

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5015

**FISCAL
NOTE**

By Delegate Jefferies

[Introduced February 02, 2026; referred to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §30-34A-1, §30-34A-2, §30-34A-3, §30-34A-4, §30-34A-5, §30-34A-6, §30-
3 34A-7, §30-34A-8, §30-34A-9, §30-34A-10, §30-34A-11, §30-34A-12, and §30-34A-13,
4 relating to the Respiratory Care Interstate Compact; enacting the Respiratory Care
5 Interstate Compact; providing definitions; authorizing interstate practice of respiratory
6 therapy; establishing the Respiratory Care Interstate Compact Commission; providing for
7 licensure privileges, enforcement, rulemaking, and data sharing; providing for withdrawal,
8 severability, and effective dates; and declaring legislative intent.

Be it enacted by the Legislature of West Virginia:

ARTICLE 34A. RESPIRATORY CARE INTERSTATE COMPACT.

§30-34A-1. Title and purpose.

1 (a) This compact shall be known and cited as the "Respiratory Care Interstate Compact."
2 The purpose of this compact is to facilitate the interstate practice of respiratory therapy with the
3 goal of improving public access to respiratory therapy services by providing respiratory therapists
4 licensed in a member state the ability to practice in other member states. The compact preserves
5 the regulatory authority of states to protect public health and safety through the current system of
6 State licensure.

7 (b) This compact is designed to achieve the following objectives:

8 (1) Increase public access to respiratory therapy services by creating a responsible,
9 streamlined pathway for licensees to practice in member states with the goal of improving
10 outcomes for patients;

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

12 (3) Promote the cooperation of member states in regulating the practice of respiratory
13 therapy within those member states;

14 (4) Ease administrative burdens on states by encouraging the cooperation of member
15 states in regulating multi-state respiratory therapy practice;

(5) Support relocating active military members and their spouses; and

(6) Promote mobility and address workforce shortages.

§30-34A-2. Definitions.

As used in this compact, unless the context requires otherwise, the following definitions shall apply:

"Active military member" means any person with a full-time duty status in the armed forces of the United States, including members of the National Guard and Reserve.

"Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by any state authority with regulatory authority over respiratory therapists, such as license denial, censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice, not including participation in an alternative program.

"Alternative program" means a non-disciplinary monitoring or practice remediation process applicable to a respiratory therapist approved by any state authority with regulatory authority over respiratory therapists. This includes, but is not limited to, programs to which licensees with substance abuse or addiction issues are referred in lieu of adverse action.

"Charter member states" means those member states who were the first seven states to enact the compact into the laws of their state.

"Commission" or "Respiratory care interstate compact commission" means the government instrumentality and body politic whose membership consists of all member states that have enacted the compact.

"Commissioner" means the individual appointed by a member state to serve as the member of the Commission for that member state.

"Compact" means the respiratory care interstate compact.

"Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a respiratory therapist in the remote state under the

remote state's laws and rules. The practice of respiratory therapy occurs in the member state where the patient is located at the time of the patient encounter.

"Criminal background check" means the submission by the member state of fingerprints or other biometric-based information on license applicants at the time of initial licensing for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d) or successor provision, from the Federal Bureau of Investigation and the state's criminal history record repository, as defined in 28 C.F.R. § 20.3(f) or successor provision.

"Data system" means the commission's repository of information about licensees as further set forth in section 8 of this article.

"Domicile" means the jurisdiction which is the licensee's principal home for legal purposes.

"Encumbered license" means a license that a state's respiratory therapy licensing authority has limited in any way.

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

"Home state" except as set forth in §30-34A-5 of this [code](#), means the member state that is the licensee's primary domicile.

"Home state license" means an active license to practice respiratory therapy in a home state that is not an encumbered license.

"Jurisprudence requirement" means an assessment of an individual's knowledge of the state laws and regulations governing the practice of respiratory therapy in such state.

"Licensee" means an individual who currently holds an authorization from the state to practice as a respiratory therapist.

"Member state" means a state that has enacted the compact and been admitted to the commission in accordance with the provisions herein and commission rules.

"Model compact" means the model for the respiratory care interstate compact on file with the council of state governments or other entity as designated by the commission.

50 "Remote state" means a member state where a licensee is exercising or seeking to
51 exercise the compact privilege.

52 "Respiratory therapist" or "respiratory care practitioner" means an individual who holds a
53 credential issued by the national board for respiratory care (or its successor) and holds a license in
54 a state to practice respiratory therapy. For purposes of this compact, any other title or status
55 adopted by a state to replace the term "respiratory therapist" or "respiratory care practitioner" shall
56 be deemed synonymous with "respiratory therapist" and shall confer the same rights and
57 responsibilities to the licensee under the provisions of this compact at the time of its enactment.

58 "Respiratory therapy," "respiratory therapy practice," "respiratory care," "the practice of
59 respiratory care," and "the practice of respiratory therapy" means the care and services provided
60 by or under the direction and supervision of a respiratory therapist or respiratory care practitioner.

61 "Respiratory therapy licensing authority" means the agency, board, or other body of a state
62 that is responsible for licensing and regulation of respiratory therapists.

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

64 "Scope of practice" means the procedures, actions, and processes a respiratory therapist
65 licensed in a state or practicing under a compact privilege in a state is permitted to undertake in
66 that state and the circumstances under which the respiratory therapist is permitted to undertake
67 those procedures, actions, and processes. such procedures, actions, and processes, and the
68 circumstances under which they may be undertaken may be established through means,
69 including, but not limited to, statute, regulations, case law, and other processes available to the
70 state respiratory therapy licensing authority or other government agency.

71 "Significant investigative information" means information, records, and documents
72 received or generated by a state respiratory therapy licensing authority pursuant to an
73 investigation for which a determination has been made that there is probable cause to believe that
74 the licensee has violated a statute or regulation that is considered more than a minor infraction for
75 which the state respiratory therapy licensing authority could pursue adverse action against the

76 licensee.

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

§30-34A-3. State participation in the compact.

1 (a) In order to participate in this compact and thereafter continue as a member state, a
2 member state shall:

3 (1) Enact a compact that is not materially different from the model compact;

4 (2) License respiratory therapists;

5 (3) Participate in the commission's data system;

6 (4) Have a mechanism in place for receiving and investigating complaints against
7 licensees and compact privilege holders;

8 (5) Notify the commission, in compliance with the terms of this compact and commission
9 rules, of any adverse action against a licensee, a compact privilege holder, or a license applicant;

10 (6) Notify the commission, in compliance with the terms of this compact and commission
11 rules, of the existence of significant investigative information;

12 (7) Comply with the rules of the commission;

13 (8) Grant the compact privilege to a holder of an active home state license and otherwise
14 meet the applicable requirements of §30-34A-4 of this code in a member state; and,

15 (9) Complete a criminal background check for each new licensee at the time of initial
16 licensure.

17 (b) Where expressly authorized or permitted by federal law, whether such federal law is in
18 effect prior to, at, or after the time of a member state's enactment of this compact, a member
19 state's enactment of this compact shall hereby authorize the member state's respiratory therapy
20 licensing authority to perform criminal background checks as defined herein. The absence of such
21 a federal law as described in this subsection shall not prevent or preclude such authorization
22 where it may be derived or granted through means other than the enactment of this compact.

23 (c) Nothing in this compact prohibits a member state from charging a fee for granting and

24 renewing the compact privilege.

§30-34A-4. Compact privilege requirements.

1 (a)(1) Hold and maintain an active home state license as a respiratory therapist;

2 (2) Hold and maintain an active credential from the National Board for Respiratory Care (or
3 its successor) that would qualify them for licensure in the remote state in which they are seeking
4 the privilege;

5 (3) Have not had any adverse action against a license within the previous two years;

6 (4) Notify the commission that the licensee is seeking the compact privilege within a
7 remote state(s);

8 (5) Pay any applicable fees, including any state and commission fees and renewal fees, for
9 the compact privilege;

10 (6) Meet any jurisprudence requirements established by the remote state in which the
11 licensee is seeking a compact privilege;

12 (7) Report to the commission adverse action taken by any non-member state within 30
13 days from the date the adverse action is taken;

14 (8) Report to the commission, when applying for a compact privilege, the address of the
15 licensee's domicile and thereafter promptly report to the commission any change in the address of
16 the licensee's domicile within thirty days of the effective date of the change in address; and

17 (9) Consent to accept service of process by mail at the licensee's domicile on record with
18 the commission with respect to any action brought against the licensee by the commission or a
19 member state, and consent to accept service of a subpoena by mail at the licensee's domicile on
20 record with the commission with respect to any action brought or investigation conducted by the
21 commission or a member state.

22 (b) The compact privilege is valid until the expiration date or revocation of the home state
23 license unless terminated pursuant to adverse action. The licensee must comply with all of the
24 requirements of subsection (a) above, to maintain the compact privilege in a remote state. If those

requirements are met, no adverse actions are taken, and the licensee has paid any applicable compact privilege renewal fees, then the licensee will maintain the licensee's compact privilege.

(c) A licensee providing respiratory therapy in a remote state under the compact privilege shall function within the scope of practice authorized by the remote state for the type of respiratory therapist license the licensee holds. Such procedures, actions, processes, and the circumstances under which they may be undertaken may be established through means, including, but not limited to, statute, regulations, case law, and other processes available to the state respiratory therapy licensing authority or other government agency.

(d) If a licensee's compact privilege in a remote state is removed by the remote state, the individual shall lose or be ineligible for the compact privilege in that remote state until the compact privilege is no longer limited or restricted by that state.

(e) If a home state license is encumbered, the licensee shall lose the compact privilege in all remote states until the following occur:

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

(2) Two years have elapsed from the date on which the license is no longer encumbered due to the adverse action.

(f) Once a licensee with a restricted or limited license meets the requirements of subsection (e)(1) and (2), the licensee must also meet the requirements of subsection a to obtain a compact privilege in a remote state.

§30-34A-5. Active military member or spouse.

(a) An active military member, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty.

(b) An active military member and their spouse shall not be required to pay to the commission for a compact privilege any fee that may otherwise be charged by the commission.

(c) If a remote state chooses to charge a fee for a compact privilege, it may choose to charge a

7 reduced fee or no fee to an active military member and their spouse for a compact privilege.

§30-34A-6. Adverse actions.

1 (a) A member state in which a licensee is licensed shall have authority to impose adverse
2 action against the license issued by that member state.

3 (b) A member state may take adverse action based on significant investigative information
4 of a remote state or the home state, so long as the member state follows its own procedures for
5 imposing adverse action.

6 (c) Nothing in this compact shall override a member state's decision that participation in an
7 alternative program may be used in lieu of adverse action and that such participation shall remain
8 non-public if required by the member state's laws.

9 (d) A remote state shall have the authority to:

10 (1) Take adverse actions as set forth herein against a licensee's compact privilege in that
11 state;

12 (2) Issue subpoenas for both hearings and investigations that require the attendance and
13 testimony of witnesses, and the production of evidence.

14 (e)(1) Subpoenas may be issued by a respiratory therapy licensing authority in a member
15 state for the attendance and testimony of witnesses and the production of evidence.

16 (2) Subpoenas issued by a respiratory therapy licensing authority in a member state for the
17 attendance and testimony of witnesses shall be enforced in the latter state by any court of
18 competent jurisdiction in the latter state, according to the practice and procedure of that court
19 applicable to subpoenas issued in proceedings pending before it.

20 (3) Subpoenas issued by a respiratory therapy licensing authority in a member state for
21 production of evidence from another member state shall be enforced in the latter state, according
22 to the practice and procedure of that court applicable to subpoenas issued in the proceedings
23 pending before it.

24 (4) The issuing authority shall pay any witness fees, travel expenses, mileage, and other

fees required by the service statutes of the state where the witnesses or evidence are located;

(f) Unless otherwise prohibited by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee;

(g) Notwithstanding subsection (d)(2), a member state may not issue a subpoena to gather evidence of conduct in another member state that is lawful in such other member state for the purpose of taking adverse action against a licensee's compact privilege or application for a compact privilege in that member state; and

(h) Nothing in this compact authorizes a member state to impose discipline against a respiratory therapist's compact privilege in that member state for the individual's otherwise lawful practice in another state.

(i) Joint investigations:

(1) In addition to the authority granted to a member state by its respective respiratory therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees, *Provided*, however, That a member state receiving such a request has no obligation to respond to any subpoena issued regarding an investigation of conduct or practice that was lawful in a member state at the time it was undertaken.

(2) Member states shall share any significant investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact, in sharing such information between member state respiratory therapy licensing authorities, all information obtained shall be kept confidential, except as otherwise mutually agreed upon by the sharing and receiving member state(s).

(j) Nothing in this compact may permit a member state to take any adverse action against a licensee or holder of a compact privilege for conduct or practice that was legal in the member state at the time it was undertaken.

51 (k) Nothing in this compact may permit a member state to take disciplinary action against a
52 licensee or holder of a compact privilege for conduct or practice that was legal in the member state
53 at the time it was undertaken.

§30-34A-7. Respiratory care interstate compact commission.

1 (a) The compact member states hereby create and establish a joint government agency
2 whose membership consists of all member states that have enacted the compact known as the
3 respiratory care interstate compact commission. The commission is an instrumentality of the
4 compact member states acting jointly and not an instrumentality of any one state. The commission
5 shall come into existence on or after the effective date of the compact, as set forth in §30-34A- 11
6 of this code.

7 (b) Membership, voting, and meetings. –

8 (1) Each member state shall have and be limited to one commissioner selected by that
9 member state's respiratory therapy licensing authority.

10 (2) The commissioner shall be an administrator or their designated staff member of the
11 member state's respiratory therapy licensing authority.

12 (3) The commission shall by rule or bylaw establish a term of office for commissioners and
13 may by rule or bylaw establish term limits.

14 (4) The commission may recommend to a member state the removal or suspension any
15 commissioner from office.

16 (5) A member state's respiratory therapy licensing authority shall fill any vacancy of its
17 commissioner occurring on the commission within 60 days of the vacancy.

18 (6) Each commissioner shall be entitled to one vote on all matters before the commission
19 requiring a vote by commissioners.

20 (7) A commissioner shall vote in person or by such other means as provided in the bylaws.
21 The bylaws may provide for commissioners to meet by telecommunication, videoconference, or
22 other means of communication.

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

(c) The commission shall have the following powers:

(1) Establish and amend the fiscal year of the commission;

(2) Establish and amend bylaws and policies, including but not limited to, a code of conduct and conflict of interest;

(3) Establish and amend rules, which shall be binding in all member states;

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

(5) Meet and take such actions as are consistent with the provisions of this compact, the commission's rules, and the bylaws;

(6) Initiate and conduct legal proceedings or actions in the name of the commission, provided that the standing of any respiratory therapy licensing authority to sue or be sued under applicable law shall not be affected;

(7) Maintain and certify records and information provided to a member state as the authenticated business records of the commission, and designate an agent to do so on the commission's behalf;

(8) Purchase and maintain insurance and bonds;

(9) Accept or contract for services of personnel, including, but not limited to, employees of a member state;

(10) Conduct an annual financial review;

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

(12) Assess and collect fees;

(13) Accept any and all appropriate gifts, donations, grants of money, other sources of

revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times:

(A) The commission shall avoid any appearance of impropriety; and

(B) The commission shall avoid any appearance of conflict of interest.

(14) Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;

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

(16) Establish a budget and make expenditures;

(17) Borrow money in a fiscally responsible manner;

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

(19) Provide and receive information from, and cooperate with, law enforcement agencies;

(20) Establish and elect an executive committee, including a chair, vice-chair, secretary, treasurer, and such other offices as the commission shall establish by rule or bylaw;

(21) Enter into contracts or arrangements for the management of the affairs of the commission;

(22) Determine whether a state's adopted language is materially different from the model compact language such that the state would not qualify for participation in the compact; and

(23) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact.

(d) The executive committee. —

(1) The executive committee shall have the power to act on behalf of the commission according to the terms of this compact. The powers, duties, and responsibilities of the executive committee shall include:

75 (A) Overseeing the day-to-day activities of the administration of the compact, including
76 enforcement and compliance with the provisions of the compact, its rules and bylaws, and other
77 such duties as deemed necessary;

78 (B) Recommending to the commission changes to the rules or bylaws, changes to this
79 compact legislation, fees charged to compact member states, fees charged to licensees, and
80 other fees;

81 (C) Ensuring compact administration services are appropriately provided, including by
82 contract;

83 (D) Preparing and recommending the budget;

84 (E) Maintaining financial records on behalf of the commission;

85 (F) Monitoring compact compliance of member states and providing compliance reports to
86 the commission;

87 (G) Establishing additional committees as necessary;

88 (H) Exercising the powers and duties of the commission during the interim between
89 commission meetings, except for adopting or amending rules, adopting or amending bylaws, and
90 exercising any other powers and duties expressly reserved to the commission by rule or bylaw;
91 and

92 (I) Performing other duties as provided in the rules or bylaws of the commission.

93 (2) The executive committee shall be composed of up to nine members, as further set forth
94 in the bylaws of the commission;

95 (A) Seven voting members who are elected by the commission from the current
96 membership of the commission; and

97 (B) Two ex-officio, non -voting members.

98 (3) The commission may remove any member of the executive committee as provided in
99 the commission's bylaws.

100 (4) The executive committee shall meet at least annually.

(A) Executive committee meetings shall be open to the public, except that the executive committee may meet in a closed, non-public meeting as provided in subsection (e) of this section;

(B) The executive committee shall give advance notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the commission; and

(C) The executive committee may hold a special meeting in accordance with subsection (e) below.

(D) The commission shall adopt and provide to the member states an annual report.

(e) Meetings of the commission. –

(1) All meetings of the commission that are not closed pursuant to § 30-34a-7(e)(4) of this code shall be open to the public. Notice of public meetings shall be posted on the commission's website at least 30 days prior to the public meeting.

(2) Notwithstanding §30-34A-7(e)(1) of this code, the commission may convene an emergency public meeting by providing at least 24 hours prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under §30-34A-9(g) of this code, the commission's legal counsel shall certify that one of the reasons justifying an emergency public meeting has been met.

(3) Notice of all commission meetings shall provide the time, date, and location of the meeting, and if the meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the notice shall include the mechanism for access to the meeting.

(4) The commission or the executive committee may convene in a closed, non-public meeting for the commission or executive committee to receive or solicit legal advice or to discuss:

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

(B) The employment, compensation, discipline or other matters, practices or procedures related to specific employees;

(C) Current or threatened discipline of a licensee or compact privilege holder by the

commission or by a member state's respiratory therapy licensing authority;

(D) Current, threatened, or reasonably anticipated litigation;

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

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

(G) Trade secrets or commercial or financial information that is privileged or confidential;

(H) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(I) Investigative records compiled for law enforcement purposes;

(J) Information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact;

(K) Legal advice;

(L) Matters specifically exempted from disclosure by federal or member state law; or

(M) Other matters as promulgated by the commission by rule.

(5) If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

(6) The commission shall keep minutes in accordance with commission rules and bylaws. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

(f). Financing of the commission. —

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

(2) The commission may accept any and all appropriate revenue sources as provided

153 herein.

154 (3) The commission may levy on and collect an annual assessment from each member
155 state and impose fees on licensees of member states to whom it grants a compact privilege to
156 cover the cost of the operations and activities of the commission and its staff. The aggregate
157 annual assessment amount for member states, if any, shall be allocated based upon a formula that
158 the commission shall promulgate by rule.

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

162 (5) The commission shall keep accurate accounts of all receipts and disbursements. The
163 receipts and disbursements of the commission shall be subject to the financial review and
164 accounting procedures established under its bylaws. However, all receipts and disbursements of
165 funds handled by the commission shall be subject to an annual financial review by a certified or
166 licensed public accountant, and the report of the financial review shall be included in and become
167 part of the annual report of the commission.

168 (g) Qualified immunity, defense, and indemnification. –

169 (1) Nothing herein shall be construed as a limitation on the liability of any licensee for
170 professional malpractice or misconduct, which shall be governed solely by any other applicable
171 state laws.

172 (2) The member states, commissioners, officers, executive directors, employees, and
173 agents of the commission shall be immune from suit and liability, both personally and in their
174 official capacity, for any claim for damage to or loss of property or personal injury or other civil
175 liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or
176 that the person against whom the claim is made had a reasonable basis for believing occurred
177 within the scope of commission employment, duties or responsibilities; that nothing in this
178 subsection shall be construed to protect any such person from suit or liability for any damage,

179 loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The
180 procurement of insurance of any type by the commission shall not in any way compromise or limit
181 the immunity granted hereunder.

182 (3) The commission shall defend any commissioner, officer, executive director, employee,
183 and agent of the commission in any civil action seeking to impose liability arising out of any actual
184 or alleged act, error, or omission that occurred within the scope of commission employment,
185 duties, or responsibilities, or as determined by the commission that the person against whom the
186 claim is made had a reasonable basis for believing occurred within the scope of commission
187 employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit
188 that person from retaining their own counsel at their own expense; and provided further, that the
189 actual or alleged act, error, or omission did not result from that person's intentional or willful or
190 wanton misconduct.

191 (4) The commission shall indemnify and hold harmless any commissioner, member, officer,
192 executive director, employee, and agent of the commission for the amount of any settlement or
193 judgment obtained against that person arising out of any actual or alleged act, error, or omission
194 that occurred within the scope of commission employment, duties, or responsibilities, or that such
195 person had a reasonable basis for believing occurred within the scope of commission
196 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
197 did not result from the intentional or willful or wanton misconduct of that person.

198 (5) Nothing in this compact shall be interpreted to waive or otherwise abrogate a member
199 state's state action immunity or state action affirmative defense with respect to antitrust claims
200 under the Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or
201 regulation.

202 (6) Nothing in this compact shall be construed to be a waiver of sovereign immunity by the
203 member states or by the commission.

§30-34A-8. Data system.

1 (a) The commission shall provide for the development, maintenance, operation, and
2 utilization of a coordinated database and reporting system containing licensure, adverse action,
3 and the presence of significant investigative information.

4 (b) Notwithstanding any other provision of state law to the contrary, a member state shall
5 submit a uniform data set to the data system as required by the rules of the commission, including
6 but not limited to:

7 (1) Identifying information;

8 (2) Licensure data;

9 (3) Adverse actions against a licensee, license applicant, or compact privilege holder and
10 information related thereto;

11 (4) Non-confidential information related to alternative program participation, the beginning
12 and ending dates of such participation, and other information related to such participation not
13 made confidential under member state law;

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

15 (6) The presence of current significant investigative information; and

16 (7) Other information that may facilitate the administration of this compact or the protection
17 of the public, as determined by the rules of the commission.

18 (c) No member state shall submit any information which constitutes criminal history record
19 information, as defined by applicable federal law, to the data system established hereunder.

20 (d) The records and information provided to a member state pursuant to this compact or
21 through the data system, when certified by the commission or an agent thereof, shall constitute the
22 authenticated business records of the commission, and shall be entitled to any associated
23 hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a
24 member state.

25 (e) Significant investigative information pertaining to a licensee in any member state will
26 only be available to other member states.

27 (f) It is the responsibility of the member states to report any adverse action against a
28 licensee and to monitor the database to determine whether adverse action has been taken against
29 a licensee. Adverse action information pertaining to a licensee in any member state will be
30 available to any other member state.

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

33 (h) Any information submitted to the data system that is subsequently expunged pursuant
34 to federal law or the laws of the member state contributing the information shall be removed from
35 the data system.

§30-34A-9. Rulemaking.

1 (a) The commission shall promulgate reasonable rules in order to effectively and efficiently
2 implement and administer the purposes and provisions of the compact. A rule shall be invalid and
3 have no force or effect only if a court of competent jurisdiction holds that the rule is invalid because
4 the commission exercised its rulemaking authority in a manner that is beyond the scope and
5 purposes of the compact, or the powers granted hereunder, or based upon another applicable
6 standard of review.

7 (b) For purposes of the compact, the rules of the commission shall have the force of law in
8 each member state.

9 (c) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in
10 this section and the rules adopted thereunder. Rules shall become binding as of the date specified
11 in each rule.

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

16 (e) Rules shall be adopted at a regular or special meeting of the commission.

17 (f) Prior to adoption of a proposed rule, the commission shall hold a public hearing and
18 allow persons to provide oral and written comments, data, facts, opinions, and arguments.

19 (g) Prior to adoption of a proposed rule by the commission, and at least 30 days in advance
20 of the meeting at which the commission will hold a public hearing on the proposed rule, the
21 commission shall provide a notice of proposed rulemaking:

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

23 (2) To persons who have requested notice of the commission's notices of proposed
24 rulemaking, and

25 (3) In such other way(s) as the commission may by rule specify.

26 (h) The notice of proposed rulemaking shall include:

27 (1) The time, date, and location of the public hearing at which the commission will hear
28 public comments on the proposed rule and, if different, the time, date, and location of the meeting
29 where the commission will consider and vote on the proposed rule;

30 (2) If the hearing is held via telecommunication, video conference, or other electronic
31 means, the commission shall include the mechanism for access to the hearing in the notice of
32 proposed rulemaking;

33 (3) The text of the proposed rule and the reason therefor;

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

35 (5) The manner in which interested persons may submit written comments.

36 (i) All hearings will be recorded. A copy of the recording and all written comments and
37 documents received by the commission in response to the proposed rule shall be available to the
38 public.

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

41 (k) The commission shall, by majority vote of all commissioners, take final action on the
42 proposed rule based on the rulemaking record and the full text of the rule.

(1) The commission may adopt changes to the proposed rule provided the changes are consistent with the original purpose of the proposed Rule.

(2) The commission shall provide an explanation of the reasons for substantive changes made to the proposed rule as well as reasons for substantive changes not made that were recommended by commenters.

(3) The commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in this article, the effective date of the rule shall be no sooner than 30 days after issuing the notice that it adopted or amended the rule.

(l) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule with 24 hours' notice, and with opportunity to comment, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

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

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

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

or

(4) Protect public health and safety.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without

69 further action. If the revision is challenged, the revision may not take effect without the approval of
70 the commission.

71 (n) No member state's rulemaking process or procedural requirements shall apply to the
72 commission. The commission shall have no authority over any member state's rulemaking
73 process or procedural requirements that do not pertain to the compact.

74 (o) Nothing in this compact, nor any rule or regulation of the commission, shall be
75 construed to limit, restrict, or in any way reduce the ability of a member state to enact and enforce
76 laws, regulations, or other rules related to the practice of respiratory therapy in that state, where
77 those laws, regulations, or other rules are not inconsistent with the provisions of this compact.

§30-34A-10. Oversight, dispute resolution, and enforcement.

1 (a) Oversight. –

2 (1) The executive and judicial branches of state government in each member state shall
3 enforce this compact and take all actions necessary and appropriate to implement the compact.

4 (2) Venue is proper and judicial proceedings by or against the commission shall be brought
5 solely and exclusively in a court of competent jurisdiction where the principal office of the
6 commission is located. The commission may waive venue and jurisdictional defenses to the extent
7 it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein
8 shall affect or limit the selection or propriety of venue in any action against a licensee for
9 professional malpractice, misconduct or any such similar matter.

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

14 (b) Default, technical assistance, and termination. –

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

17 shall provide written notice to the defaulting state. The notice of default shall describe the default,
18 the proposed means of curing the default, and any other action that the commission may take, and
19 shall offer training and specific technical assistance regarding the default.

20 (2) The commission shall provide a copy of the notice of default to the other member
21 states.

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

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

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

35 (f) Upon the termination of a state's membership from this compact, that state shall
36 immediately provide notice to all licensees and compact privilege holders (of which the
37 commission has a record) within that state of such termination. The terminated state shall continue
38 to recognize all licenses granted pursuant to this compact for a minimum of 180 days after the date
39 of said notice of termination.

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

43 (h) The defaulting state may appeal the action of the commission by petitioning the U.S.
44 District Court for the District of Columbia or the federal district where the commission has its
45 principal offices. The prevailing party shall be awarded all costs of such litigation, including
46 reasonable attorney's fees.

47 (i) Dispute resolution. –

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

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

53 (j) Enforcement. –

54 (1) By majority vote, as may be further provided by rule, the commission may initiate legal
55 action against a member state in default in the United States district court for the District of
56 Columbia or the federal district where the commission has its principal offices to enforce
57 compliance with the provisions of the compact and its promulgated rules. A member state by
58 enactment of this compact, consents to venue and jurisdiction in such court for the purposes set
59 forth herein. The relief sought may include both injunctive relief and damages. In the event judicial
60 enforcement is necessary, the prevailing party shall be awarded all costs of such litigation,
61 including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of
62 the commission. The commission may pursue any other remedies available under federal or the
63 defaulting member state's law.

64 (2) A member state may initiate legal action against the commission in the U.S. District
65 Court for the District of Columbia or the federal district where the commission has its principal
66 offices to enforce compliance with the provisions of the compact and its promulgated rules. The
67 relief sought may include both injunctive relief and damages. In the event judicial enforcement is
68 necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable

69 attorney's fees.

70 (3) No person other than a member state shall enforce this compact against the
71 commission.

§30-34A-11. Effective date; withdrawal; amendment.

1 (a) The compact shall come into effect on the date on which the compact statute is enacted
2 into law in the seventh member state.

3 (1) On or after the effective date of the compact, the commission shall convene and review
4 the enactment of each of the first seven member states ("charter member states") to determine if
5 the statute enacted by each such charter member state is materially different than the model
6 compact.

7 (A) A charter member state whose enactment is found to be materially different from the
8 model compact shall be entitled to the default process set forth in §30-34A-10 of this code.

9 (B) If any member state is later found to be in default, or is terminated or withdraws from the
10 compact, the commission shall remain in existence and the compact shall remain in effect even if
11 the number of member states should be less than seven.

12 (2) Member states enacting the compact subsequent to the seven initial charter member
13 states shall be subject to the process set forth herein and commission rule to determine if their
14 enactments are materially different from the model compact and whether they qualify for
15 participation in the compact.

16 (3) All actions taken for the benefit of the commission or in furtherance of the purposes of
17 the administration of the compact prior to the effective date of the compact or the commission
18 coming into existence shall be considered to be actions of the commission unless specifically
19 repudiated by the commission. The commission shall own and have all rights to any intellectual
20 property developed on behalf or in furtherance of the commission by individuals or entities
21 involved in organizing or establishing the commission, as may be further set forth in rules of the
22 commission.

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

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

(1) A member state's withdrawal shall not take effect until 180 days after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's respiratory therapy licensing authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

(3) Upon the enactment of a statute withdrawing from this compact, a state shall immediately provide notice of such withdrawal to all licensees and compact privilege holders (of which the commission has a record) within that state. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing state shall continue to recognize all licenses granted pursuant to this compact for a minimum of 180 days after the date of such notice of withdrawal.

(c) Nothing contained in this compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a member state and a non - member state that does not conflict with the provisions of this compact.

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

§30-34A-12. Construction and severability.

(a) This compact and the commission's rulemaking authority shall be liberally construed so as to effectuate the purposes and the implementation and administration of the compact. provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be

4 construed to limit the commission's rulemaking authority solely for those purposes.

5 (b) The provisions of this compact shall be severable, and if any phrase, clause, sentence
6 or provision of this compact is held by a court of competent jurisdiction to be contrary to the
7 constitution of any member state, a state seeking participation in the compact, or of the united
8 states, or the applicability thereof to any government, agency, person or circumstance is held to be
9 unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact
10 and the applicability thereof to any other government, agency, person or circumstance shall not be
11 affected thereby.

12 (c) Notwithstanding subsection (b) of this section, the commission may deny a state's
13 participation in the compact or, in accordance with the requirements of §30-34A-10 of this code,
14 terminate a member state's participation in the compact, if it determines that a constitutional
15 requirement of a member state is a material departure from the compact. Otherwise, if this
16 compact shall be held to be contrary to the constitution of any member state, the compact shall
17 remain in full force and effect as to the remaining member states and in full force and effect as to
18 the member state affected as to all severable matters.

§30-34A-13. Consistent effect and conflict with other state laws.

1 (a) Nothing herein shall prevent or inhibit the enforcement of any other law of a member
2 state that is not inconsistent with the compact.

3 (b) Any laws, statutes, regulations, or other legal requirements in a member state in conflict
4 with the compact are superseded to the extent of the conflict, including any subsequently enacted
5 state laws.

6 (c) All permissible agreements between the commission and the member states are
7 binding in accordance with their terms.

8 (d) Other than as expressly set forth herein, nothing in this compact will impact initial
9 licensure.

NOTE: The purpose of this bill is to facilitate the interstate practice of respiratory therapy with the goal of improving public access to respiratory therapy services by providing respiratory therapists licensed in a member state the ability to practice in other member states.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.