health
and Human Services

Brief*

HB 2288 would establish the Counseling Compact (Compact) to facilitate interstate practice of licensed professional counselors. The bill would also amend law to add a licensure fee relating to the privilege to practice under the Compact.

The Compact's uniform provisions are detailed below.

Purpose (Section 1)

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

The Compact's objectives would include:

- Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;
- Enhance the states' ability to protect the public's health and safety;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Encourage the cooperation of member states in regulating multi-state practice for licensed professional counselors;
- Support spouses of relocating active duty military personnel;
- Enhance the exchange of licensure, investigative, and disciplinary information among member states;
- Allow for the use of telehealth technology to facilitate increased access to professional counseling services;
- Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;
- Invest all member state with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;
- Eliminate the necessity for licenses in multiple states; and
- Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

Definitions (Section 2)

The Compact would define various terms used throughout the Compact. “Professional counseling” would mean the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

State Participation in the Compact (Section 3)

The Compact would provide that participation will require a state to currently:

- License and regulate licensed professional counselors;
- Require licensees to pass a nationally recognized exam approved by the Counseling Compact Commission (Commission);
- Require licensees to have a 60 semester-hour or 90 quarter-hour master's degree in counseling or 60 semester hours or 90 quarter hours of graduate coursework including subject areas as outlined in the bill;
- Require licensees to complete a supervised postgraduate professional experience as defined by the Commission; and
- Have a mechanism in place for receiving and investigating complaints about licensees.

Member states participating in the Compact would be required to:

- Participate fully in the Commission's data system, including using the Commission's unique identifier,
- Notify the Commission of any adverse action or the availability of investigative information regarding a licensee;
- Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice, including the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an

applicant's criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining that state's criminal records. Member states would be required to fully implement a criminal background check requirement, including the confidential use of FBI record search results to make licensure decisions;

- Comply with the rules of the Commission;
- Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;
- Grant the privilege to practice to licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules; and
- Provide for the attendance of the state's commissioner to the Commission meetings.

The Compact would provide for the state to charge a fee for granting the privilege to practice. Individuals not residing in a member state would still be able to apply for a member state's single-state license as provided under the member state's laws, but the single-state license would not be recognized as granting a privilege to practice professional counseling in any other member state.

The Compact would not affect the requirements established by a member state for the issuance of a single-state license.

Under the Compact, a license must be issued to a licensed professional counselor by a home state to a resident in that state to be recognized in each member state as authorizing the licensee the privilege to practice in each member state.

Privilege to Practice (Section 4)

A licensee would be required, in order to exercise the privilege to practice under the Compact's terms, to:

- Hold a license in the home state;
- Have a valid U.S. Social Security number or national practitioner identifier;
- Be eligible for a privilege to practice in any member state in accordance with the Compact;
- Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years;
- Notify the Commission that the licensee is seeking the privilege to practice within a remote state;
- Pay any applicable fees, including any state fee, for the privilege to practice;
- Meet any continuing competence or education requirements established by the home state;
- Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice; and
- Report to the Commission any adverse action, encumbrance, or restriction on license taken by any non-member state within 30 days from the date of action.

The licensee would be required to comply with the above requirements (Section 4, privilege to practice) to maintain privilege to practice. The privilege to practice would be valid until the expiration date of the home state license.

Under the Compact a licensee providing professional counseling in a remote state under the privilege to practice would be required to adhere to laws and regulations of the remote state and be subject to that state's regulatory authority. In accordance with due process and the state's laws, the remote state would be able to remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, or take other necessary actions to protect the health and safety of its citizens. The licensee would potentially be ineligible for privilege to practice in any member state until the specific time of removal has passed and all fines are paid.

If a licensee's home state license is encumbered, the Compact would require the licensee to lose their privilege to practice in any remote state until the home state license is no longer encumbered and the licensee has not had any encumbrance or restriction within the previous two years.

Once an encumbered license is returned to good standing, the Compact would require licensees to meet the requirements of privilege to practice in order to practice in any remote state.

If a licensee's privilege to practice is removed, the Compact states the individual would lose the privilege to practice in all other remote states until the following occur:

- The specific period of time for which the privilege of practice was removed has ended;
- All fines have been paid; and
- The individual has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

Once these requirements have been met, the licensee must also meet the requirements of privilege to practice to practice in any remote state.

***Obtaining a New Home State License Based on a
Privilege to Practice (Section 5)***

The Compact would provide for a licensed professional counselor to hold a home state license in only one member state at a time. If the licensee changes primary state of residence by moving between two member states, the licensee would be required to file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the Commission.

Upon receiving an application for a new home state license, the new home state would be required to verify that the licensed professional counselor meets the criteria of privilege to practice via the data system, without need for primary source verification except for an FBI fingerprint-based criminal background check if not previously performed or updated, other criminal background check as required by the new home state, and completion of any requisite jurisprudence requirements of the new home state.

The Compact would require the former home state to convert the former license into a privilege to practice once the new home state has activated the new license. If the licensee cannot meet the criteria of privilege to practice, the new home state would be allowed to apply its requirements for issuing a new single-state license. The Compact would require the licensed professional counselor to pay all applicable fees to the new home state for a new home state license.

The Compact would also provide that for a licensed professional counselor who changes primary state of residence by moving from a member state to a non-member state or from a non-member state to a member state, the state criteria would apply issuance of a single-state license in the new state.

The Compact would not interfere with a licensee's ability to hold a single-state license in multiple states. For the purposes of the Compact, a licensee could only hold one home state license. The Compact would not affect the requirements established by a member state for the issuance of a single-state license.

Active Duty Military Personnel or Their Spouses (Section 6)

The Compact would require active duty military personnel or their spouse to designate a home state where the individual has a current license in good standing. The individual would be able to retain the home state designation during the period the service member is on active duty. Once a home state is designated, the Compact would require the individual to change their home state through application for licensure in the new state or through the process outlined in Section 5 of the Compact (obtaining a new home state license).

Compact Privilege to Practice Telehealth (Section 7)

The Compact would require member states to recognize the right of a licensed professional counselor, licensed by a home state in accordance with the Compact, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission.

Under the Compact, a licensee providing professional counseling services in a remote state under the privilege to practice would be required to adhere to the laws and regulations of the remote state.

Adverse Actions (Section 8)

The Compact would provide a remote state the authority to take adverse action against a licensed professional counselor's privilege to practice within that member state and to issue subpoenas for hearings and investigations as enforced by the a court of competent jurisdiction and payment of witness related expenses as set forth in the Compact.

The Compact would only allow the home state to take adverse action against a licensed professional counselor's license issued by the home state.

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

The Compact would require the home state to complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state would have the authority to take appropriate action and promptly report the conclusions of the investigation to the administrator of the data system. The administrator of the coordinated licensure information system would be required to notify the home state of any adverse actions.

The Compact would allow a member state, if permitted by state law, to recover the costs of investigations and dispositions of cases resulting from any adverse action taken from the affected licensed professional counselor. A member state would be able to take adverse action based on the factual findings of the remote state following its own procedures for taking adverse action.

Under the Compact, member states would be allowed to participate with other member states in joint investigations of

licensees. Member states would be required to share any investigative, litigation, or compliance materials related to any joint or individual investigation initiated under the Compact.

If adverse action is taken by the home state against the license of a licensee, the licensee's privilege to practice in all other member states would be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensee would be required to include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states while awaiting settlement of the order.

If a member state takes adverse action, it would be required to promptly notify the administrator the data system, who would be required to promptly notify the home state of any adverse actions by remote states.

Nothing in the Compact would override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

***Establishment of Counseling Compact Commission
(Section 9)***

The Compact would provide for the creation of a public agency to be formally identified as the Counseling Compact Commission (Commission). The Commission would be comprised of all states that have adopted the Compact.

Any judicial proceedings by or against the Commission would be brought in a court of competent jurisdiction where the principal office of the Commission is located. The Commission would be able to waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. The Compact does not provide for a waiver of sovereign immunity.

Membership, Voting, and Meetings

The Compact would require each member state to have a limit of one delegate selected by the member state's licensing board. The delegate would be either a current member of the licensing board at the time of appointment or an administrator of the licensing board.

Any delegate could be removed or suspended from office as provided by the law of the state from which the delegate is appointed. The member state licensing board would be required to fill any vacancy occurring on the Commission within 60 days.

Each delegate would be entitled to one vote with regard to promulgation of rules and creation of bylaws and would otherwise have an opportunity to participate in the business and affairs of the Commission. Delegates would be required to vote in person or other means as provided in the bylaws, which could include telephone or other means of communication.

The Compact would require the Commission to meet at least once during each calendar year; additional meetings would be held as set forth in the bylaws.

The Compact would require the Commission to establish by rule a term of office and term limits for delegates.

The Compact would provide the following powers for the Commission:

- Establishing the fiscal year of the Commission;
- Establishing bylaws;
- Maintaining its financial records in accordance with the bylaws;

- Meeting and taking actions consistent with the provisions of the Compact and bylaws;
- Promulgating rules, which would be binding to the extent and in the manner provided in the Compact;
- Bringing and prosecuting legal proceedings or actions in the name of the Commission, provided that the standing of any state licensing board to sue or be sued under applicable law would not be affected;
- Purchasing and maintaining insurance and bonds;
- Borrowing, accepting, or contracting for services of personnel, including, but not limited to, employees of a member state;
- Hiring employees, electing or appointing officers, fixing compensation, defining duties, granting individuals appropriate authority to carry out the purposes of the Compact, and establishing the Commission's personnel policies and programs relating to conflict of interest, qualifications of personnel, and other related personnel matters;
- Accepting, receiving, utilizing, and disposing of any and all appropriate donations and grants of money, equipment, supplies, materials, and services;
- Leasing, purchasing, and accepting appropriate gifts or donations of, or otherwise owning, holding, improving, or using any real, personal, or mixed property while avoiding any appearance of impropriety;
- Selling, conveying, mortgaging, pledging, leasing, exchanging, abandoning, or otherwise disposing of any real, personal, or mixed property;
- Establishing a budget and making expenditures;

- Borrowing money;
- Appointing committees, including standing committees composed of members; state regulators; state legislators or their representatives; consumer representatives; and such other interested persons as may be designated in the Compact and its bylaws;
- Providing and receiving information from and cooperating with law enforcement agencies;
- Establishing and electing an Executive Committee; and
- Performing other functions as may be necessary or appropriate to achieve the purposes of the Compact.

The Executive Committee

The Compact would provide for the Executive Committee to have the power to act on behalf of the Commission within the terms of the Compact.

The Executive Committee would be composed of 11 members, including:

- Seven voting members elected by the Commission from the current membership of the Commission; and
- Up to four ex-officio, nonvoting members from four recognized national professional counselor organizations, selected by their respective organizations.

The Compact would allow the Commission to remove any member of the Executive Committee as provided in bylaws.

The Executive Committee would be required to meet at least annually.

The Compact would provide for the Executive Committee to have the following duties and responsibilities:

- Recommending to the entire Commission changes to the rules or bylaws, changes to the Compact legislation, fees paid by Compact member states such as annual dues and any Commission Compact fee charged to licensees for the privilege to practice;
- Ensuring Compact administration services are appropriately provided, contractual or otherwise;
- Preparing and recommending the budget;
- Maintaining financial records on behalf of the Commission;
- Monitoring Compact compliance of member states and providing compliance reports to the Commission;
- Establishing additional committees as necessary; and
- Other duties as provided in rules or bylaws.

Meetings of the Commission

The Compact would require all meetings to be open to the public, and public notice of meetings would be required 30 days in advance of the meeting date with notification provided on the Commission and member state professional counseling board websites.

The Commission or the Executive Committee or other committees of the Commission would be able to meet in a closed, non-public meeting if the discussion would include:

- Non-compliance of a member state with its obligations under the Compact;
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- Current, threatened, or recently anticipated litigation;
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- Accusing any person of a crime or formally censuring any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigative records compiled for law enforcement purposes;
- Disclosure of information related to investigative reports prepared by, on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or
- Matters specifically exempted from disclosure by federal or member state statute.

If a meeting or portion of a meeting would be closed, the Commission's legal counsel or designee would certify that the meeting be closed and would reference each relevant exempting provision.

The Compact would require the Commission to keep minutes on all matters discussed in a meeting, providing a full and accurate summary of actions taken, reasons for those actions, and views expressed. All documents considered in connection with an action would be identified in the minutes. Minutes and documents of a closed meeting would remain sealed, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

Financing of the Commission

The Compact would require the Commission to pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The Commission would be allowed to accept any and all appropriate revenue sources, donations, or grants of money, equipment, supplies, materials, and services.

The Commission would be able to levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which would be required to be a total amount sufficient to cover its approved annual budget. The aggregate annual assessment amount would be allocated based upon a formula determined by the Commission.

The Compact would not allow the Commission to incur obligations of any kind prior to securing adequate funds to cover the cost. The Commission would not be able to pledge the credit of any member state without the authority of the member state.

The Commission would be required to keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission would be audited yearly by a certified or licensed public accountant, and the report of the audit would be included in the annual report of the Commission.

Qualified Immunity, Defense, and Indemnification

The Compact would specify that members, officers, the executive director, employees, and representatives of the Commission would be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of action within the scope of Commission employment, duties, or responsibilities; such immunity would not apply in instances of intentional, willful, or wanton misconduct.

The Compact would direct the Commission to defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability occurring within the scope of Commission employment, as long as such action was not a result of intentional, willful, or wanton misconduct. The Compact would not prohibit a person from retaining their own counsel.

The Compact would require the Commission to indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against the person within the scope of commission employment, duties, or responsibilities, provided that the act did not result from the intentional, willful, or wanton misconduct of the person.

Data System (Section 10)

The bill would require the Commission to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

As permitted by member state laws, member states would be required to submit a uniform data set to the data system on all individuals to whom the Compact is applicable as required by the rules of the Commission, including:

- Identifying information;
- Licensure data;
- Adverse actions against a license or privilege to practice;
- Non-confidential information related to alternative program participation;
- Any denial of application for licensure, and the reasons for such denial;
- Current significant investigative information; and
- Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

The Compact would provide that investigative information pertaining to a licensee in any member state would only be available to other member states. The Commission would be required to promptly notify all member states of any adverse action taken against a licensee or an individual applying for license. Adverse action information pertaining to a licensee in any member state would be available to any other member state.

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

Under the Compact, information would be required to be submitted to the data system that is subsequently expunged by the laws of the member state to be removed from the data system.

Rulemaking (Section 11)

The Compact would require the Commission to promulgate reasonable rules to achieve the purpose of the Compact. In the event the Commission exceeds its rulemaking authority beyond the scope of the purposes of the Compact, those actions by the Commission would be invalid.

Rules and amendments set by the Commission would become binding as of the date specified in each rule or amendment.

The Compact would provide for a majority of member state legislatures to reject a rule by enactment of a statute or resolution within four years of the date of adoption of the rule. Such rule would have no further force or effect in any member state.

Rules or amendments to rules would be required to be adopted at a regular or special meeting of the Commission.

The Compact would require the Commission to file a notice of proposed rulemaking at least 30 days in advance of the meeting in which the rule would be considered and voted upon. Notice would be required to be posted on the website of the Commission or other publicly accessible platform and on the website of each member state professional counseling licensing board or other publicly accessible platform or the

publication in which each state would otherwise publish proposed rules.

The notice of proposed rulemaking would be required to include:

- The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
- The text of the proposed rule or amendment and the reason for the proposed rule;
- A request for comments on the proposed rule from any interested person; and
- The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

Prior to the adoption of a proposed rule, the Commission would be required to allow persons to submit written data, facts, opinions, and arguments; these submissions would be required to be made available to the public.

The Compact would require the Commission to grant opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by at least 25 persons, a state or federal governmental subdivision or agency, or an association having at least 25 members. If a hearing is held on a proposed rule or amendment, the Commission would be required to publish the place, time, and date of the scheduled public hearing, or information about accessing the meeting if held electronically.

Individuals wishing to be heard at the hearing would be required to notify the executive director of the Commission or other designated member in writing not less than five business days before the scheduled date of the hearing.

Hearings would be required to allow each person who wishes to comment with the opportunity to do so orally or in writing. All hearings would be recorded, and a copy of the recording would be required to be made available upon request. The Compact would provide that rules may be grouped for the convenience for the Commission, and separate hearings for each rule would not be required.

Following the scheduled hearing date or by the close of business on the hearing date if the hearing was not held, the Commission would be required to consider all written and oral comments received. If no written notice of intent to attend the public hearing by interested parties is received, the Commission would be allowed to proceed with promulgation of a proposed rule without a public hearing.

The Compact would require the Commission, with a majority vote of all members, to take final action on a proposed rule and determine the effective date based on the rulemaking record and the full text of the rule.

Emergency Rulemaking

Upon determination that an emergency exists, the Commission could consider and adopt an emergency rule without prior notice or opportunity for comment or hearing, provided the usual rulemaking procedures provided in the Compact are retroactively applied to the rule as soon as possible, or no later than 90 days after the effective date of the rule. Emergency rules would be defined as those that would be adopted immediately in order to:

- Meet an imminent threat to public health, safety, or welfare;
- Prevent a loss of Commission or member state funds;

- Meet a deadline for the promulgation of of an administrative rule that is established by federal law or rule; or
- Protect the public health and safety.

Revisions

The Compact would provide for the Commission or an authorized committee of the Commission to direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of revisions would be posted on the website of the Commission.

The Compact would provide for revisions to be subject to challenge by any person for a period of 30 days after posting. Revisions could only be challenged on grounds that the revision results in a direct material change to the rule. Challenges would be required to be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision would take effect without further action. If the revision is challenged, it would not take effect without approval of the Commission.

Oversight, Dispute Resolution, and Enforcement (Section 12)

Oversight

The Compact would provide that the executive, legislative, and judicial branches in each member state would enforce the Compact, and its provisions and rules would have the force of statutory law. The courts would be directed to recognize the Compact and its rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

Under the Compact, the Commission would be entitled to receive service of process and have standing to intervene in any such proceeding for all purposes. Failure to provide service of process to the Commission would render a judgment or order void as to the Commission, the Compact, and promulgated rules.

Default, Technical Assistance, and Termination

Under the Compact, if the Commission determines that a member state has defaulted in performance of its obligations or responsibilities under the Compact or its rules, the Commission would:

- Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission; and
- Provide remedial training and specific technical assistance regarding the default.

A state that fails to cure a default would be subject to termination from the Compact upon affirmative vote of a majority of the member states. A cure of the default would not relieve the offending state of obligations or liabilities incurred during the period of default.

The Compact would state that termination of membership would be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate would be required to be provided by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states. A terminated state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

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

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

Dispute Resolution

The bill would provide that, upon request of a member state, the Commission would attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

The Compact would require the Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Enforcement

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

The remedies included in the Compact would not be the exclusive remedies of the Commission; other remedies available under federal or state law could be pursued.

***Date of Implementation of the Counseling Compact
Commission and Associated Rules, Withdrawal, and
Amendment (Section 13)***

The Compact would be effective on the date in which the Compact statute is enacted into law in the tenth member state. The provisions would be limited to the powers granted to the Commission relating to assembly and the promulgation of rules, after which the Commission would be required to meet and exercise rulemaking powers necessary for the implementation and administration of the Compact.

Any state joining the Compact subsequent to the Commission's initial adoption of the rules would be subject to the rules as they exist on the date in which the Compact becomes law in that state.

Any member state would be able to withdraw from the Compact by repealing the Compact statute. A member state's withdrawal would not take effect until six months after enactment of the repealing statute.

Withdrawal from the Compact would not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

Nothing in the Compact would be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of the Compact.

The Compact would be amendable by member states; no amendment to the Compact would become effective and binding upon any member state until enacted into the laws of all member states. [Note: Currently, there are 17 states that are members of the Counseling Compact. Nineteen states have introduced legislation for consideration as of February 14, 2023.]

Construction and Severability (Section 14)

The provisions of the Compact would be severable if found to be contrary to the constitution of any member state or of the United States. If provisions of the Compact are found to be invalid, the validity of the remainder of the Compact and its applicability would not be affected. If the Compact were to be found contrary to the constitution of any member state, the Compact would remain in full force and effect in the remaining member states; portions of the Compact not in conflict with the state's constitution would remain in effect in the affected member state.

Binding Effect of Compact and Other Laws (Section 15)

The Compact would state a licensee providing professional counseling services in a remote state under the privilege to practice must adhere to the laws, regulations, and scope of practice in the remote state.

Nothing in the Compact would prevent the enforcement of any other law of a member state that is not inconsistent with the Compact.

Any laws in a member state in conflict with the Compact would be superseded to the extent of the conflict. Any lawful actions of the Commission, including all rules and bylaws properly promulgated by the Commission, would be binding upon the member states. All permissible agreements between

the Commission and the members states would be binding in accordance with their terms.

Home-State License Fee (amending KSA 2022 Supp. 65-5808)

The bill would provide for the Board to set the fee for a home-state license with privilege to practice under the Compact for not more than \$25 in addition to other applicable fees.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative S. Ruiz on behalf of the Kansas Counseling Association.

House Committee on Health and Human Services

In the House Committee hearing on February 14, 2023, **proponent** testimony was provided by representatives of the Behavioral Sciences Regulatory Board (BSRB), American Counseling Association, and the Kansas Counseling Association. Proponents generally stated the bill could increase the number of services available to citizens in Kansas and provide additional opportunities and flexibility for licensees.

Written-only proponent testimony was provided by a board member of the BSRB and representatives of Fort Hays State University, MidAmerica Nazarene University, the National Career Development Association, Teledoc Health, and Wichita State University.

Neutral testimony was provided by a representative of the Council of State Governments' National Center for Interstate Compacts.

No other testimony was provided.

The House Committee amended the bill to provide the Board the ability to set the fee for a home-state license in Kansas statute with privilege to practice under the Compact.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the BSRB indicates its enactment would have a negligible impact on revenues to the BSRB Fee Fund in FY 2024, which is based on discussions with other Compact states. Generally, Compact states indicate that revenue from privileges to practice fees replace licensing fee revenue. However, the BSRB indicates any increase in fee revenue would also increase revenue to the State General Fund from a statutory remittance of 10.0 percent.

In subsequent years, the BSRB indicates the number of individuals practicing under the Compact from other states is expected to increase as more states join the Compact. However, the amount of fee revenue that may be generated cannot be estimated since the number of additional practitioners that may be licensed in Kansas from other states is unknown. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Behavioral sciences; professional counselors; counseling compact; interstate practice privileges; Behavioral Sciences Regulatory Board; fees