

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1309

Introduced by

Representatives Koppelman, Delmore, Ruby

Senators Krebsbach, Nelson, Wardner

1 A BILL for an Act to enter the compact on educational opportunity for military children.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Compact on educational opportunity for military children.** The  
4 compact on educational opportunity for military children is entered with all jurisdictions legally  
5 joining therein, in the form substantially as follows:

6 **ARTICLE I. PURPOSE**

7 It is the purpose of this compact to remove barriers to educational success imposed on  
8 children of military families because of frequent moves and deployment of their parents by:

- 9 1. Facilitating the timely enrollment of children of military families and ensuring that  
10 they are not placed at a disadvantage due to difficulty in the transfer of education  
11 records from the previous school district or variations in entrance/age  
12 requirements.
- 13 2. Facilitating the student placement process through which children of military  
14 families are not disadvantaged by variations in attendance requirements,  
15 scheduling, sequencing, grading, course content, or assessment.
- 16 3. Facilitating the qualification and eligibility for enrollment, educational programs, and  
17 participation in extracurricular academic, athletic, and social activities.
- 18 4. Facilitating the on-time graduation of children of military families.
- 19 5. Providing for the promulgation and enforcement of administrative rules  
20 implementing this compact.
- 21 6. Providing for the uniform collection and sharing of information among member  
22 states, schools, and military families under this compact.
- 23 7. Promoting coordination between this compact and other compacts affecting military  
24 children.

- 1           8.   Promoting flexibility and cooperation between the educational system, parents, and  
2           the student in order to achieve educational success for the student.

3                           ARTICLE II. DEFINITIONS

4           As used in this compact, unless the context otherwise requires:

- 5           1.   "Active duty" means full-time duty status in the active uniformed service of the  
6           United States, including members of the national guard and reserve on active duty  
7           orders pursuant to 10 U.S.C. 1209 and 1211.
- 8           2.   "Children of military families" means school-aged children, enrolled in kindergarten  
9           through grade twelve, in the household of an active duty member.
- 10          3.   "Commission" means the commission that is created under article IX of this  
11          compact.
- 12          4.   "Compact commissioner" means the voting representative of each compacting  
13          state appointed pursuant to article VIII of this compact.
- 14          5.   "Deployment" means the period one month before the service member's departure  
15          from the home station on military orders through six months after return to the  
16          home station.
- 17          6.   "Educational records" means those official records, files, and data directly related  
18          to a student and maintained by the school or local education agency, including  
19          records encompassing all the material kept in the student's cumulative folder such  
20          as general identifying data, records of attendance and of academic work  
21          completed, records of achievement and results of evaluative tests, health data,  
22          disciplinary status, test protocols, and individualized education programs.
- 23          7.   "Extracurricular activities" means a voluntary activity sponsored by the school or  
24          local education agency or an organization sanctioned by the local education  
25          agency. The term includes preparation for the involvement in public performances,  
26          contests, athletic competitions, demonstrations, displays, and club activities.
- 27          8.   "Local education agency" means a public authority legally constituted by the state  
28          as an administrative agency to provide control of and direction for kindergarten  
29          through grade twelve public educational institutions.
- 30          9.   "Member state" means a state that has enacted this compact.

- 1        10. "Military installation" means a base, camp, post, station, yard, center, homeport  
2        facility for any ship, or other activity under the jurisdiction of the department of  
3        defense, including any leased facility, which is located within any state. The term  
4        does not include any facility used primarily for civil works, rivers and harbors  
5        projects, or flood control projects.
- 6        11. "Nonmember state" means a state that has not enacted this compact.
- 7        12. "Receiving state" means the state to which a child of a military family is sent,  
8        brought, or caused to be sent or brought.
- 9        13. "Rule" means a written statement by the commission promulgated pursuant to  
10       article XII of this compact which is of general applicability, implements, interprets,  
11       or prescribes a policy or provision of the compact, or an organizational, procedural,  
12       or practice requirement of the commission, and has the force and effect of statutory  
13       law in a member state, and includes the amendment, repeal, or suspension of an  
14       existing rule.
- 15       14. "Sending state" means the state from which a child of a military family is sent,  
16       brought, or caused to be sent or brought.
- 17       15. "State" means a state of the United States, the District of Columbia, the  
18       Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American  
19       Samoa, the Northern Marianas Islands, and any other United States territory.
- 20       16. "Student" means the child of a military family for whom the local education agency  
21       receives public funding and who is formally enrolled in kindergarten through grade  
22       twelve.
- 23       17. "Transition" means:  
24       a. The formal and physical process of transferring from school to school; or  
25       b. The period of time in which a student moves from one school in the sending  
26       state to another school in the receiving state.
- 27       18. "Uniformed services" means the army, navy, air force, marine corps, and coast  
28       guard, and the commissioned corps of the national oceanic and atmospheric  
29       administration and public health services.
- 30       19. "Veteran" means an individual who served in the uniformed services and who was  
31       discharged or released there from under conditions other than dishonorable.

ARTICLE III. APPLICABILITY

1. Except as otherwise provided in subsection 2, this compact applies to the children of:
  - a. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211;
  - b. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and
  - c. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.
2. This compact only applies to local education agencies as defined in this compact.
3. This compact does not apply to the children of:
  - a. Inactive members of the national guard and military reserves;
  - b. Members of the uniformed services now retired, except as provided in subsection 1;
  - c. Veterans of the uniformed services, except as provided in subsection 1; and
  - d. Other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV. EDUCATIONAL RECORDS AND ENROLLMENT

1. If official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.
2. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the

1           sending state will process and furnish the official education records to the school in  
2           the receiving state within ten days or within such time as is reasonably determined  
3           under the rules promulgated by the commission.

- 4           3. Compacting states must give thirty days from the date of enrollment or within such  
5           time as is reasonably determined under the rules promulgated by the commission  
6           for students to obtain any immunization required by the receiving state. For a  
7           series of immunizations, initial vaccinations must be obtained within thirty days or  
8           within such time as is reasonably determined under the rules promulgated by the  
9           commission.

- 10          4. Students must be allowed to continue their enrollment at grade level in the  
11          receiving state commensurate with their grade level from a local education agency  
12          in the sending state at the time of transition, regardless of age. A student who  
13          satisfactorily has completed the prerequisite grade level in the local education  
14          agency in the sending state must be eligible for enrollment in the next highest  
15          grade level in the receiving state, regardless of age. A student transferring after  
16          the start of the school year in the receiving state shall enter the school in the  
17          receiving state on the validated level from an accredited school in the sending  
18          state.

#### 19                           ARTICLE V. PLACEMENT AND ATTENDANCE

- 20          1. When the student transfers before or during the school year, the receiving state  
21          school shall initially honor placement of the student in educational courses based  
22          on the student's enrollment in the sending state school or educational assessments  
23          conducted at the school in the sending state if the courses are offered. Course  
24          placement includes honors, international baccalaureate, advanced placement,  
25          vocational, technical, and career pathways courses. Continuing the student's  
26          academic program from the previous school and promoting placement in  
27          academically and career challenging courses should be paramount when  
28          considering placement. This does not preclude the school in the receiving state  
29          from performing subsequent evaluations to ensure appropriate placement and  
30          continued enrollment of the student in the course.

- 1           2.   The receiving state school initially shall honor placement of the student in  
2                   educational programs based on current educational assessments conducted at the  
3                   school in the sending state or placement in like programs in the sending state.  
4                   Such programs include gifted and talented programs, and English as a second  
5                   language. This does not preclude the school in the receiving state from performing  
6                   subsequent evaluations to ensure appropriate placement of the student.
- 7           3.   a.   In compliance with the federal requirements of the Individuals With Disabilities  
8                   Education Act [20 U.S.C. 1400 et seq.] the receiving state initially shall  
9                   provide comparable services to a student with disabilities based on the  
10                  student's current individualized education program; and
- 11           b.   In compliance with the requirements of section 504 of the Rehabilitation Act  
12                  [29 U.S.C. 794] and with the Americans with Disabilities Act [42 U.S.C. 12131  
13                  et seq.] the receiving state shall make reasonable accommodations and  
14                  modifications to address the needs of incoming students with disabilities,  
15                  subject to an existing 504 or title II plan, to provide the student with equal  
16                  access to education. This does not preclude the school in the receiving state  
17                  from performing subsequent evaluations to ensure appropriate placement of  
18                  the student.
- 19           4.   Local education agency administrative officials must have flexibility in waiving  
20                  course/program prerequisites, or other preconditions for placement in  
21                  courses/programs offered under the jurisdiction of the local education agency.
- 22           5.   A student whose parent or legal guardian is an active duty member of the  
23                  uniformed services and has been called to duty for, is on leave from, or  
24                  immediately returned from deployment to a combat zone or combat support  
25                  posting must be granted additional excused absences at the discretion of the local  
26                  education agency superintendent to visit with the student's parent or legal guardian  
27                  relative to the leave or deployment of the parent or guardian.

28                                   ARTICLE VI. ELIGIBILITY

- 29           1.   Eligibility for enrollment:

1           a. A special power of attorney, relative to the guardianship of a child of a military  
2           family and executed under applicable law is sufficient for the purposes of  
3           enrollment and all other actions requiring parental participation and consent.

4           b. A local education agency may not charge local tuition to a transitioning  
5           military child placed in care of a noncustodial parent or other person standing  
6           in loco parentis who lives in a jurisdiction other than that of the custodial  
7           parent.

8           c. A transitioning military child, placed in the care of a noncustodial parent or  
9           other person standing in loco parentis who lives in a jurisdiction other than  
10          that of the custodial parent, may continue to attend the school in which the  
11          child was enrolled while residing with the custodial parent.

12          2. State and local education agencies shall facilitate the opportunity for transitioning  
13          military children's inclusion in extracurricular activities, regardless of application  
14          deadlines, to the extent they are otherwise qualified.

#### 15                                   ARTICLE VII. GRADUATION

16          To facilitate the on-time graduation of children of military families, state and local  
17          education agencies shall incorporate the following procedures:

18          1. Local education agency administrative officials shall waive specific courses  
19          required for graduation if similar coursework has been satisfactorily completed in  
20          another local education agency or shall provide reasonable justification for denial.  
21          Should a waiver not be granted to a student who would qualify to graduate from the  
22          sending school, the local education agency shall provide an alternative means of  
23          acquiring required coursework so that graduation may occur on time.

24          2. States must accept exit or end-of-course examinations required for graduation from  
25          the sending state; national norm-referenced achievement tests; or alternative  
26          testing, in lieu of testing requirements for graduation in the receiving state. If these  
27          alternatives cannot be accommodated by the receiving state for a student  
28          transferring in the student's senior year, then subsection 3 applies.

29          3. Should a military student transferring at the beginning or during the student's  
30          senior year be ineligible to graduate from the receiving local education agency after  
31          all alternatives have been considered, the sending and receiving local education

1           agencies shall ensure the receipt of a diploma from the sending local education  
2           agency if the student meets the graduation requirements of the sending local  
3           education agency. If one of the states in question is not a member of this compact,  
4           the member state shall use best efforts to facilitate the on-time graduation of the  
5           student in accordance with subsections 1 and 2.

6                           ARTICLE VIII. STATE COORDINATION

- 7           1. Each member state, through the creation of a state council or use of an existing  
8           entity, shall provide for the coordination among its agencies of government, local  
9           education agencies, and military installations concerning the state's participation in,  
10          and compliance with, this compact and commission activities. While each member  
11          state may determine the membership of its own state council, its membership must  
12          include at least the state superintendent of public instruction, superintendent of a  
13          school district with a high concentration of military children, representative from a  
14          military installation, one representative each from the legislative branch and the  
15          executive branch of government, and other offices and stakeholder groups the  
16          state council determines appropriate. A member state that does not have a school  
17          district determined to contain a high concentration of military children may appoint  
18          a superintendent from another school district to represent local education agencies  
19          on the state council.
- 20          2. The state council of each member state shall appoint or designate a military family  
21          education liaison to assist military families and the state in facilitating the  
22          implementation of this compact.
- 23          3. The compact commissioner responsible for the administration and management of  
24          the state's participation in the compact must be appointed by the governor or as  
25          otherwise determined by each member state.
- 26          4. The compact commissioner and the military family education liaison are ex officio  
27          members of the state council, unless either is already a full voting member of the  
28          state council.

29                       ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL  
30                       OPPORTUNITY FOR MILITARY CHILDREN



1        The interstate commission on educational opportunity for military children is created.

2        The activities of the commission are the formation of public policy and are a discretionary state  
3        function. The commission:

4            1.    Is a body corporate and joint agency of the member states and has all the  
5                    responsibilities, powers and duties set forth herein, and any additional powers as  
6                    may be conferred upon it by a subsequent concurrent action of the respective  
7                    legislatures of member states in accordance with the terms of this compact.

8            2.    Consists of one commission voting representative from each member state who  
9                    must be that state's compact commissioner.

10           a.    Each member state represented at a meeting of the commission is entitled to  
11                    one vote.

12           b.    A majority of the total member states constitutes a quorum for the transaction  
13                    of business unless a larger quorum is required by the bylaws of the  
14                    commission.

15           c.    A representative may not delegate a vote to another member state. If the  
16                    compact commissioner is unable to attend a meeting of the commission, the  
17                    governor or state council may delegate voting authority to another person  
18                    from the state for a specified meeting.

19           d.    The bylaws may provide for meetings of the commission to be conducted by  
20                    telecommunication or electronic communication.

21           3.    Consists of ex officio, nonvoting representatives who are members of interested  
22                    organizations. Ex officio members, as defined in the bylaws, may include  
23                    members of the representative organizations of military family advocates, local  
24                    education agency officials, parent and teacher groups, the department of defense,  
25                    the education commission of the states, the interstate agreement on the  
26                    qualification of educational personnel and other interstate compacts affecting the  
27                    education of children of military members.

28           4.    Shall meet at least once each calendar year. The chairman may call additional  
29                    meetings and, upon the request of a simple majority of the member states, shall  
30                    call additional meetings.

- 1           5. Shall establish an executive committee, whose members must include the officers  
2           of the commission and any other members of the commission as determined by  
3           the bylaws. Members of the executive committee shall serve a one-year term.  
4           Members of the executive committee are entitled to one vote each. The executive  
5           committee may act on behalf of the commission, with the exception of rulemaking,  
6           during periods when the commission is not in session. The executive committee  
7           shall oversee the day-to-day activities of the administration of the compact,  
8           including enforcement and compliance with the compact, its bylaws and rules, and  
9           other such duties as determined necessary. The department of defense is an  
10          ex officio nonvoting member of the executive committee.
- 11          6. Shall establish bylaws and rules that provide for conditions and procedures under  
12          which the commission shall make its information and official records available to  
13          the public for inspection or copying. The commission may exempt from disclosure  
14          information or official records to the extent they would adversely affect personal  
15          privacy rights or proprietary interests.
- 16          7. Shall give public notice of all meetings and all meetings shall be open to the public,  
17          except as set forth in the rules or as otherwise provided in the compact. The  
18          commission and its committees may close a meeting, or portion thereof, when it  
19          determines by two-thirds vote that an open meeting would be likely to:
- 20           a. Relate solely to the commission's internal personnel practices and  
21           procedures;
- 22           b. Disclose matters specifically exempted from disclosure by federal and state  
23           statute;
- 24           c. Disclose trade secrets or commercial or financial information which is  
25           privileged or confidential;
- 26           d. Involve accusing a person of a crime, or formally censuring a person;
- 27           e. Disclose information of a personal nature when disclosure would constitute a  
28           clearly unwarranted invasion of personal privacy;
- 29           f. Disclose investigative records compiled for law enforcement purposes; or  
30           g. Specifically relate to the commission's participation in a civil action or other  
31           legal proceeding.

1           8.   Shall cause its legal counsel or designee to certify that a meeting may be closed  
2               and shall reference each relevant exemptible provision for any meeting, or portion  
3               of a meeting, which is closed pursuant to this provision. The commission shall  
4               keep minutes that fully and clearly describe all matters discussed in a meeting and  
5               shall provide a full and accurate summary of actions taken, and the reasons  
6               therefore, including a description of the views expressed and the record of a roll  
7               call vote. All documents considered in connection with an action must be identified  
8               in the minutes. All minutes and documents of a closed meeting must remain under  
9               seal, subject to release by a majority vote of the commission.

10          9.   Shall collect standardized data concerning the educational transition of the children  
11               of military families under this compact as directed through its rules, which shall  
12               specify the data to be collected, the means of collection, and data exchange and  
13               reporting requirements. The methods of data collection, exchange, and reporting,  
14               in so far as is reasonably possible, must conform to current technology and  
15               coordinate its information functions with the appropriate custodian of records as  
16               identified in the bylaws and rules.

17          10. Shall create a process that permits military officials, education officials, and parents  
18               to inform the commission if and when there are alleged violations of the compact or  
19               its rules or when issues subject to the jurisdiction of the compact or its rules are not  
20               addressed by the state or local education agency. This subsection does create a  
21               private right of action against the commission or any member state.

#### 22                   ARTICLE X. POWERS AND DUTIES OF THE COMMISSION

23               The commission may:

- 24           1.   Provide for dispute resolution among member states.
- 25           2.   Promulgate rules and take all necessary actions to effect the goals, purposes, and  
26               obligations as enumerated in this compact. The rules have the force and effect of  
27               statutory law and are binding in the compact states to the extent and in the manner  
28               provided in this compact.
- 29           3.   Issue, upon request of a member state, advisory opinions concerning the meaning  
30               or interpretation of the interstate compact, its bylaws, rules, and actions.

- 1           4.   Enforce compliance with the compact provisions, the rules promulgated by the  
2               commission, and the bylaws, using all necessary and proper means, including but  
3               not limited to the use of judicial process.
- 4           5.   Establish and maintain offices within one or more of the member states.
- 5           6.   Purchase and maintain insurance and bonds.
- 6           7.   Borrow, accept, hire, or contract for services of personnel.
- 7           8.   Establish and appoint committees, including an executive committee as required  
8               by article IX which may act on behalf of the commission in carrying out its powers  
9               and duties.
- 10          9.   Elect or appoint such officers, attorneys, employees, agents, or consultants, and to  
11               fix their compensation, define their duties, and determine their qualifications, and  
12               establish the commission's personnel policies and programs relating to conflicts of  
13               interest, rates of compensation, and qualifications of personnel.
- 14          10.   Accept, receive, use, and dispose of donations and grants of money, equipment,  
15               supplies, materials, and services.
- 16          11.   Lease, purchase, accept contributions or donations of, or otherwise to own, hold,  
17               improve or use any property, real, personal, or mixed.
- 18          12.   Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose  
19               of any property.
- 20          13.   Establish a budget and make expenditures.
- 21          14.   Adopt a seal and bylaws governing the management and operation of the  
22               commission.
- 23          15.   Report annually to the legislatures, governors, judiciary, and state councils of the  
24               member states concerning the activities of the commission during the preceding  
25               year. The reports must include any recommendations that may have been  
26               adopted by the commission.
- 27          16.   Coordinate education, training, and public awareness regarding the compact, its  
28               implementation, and operation for officials and parents involved in such activity.
- 29          17.   Establish uniform standards for the reporting, collecting, and exchanging of data.
- 30          18.   Maintain corporate books and records in accordance with the bylaws.

1        19. Perform such functions as may be necessary or appropriate to achieve the  
2                    purpose of this compact.

3        20. Provide for the uniform collection and sharing of information between and among  
4                    member states, schools, and military families under this compact.

5        ARTICLE XI. ORGANIZATION AND OPERATION OF THE COMMISSION

6        1. The commission, by a majority of the members present and voting, within twelve  
7                    months after the first commission meeting, shall adopt bylaws to govern its conduct  
8                    as may be necessary or appropriate to carry out the purposes of the compact,  
9                    including:

10           a. Establishing the fiscal year of the commission;

11           b. Establishing an executive committee, and such other committees as may be  
12                    necessary;

13           c. Providing for the establishment of committees and for governing any general  
14                    or specific delegation of authority or function of the commission;

15           d. Providing reasonable procedures for calling and conducting meetings of the  
16                    commission, and ensuring reasonable notice of each meeting;

17           e. Establishing the titles and responsibilities of the officers and staff of the  
18                    commission;

19           f. Providing a mechanism for concluding the operations of the commission and  
20                    the return of surplus funds that may exist upon the termination of the compact  
21                    after the payment and reserving of all of its debts and obligations.

22           g. Providing startup rules for initial administration of the compact.

23        2. The commission, by a majority of the members, shall elect annually from among its  
24                    members a chairman, a vice chairman, and a treasurer, each of whom has the  
25                    authority and duties as specified in the bylaws. The chairman or, in the chairman's  
26                    absence or disability, the vice chairman shall preside at all meetings of the  
27                    commission. The officers so elected serve without compensation or remuneration  
28                    from the commission; provided that, subject to the availability of budgeted funds,  
29                    the officers are entitled to be reimbursed for ordinary and necessary costs and  
30                    expenses incurred by them in the performance of their responsibilities as officers of  
31                    the commission.

- 1           3.   a.   The executive committee has the authority and duties as set forth in the  
2                   bylaws, including:  
3                   (1)   Managing the affairs of the commission in a manner consistent with the  
4                         bylaws and purposes of the commission;  
5                   (2)   Overseeing an organizational structure and appropriate procedures for  
6                         the commission to provide for the creation of rules, operating  
7                         procedures, and administrative and technical support functions; and  
8                   (3)   Planning, implementing, and coordinating communications and  
9                         activities with other state, federal, and local government organizations  
10                         in order to advance the goals of the commission.  
11           b.   The executive committee, subject to the approval of the commission, may  
12                   appoint or retain an executive director for such period, upon such terms and  
13                   conditions, and for such compensation as the commission determines  
14                   appropriate. The executive director shall serve as secretary to the  
15                   commission but may not be a member of the commission. The executive  
16                   director shall hire and supervise such other persons as may be authorized by  
17                   the commission.  
18           4.   The commission's executive director and its employees are immune from suit and  
19                   liability, either personally or in their official capacity, for a claim for damage to or  
20                   loss of property or personal injury or other civil liability caused or arising out of or  
21                   relating to an actual or alleged act, error, or omission that occurred, or that such  
22                   person had a reasonable basis for believing occurred, within the scope of  
23                   commission employment, duties, or responsibilities; provided, those individuals are  
24                   not protected from suit or liability for damage, loss, injury, or liability caused by their  
25                   intentional or willful and wanton misconduct.  
26           a.   The liability of the commission's executive director and employees or  
27                   commission representatives, acting within the scope of such person's  
28                   employment or duties for acts, errors, or omissions occurring within such  
29                   person's state, may not exceed the limits of liability set forth under the  
30                   constitution and laws of that state for state officials, employees, and agents.  
31                   The commission is considered to be an instrumentality of the states for the

1 purposes of any such action. This subsection does not protect such person  
2 from suit or liability for damage, loss, injury, or liability caused by the  
3 intentional or willful and wanton misconduct of such person.

4 b. The commission shall defend the executive director and its employees and,  
5 subject to the approval of the attorney general or other appropriate legal  
6 counsel of the member state represented by a commission representative,  
7 shall defend such commission representative in any civil action seeking to  
8 impose liability arising out of an actual or alleged act, error, or omission that  
9 occurred within the scope of commission employment, duties, or  
10 responsibilities, or that the defendant had a reasonable basis for believing  
11 occurred within the scope of commission employment, duties, or  
12 responsibilities, provided that the actual or alleged act, error, or omission did  
13 not result from intentional or willful and wanton misconduct on the part of such  
14 person.

15 c. To the extent not covered by the state involved, member state, or the  
16 commission, the representatives or employees of the commission must be  
17 held harmless in the amount of a settlement or judgment, including attorney's  
18 fees and costs, obtained against such persons arising out of an actual or  
19 alleged act, error, or omission that occurred within the scope of commission  
20 employment, duties, or responsibilities, or that such persons had a reasonable  
21 basis for believing occurred within the scope of commission employment,  
22 duties, or responsibilities, provided that the actual or alleged act, error, or  
23 omission did not result from intentional or willful and wanton misconduct on  
24 the part of such persons.

## 25 ARTICLE XII. RULEMAKING FUNCTIONS OF THE COMMISSION

26 1. The commission shall promulgate reasonable rules in order to effectively and  
27 efficiently achieve the purposes of this compact. Notwithstanding the foregoing, if  
28 the commission exercises its rulemaking authority in a manner that is beyond the  
29 scope of the purposes of this compact, or the powers granted hereunder, then  
30 such an action by the commission is invalid and has no force or effect.

- 1           2.   Rules must be made pursuant to a rulemaking process that substantially conforms  
2                   to the Model State Administrative Procedure Act of the national conference of  
3                   commissioners on uniform state laws, as may be appropriate to the operations of  
4                   the commission.
- 5           3.   Within thirty days after a rule is promulgated, any person may file a petition for  
6                   judicial review of the rule; provided, that the filing of the petition does not stay or  
7                   otherwise prevent the rule from becoming effective unless the court finds that the  
8                   petitioner has a substantial likelihood of success. The court shall give deference to  
9                   the actions of the commission consistent with applicable law and shall not find the  
10                  rule to be unlawful if the rule represents a reasonable exercise of the commission's  
11                  authority.
- 12          4.   If a majority of the legislatures of the compacting states rejects a rule by enactment  
13                  of a statute or resolution in the same manner used to adopt the compact, then the  
14                  rule has no further force and effect in any compacting state.

15                   ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE

16                                   RESOLUTION

- 17          1.   a.   The executive, legislative, and judicial branches of state government in each  
18                   member state shall enforce this compact and shall take all actions necessary  
19                   and appropriate to effectuate the compact's purposes and intent. The  
20                   provisions of this compact and the rules promulgated hereunder have  
21                   standing as statutory law.
- 22           b.   All courts must take judicial notice of the compact and the rules in any judicial  
23                   or administrative proceeding in a member state pertaining to the subject  
24                   matter of this compact which may affect the powers, responsibilities, or  
25                   actions of the commission.
- 26           c.   The commission is entitled to receive all service of process in any such  
27                   proceeding, and has standing to intervene in the proceeding for all purposes.  
28                   Failure to provide service of process to the commission renders a judgment or  
29                   order void as to the commission, this compact, or promulgated rules.



- 1           2. If the commission determines that a member state has defaulted in the  
2           performance of its obligations or responsibilities under this compact, or the bylaws  
3           or promulgated rules, the commission shall:
- 4           a. Provide written notice to the defaulting state and other member states, of the  
5           nature of the default, the means of curing the default and any action taken by  
6           the commission. The commission shall specify the conditions by which the  
7           defaulting state must cure its default.
- 8           b. Provide remedial training and specific technical assistance regarding the  
9           default.
- 10          c. If the defaulting state fails to cure the default, the defaulting state shall  
11          terminate from the compact upon an affirmative vote of a majority of the  
12          member states and all rights, privileges, and benefits conferred by this  
13          compact are terminated from the effective date of termination. A cure of the  
14          default does not relieve the offending state of obligations or liabilities incurred  
15          during the period of the default.
- 16          d. Suspension or termination of membership in the compact may be imposed  
17          only after all other means of securing compliance have been exhausted.  
18          Notice of intent to suspend or terminate must be given by the commission to  
19          the governor, the majority and minority leaders of the defaulting state's  
20          legislature, and each member state.
- 21          e. The state that has been suspended or terminated is responsible for all  
22          assessments, obligations, and liabilities incurred through the effective date of  
23          suspension or termination including obligations, the performance of which  
24          extends beyond the effective date of suspension or termination.
- 25          f. The commission may not bear any costs relating to any state that has been  
26          found to be in default or which has been suspended or terminated from the  
27          compact, unless otherwise mutually agreed upon in writing between the  
28          commission and the defaulting state.
- 29          g. The defaulting state may appeal the action of the commission by petitioning  
30          the United States district court for the District of Columbia or the federal  
31          district where the commission has its principal offices. The prevailing party

1                   must be awarded all costs of such litigation including reasonable attorney's  
2                   fees.

3           3. The commission shall attempt, upon the request of a member state, to resolve  
4           disputes that are subject to the compact and which may arise among member  
5           states and between member and nonmember states. The commission shall  
6           promulgate a rule providing for mediation and binding dispute resolution for  
7           disputes as appropriate.

8           4. a. The commission, in the reasonable exercise of its discretion, shall enforce the  
9           provisions and rules of this compact.

10           b. The commission, by majority vote of the members, may initiate legal action in  
11           the United States district court for the District of Columbia or, at the discretion  
12           of the commission, in the federal district where the commission has its  
13           principal offices, to enforce compliance with this compact, its promulgated  
14           rules, and bylaws, against a member state in default. The relief sought may  
15           include injunctive relief and damages. If judicial enforcement is necessary,  
16           the prevailing party must be awarded all costs of such litigation, including  
17           reasonable attorney's fees.

18           c. The remedies herein are not the exclusive remedies of the commission. The  
19           commission may avail itself of any other remedies available under state law or  
20           the regulation of a profession.

#### 21                   ARTICLE XIV. FINANCING OF THE COMMISSION

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

24           2. The commission may levy on and collect an annual assessment from each  
25           member state to cover the cost of the operations and activities of the commission  
26           and its staff which must be in a total amount sufficient to cover the commission's  
27           annual budget as approved each year. The aggregate annual assessment amount  
28           must be allocated based upon a formula to be determined by the commission,  
29           which shall promulgate a rule binding upon all member states.

1       3.   The commission may not incur obligations of any kind prior to securing the funds  
2       adequate to meet the same; nor may the commission pledge the credit of any of  
3       the member states, except by and with the authority of the member state.

4       4.   The commission shall keep accurate accounts of all receipts and disbursements.  
5       The receipts and disbursements of the commission are subject to the audit and  
6       accounting procedures established under its bylaws. However, all receipts and  
7       disbursements of funds handled by the commission must be audited yearly by a  
8       certified or licensed public accountant and the report of the audit must be included  
9       in and become part of the annual report of the commission.

10       ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

- 11       1.   Any state is eligible to become a member state.
- 12       2.   The compact becomes effective and binding upon legislative enactment of the  
13       compact into law by no less than ten states. The effective date may not be earlier  
14       than December 1, 2007. Thereafter, it shall become effective and binding as to  
15       any other member state upon enactment of the compact into law by that state. The  
16       governors of nonmember states or their designees must be invited to participate in  
17       the activities of the commission on a nonvoting basis prior to adoption of the  
18       compact by all states.
- 19       3.   The commission may propose amendments to the compact for enactment by the  
20       member states. No amendment may become effective and binding upon the  
21       commission and the member states until the amendment is enacted into law by  
22       unanimous consent of the member states.

23       ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

- 24       1.   a.   Once effective, the compact continues in force and remains binding upon  
25       each member state, provided that a member state may withdraw from the  
26       compact by specifically repealing the statute that enacted the compact into  
27       law.
- 28       b.   Withdrawal from this compact must be by the enactment of a statute repealing  
29       the same, but may not take effect until one year after the effective date of  
30       such statute and until written notice of the withdrawal has been given by the  
31       withdrawing state to the governor of each other member jurisdiction.

- 1           c. The withdrawing state immediately shall notify the chairman of the  
2           commission in writing upon the introduction of legislation repealing this  
3           compact in the withdrawing state. The commission shall notify the other  
4           member states of the withdrawing state's intent to withdraw within sixty days  
5           of its receipt thereof.
- 6           d. The withdrawing state is responsible for all assessments, obligations, and  
7           liabilities incurred through the effective date of withdrawal, including  
8           obligations, the performance of which extend beyond the effective date of  
9           withdrawal.
- 10          e. Reinstatement following withdrawal of a member state occurs upon the  
11          withdrawing state reenacting the compact or upon such later date as  
12          determined by the commission.

- 13          2. This compact dissolves effective upon the date of the withdrawal or default of the  
14          member state which reduces the membership in the compact to one member state.  
15          Upon the dissolution of this compact, the compact becomes null and void and is of  
16          no further force or effect, and the business and affairs of the commission must be  
17          concluded and surplus funds must be distributed in accordance with the bylaws.

18                   ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

- 19          1. The provisions of this compact are severable, and if any phrase, clause, sentence,  
20          or provision is determined unenforceable, the remaining provisions of the compact  
21          are enforceable.
- 22          2. This compact must be liberally construed to effectuate its purposes.
- 23          3. Nothing in this compact prohibits the applicability of other interstate compacts to  
24          which the states are members.

25                   ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

- 26          1. Nothing in this compact prevents the enforcement of any other law of a member  
27          state that is not inconsistent with this compact. All member states' laws conflicting  
28          with this compact are superseded to the extent of the conflict.
- 29          2. a. All lawful actions of the commission, including all rules and bylaws  
30          promulgated by the commission, are binding upon the member states.

- 1                    b. All agreements between the commission and the member states are binding
- 2                    in accordance with their terms.
- 3                    c. If any provision of this compact exceeds the constitutional limits imposed on
- 4                    the legislature of any member state, the provision is ineffective to the extent of
- 5                    the conflict with the constitutional provision in question in that member state.