

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2223

Introduced by

Senators Barta, Axtman, Burckhard

Representatives Bahl, Frelich

1 A BILL for an Act to create and enact chapter 43-44.1 of the North Dakota Century Code,
2 relating to adoption of the dietitian licensure compact.

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

4 **SECTION 1.** Chapter 43-44.1 of the North Dakota Century Code is created and enacted as
5 follows:

6 **43-44.1-01. Dietitian licensure compact.**

7 The dietitian licensure compact is entered with all states legally joining the compact, in the
8 form substantially as follows:

9 **ARTICLE I - PURPOSE**

- 10 1. The purpose of this compact is to facilitate interstate practice of dietetics with the goal
11 of improving public access to dietetic services. This compact preserves the regulatory
12 authority of states to protect public health and safety through the current system of
13 state licensure, while also providing for licensure portability through a compact
14 privilege granted to qualifying professionals.
- 15 2. This compact is designed to achieve the following objectives:
- 16 a. Increase public access to dietetic services;
- 17 b. Provide opportunities for interstate practice by licensed dietitians who meet
18 uniform requirements;
- 19 c. Eliminate the necessity for licenses in multiple states;
- 20 d. Reduce the administrative burden on member states and licensees;
- 21 e. Enhance the ability of member states to protect the public's health and safety;

- 1 8. "Compact privilege" means a legal authorization, which is equivalent to a license,
2 permitting the practice of dietetics in a remote state.
- 3 9. "Continuing education" means a requirement, as a condition of license renewal, to
4 provide evidence of participation in, and completion of, educational and professional
5 activities relevant to practice or area of work.
- 6 10. "Current significant investigative information" means investigative information that:
7 a. A licensing authority, after a preliminary inquiry that includes notification and an
8 opportunity for the subject licensee to respond, if required by state law, has
9 reason to believe is not groundless and, if proved true, would indicate more than
10 a minor infraction; or
11 b. Indicates that the subject licensee represents an immediate threat to public
12 health and safety regardless of whether the subject licensee has been notified
13 and had an opportunity to respond.
- 14 11. "Data system" means a repository of information about licensees, including continuing
15 education, examination, licensure, investigative, compact privilege, and adverse action
16 information.
- 17 12. "Encumbered license" means a license in which an adverse action restricts a
18 licensee's ability to practice dietetics.
- 19 13. "Encumbrance" means a revocation or suspension of, or any limitation on a licensee's
20 full and unrestricted practice of dietetics by a licensing authority.
- 21 14. "Executive committee" means a group of delegates elected or appointed to act on
22 behalf of, and within the powers granted to them by, this compact, and the compact
23 commission.
- 24 15. "Home state" means the member state that is the licensee's primary state of residence
25 or that has been designated pursuant to article XI.
- 26 16. "Investigative information" means information, records, and documents received or
27 generated by a licensing authority pursuant to an investigation.
- 28 17. "Jurisprudence requirement" means an assessment of an individual's knowledge of
29 the state laws and regulations governing the practice of dietetics in the state.
- 30 18. "License" means an authorization from a member state to either:
31 a. Engage in the practice of dietetics, including medical nutrition therapy; or

- 1 b. Use the title "dietitian", "licensed dietitian", "licensed dietitian nutritionist",
2 "certified dietitian", or other title describing a substantially similar practitioner as
3 the compact commission may further define by rule.
- 4 19. "Licensee" or "licensed dietitian" means an individual who currently holds a license
5 and who meets all of the requirements outlined in article IV.
- 6 20. "Licensing authority" means the board or agency of a state, or equivalent, that is
7 responsible for the licensing and regulation of the practice of dietetics.
- 8 21. "Member state" means a state that has enacted the compact.
- 9 22. "Practice of dietetics" means the synthesis and application of dietetics as defined by
10 state law and regulations, primarily for the provision of nutrition care services,
11 including medical nutrition therapy, in person or via telehealth, to prevent, manage, or
12 treat diseases or medical conditions, and promote wellness.
- 13 23. "Registered dietitian" means an individual who:
- 14 a. Has completed applicable education, experience, examination, and recertification
15 requirements approved by CDR;
- 16 b. Is credentialed by CDR as a registered dietitian or a registered dietitian
17 nutritionist; and
- 18 c. Is legally authorized to use the title registered dietitian or registered dietitian
19 nutritionist and the corresponding abbreviations "RD" or "RDN".
- 20 24. "Remote state" means a member state other than the home state, where a licensee is
21 exercising or seeking to exercise a compact privilege.
- 22 25. "Rule" means a regulation promulgated by the compact commission which has the
23 force of law.
- 24 26. "Single state license" means a license issued by a member state within the issuing
25 state and does not include a compact privilege in any other member state.
- 26 27. "State" means any state, commonwealth, district, or territory of the United States of
27 America.
- 28 28. "Unencumbered license" means a license that authorizes a licensee to engage in the
29 full and unrestricted practice of dietetics.

30 **ARTICLE III - STATE PARTICIPATION IN THE COMPACT**

- 31 1. To participate in the compact, a state shall currently:

- 1 a. License and regulate the practice of dietetics; and
- 2 b. Have a mechanism in place for receiving and investigating complaints about
- 3 licensees.
- 4 2. A member state shall:
- 5 a. Participate fully in the compact commission's data system, including using the
- 6 unique identifier as defined in rules;
- 7 b. Notify the compact commission, in compliance with the terms of the compact and
- 8 rules, of any adverse action or the availability of current significant investigative
- 9 information regarding a licensee;
- 10 c. Implement or utilize procedures for considering the criminal history record
- 11 information of applicants for an initial compact privilege. These procedures must
- 12 include the submission of fingerprints or other biometric-based information by
- 13 applicants for the purpose of obtaining an applicant's criminal history record
- 14 information from the federal bureau of investigation and the agency responsible
- 15 for retaining that state's criminal records;
- 16 (1) A member state shall fully implement a criminal history record information
- 17 requirement, within a time frame established by rule, which includes
- 18 receiving the results of the federal bureau of investigation record search,
- 19 and shall use those results in determining compact privilege eligibility.
- 20 (2) Communication between a member state and the compact commission or
- 21 among member states regarding the verification of eligibility for a compact
- 22 privilege may not include any information received from the federal bureau
- 23 of investigation relating to a federal criminal history record information check
- 24 performed by a member state.
- 25 d. Comply with and enforce the rules of the compact commission;
- 26 e. Require an applicant for a compact privilege to obtain or retain a license in the
- 27 licensee's home state and meet the home state's qualifications for licensure or
- 28 renewal of licensure, as well as all other applicable state laws; and
- 29 f. Recognize a compact privilege granted to a licensee who meets all of the
- 30 requirements outlined in article IV under the terms of the compact and rules.
- 31 3. Member states may set and collect a fee for granting a compact privilege.

1 of education, which the compact commission may by rule
2 determine.

3 (b) A planned, documented, supervised practice experience in dietetics
4 that is programmatically accredited by ACEND or a dietetics
5 accrediting agency recognized by the United States department of
6 education, which the compact commission may by rule determine and
7 which involves at least one thousand hours of practice experience
8 under the supervision of a registered dietitian or a licensed dietitian.

9 (c) Successful completion of either the registration examination for
10 dietitians administered by CDR or a national credentialing
11 examination for dietitians approved by the compact commission by
12 rule, with completion occurring no more than five years before the
13 date of the licensee's application for initial licensure and accompanied
14 by a period of continuous licensure thereafter, all of which may be
15 further governed by the rules of the compact commission.

16 b. Hold an unencumbered license in the home state;

17 c. Notify the compact commission that the licensee is seeking a compact privilege
18 within a remote state;

19 d. Pay any applicable fees, including any state fee, for the compact privilege;

20 e. Meet any jurisprudence requirements established by the remote state in which
21 the licensee is seeking a compact privilege; and

22 f. Report to the compact commission any adverse action, encumbrance, or
23 restriction on a license taken by any nonmember state within thirty days from the
24 date the action is taken.

25 2. The compact privilege is valid until the expiration date of the home state license. To
26 maintain a compact privilege, renewal of the compact privilege must be congruent with
27 the renewal of the home state license as the compact commission may define by rule.
28 The licensee shall comply with the requirements of subsection 1 of article IV to
29 maintain the compact privilege in the remote state.

1 3. A licensee exercising a compact privilege shall adhere to the laws and regulations of
2 the remote state. Licensees must be responsible for educating themselves on, and
3 complying with, all state laws relating to the practice of dietetics in the remote state.

4 4. Notwithstanding anything to the contrary provided in this compact or state law, a
5 licensee exercising a compact privilege may not be required to complete continuing
6 education requirements required by a remote state. A licensee exercising a compact
7 privilege only is required to meet any continuing education requirements as required
8 by the home state.

9 **ARTICLE V - OBTAINING A NEW HOME STATE LICENSEBASED ON A COMPACT**
10 **PRIVILEGE**

11 1. A licensee may hold a home state license, which allows for a compact privilege in
12 other member states, in only one member state at a time.

13 2. If a licensee changes home state by moving between two member states:

14 a. The licensee shall file an application for obtaining a new home state license
15 based on a compact privilege, pay all applicable fees, and notify the current and
16 new home state in accordance with the rules of the compact commission.

17 b. Upon receipt of an application for obtaining a new home state license by virtue of
18 a compact privilege, the new home state shall verify that the licensee meets the
19 criteria in article IV via the data system, and require that the licensee complete:

20 (1) A federal bureau of investigation fingerprint-based criminal history record
21 information check;

22 (2) Any other criminal history record information required by the new home
23 state; and

24 (3) Any jurisprudence requirements of the new home state.

25 c. The former home state shall convert the former home state license into a
26 compact privilege once the new home state has activated the new home state
27 license in accordance with applicable rules adopted by the compact commission.

28 d. Notwithstanding any other provision of this compact, if the licensee cannot meet
29 the criteria in article IV, the new home state may apply its requirements for
30 issuing a new single state license.

- 1 3. For purposes of taking adverse action, the home state shall give the same priority and
2 effect to reported conduct received from a member state as it would if the conduct had
3 occurred within the home state. In so doing, the home state shall apply its own state
4 laws to determine appropriate action.
- 5 4. The home state shall complete any pending investigations of a licensee who changes
6 home states during the course of the investigations. The home state must have
7 authority to take appropriate action and shall promptly report the conclusions of the
8 investigations to the administrator of the data system. The administrator of the data
9 system shall promptly notify the new home state of any adverse actions.
- 10 5. A member state, if otherwise permitted by state law, may recover from the affected
11 licensee the costs of investigations and dispositions of cases resulting from any
12 adverse action taken against that licensee.
- 13 6. A member state may take adverse action based on the factual findings of another
14 remote state, provided that the member state follows its own procedures for taking the
15 adverse action.
- 16 7. Joint investigations:
 - 17 a. In addition to the authority granted to a member state by its respective state law,
18 any member state may participate with other member states in joint
19 investigations of licensees.
 - 20 b. Member states shall share any investigative, litigation, or compliance materials in
21 furtherance of any joint investigations initiated under the compact.
- 22 8. If adverse action is taken by the home state against a licensee's home state license
23 resulting in an encumbrance on the home state license, the licensee's compact
24 privilege in all other member states must be revoked until all encumbrances have
25 been removed from the home state license. All home state disciplinary orders that
26 impose adverse action against a licensee must include a statement that the licensee's
27 compact privileges are revoked in all member states during the pendency of the order.
- 28 9. Once an encumbered license in the home state is restored to an unencumbered
29 license, as certified by the home state's licensing authority, the licensee shall meet the
30 requirements of subsection 1 of article IV and follow the administrative requirements to
31 reapply to obtain a compact privilege in any remote state.

- 1 commission may meet in-person or by telecommunication, video conference, or
2 other means of communication.
- 3 3. The compact commission has the power to:
- 4 a. Establish the fiscal year of the compact commission;
5 b. Establish code of conduct and conflict of interest policies;
6 c. Establish and amend rules and bylaws;
7 d. Maintain the commission's financial records in accordance with the bylaws;
8 e. Meet and take actions consistent with the provisions of this compact, the
9 compact commission's rules, and the bylaws;
10 f. Initiate and conclude legal proceedings or actions in the name of the compact
11 commission, provided that the standing of any licensing authority to sue or be
12 sued under applicable law may not be affected;
13 g. Maintain and certify records and information provided to a member state as the
14 authenticated business records of the compact commission, and designate an
15 agent to do so on the compact commission's behalf;
16 h. Purchase and maintain insurance and bonds;
17 i. Borrow, accept, or contract for services of personnel, including employees of a
18 member state;
19 j. Conduct an annual financial review;
20 k. Hire employees, elect or appoint officers, fix compensation, define duties, grant
21 those individuals appropriate authority to carry out the purposes of the compact,
22 and establish the compact commission's personnel policies and programs
23 relating to conflicts of interest, qualifications of personnel, and other related
24 personnel matters;
25 l. Assess and collect fees;
26 m. Accept all appropriate donations, grants of money, other sources of revenue,
27 equipment, supplies, materials, services, and gifts, and receive, utilize, and
28 dispose of the same provided that at all times the compact commission shall
29 avoid any actual or appearance of impropriety or conflict of interest;
30 n. Lease, purchase, retain, own, hold, improve, or use any property, real, personal,
31 or mixed, or any undivided interest therein;

- 1 o. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose
- 2 of any property real, personal, or mixed;
- 3 p. Establish a budget and make expenditures;
- 4 q. Borrow money;
- 5 r. Appoint committees, including standing committees, composed of members,
- 6 state regulators, state legislators or their representatives, and consumer
- 7 representatives, and other interested persons as may be designated in this
- 8 compact or the bylaws;
- 9 s. Provide and receive information from, and cooperate with, law enforcement
- 10 agencies;
- 11 t. Establish and elect an executive committee, including a chair and a vice chair;
- 12 u. Determine whether a state's adopted language is materially different from the
- 13 model compact language such that the state would not qualify for participation in
- 14 the compact; and
- 15 v. Perform such other functions as may be necessary or appropriate to achieve the
- 16 purposes of this compact.
- 17 4. The executive committee.
- 18 a. The executive committee must have the power to act on behalf of the compact
- 19 commission according to the terms of this compact. The powers, duties, and
- 20 responsibilities of the executive committee shall include:
- 21 (1) Overseeing the day-to-day activities of the administration of the compact,
- 22 including enforcement and compliance with the provisions of the compact,
- 23 its rules and bylaws, and other duties as deemed necessary;
- 24 (2) Recommending to the compact commission changes to the rules or bylaws,
- 25 changes to this compact legislation, fees charged to compact member
- 26 states, fees charged to licensees, and other fees;
- 27 (3) Ensuring compact administration services are provided appropriately,
- 28 including by contract;
- 29 (4) Preparing and recommending the budget;
- 30 (5) Maintaining financial records on behalf of the compact commission;

- 1 (6) Monitoring compact compliance of member states and providing compliance
2 reports to the compact commission;
- 3 (7) Establishing additional committees as necessary;
- 4 (8) Exercising the powers and duties of the compact commission during the
5 interim between compact commission meetings, except for adopting or
6 amending rules, adopting or amending bylaws, and exercising any other
7 powers and duties expressly reserved to the compact commission by rule or
8 bylaw; and
- 9 (9) Other duties as provided in the rules or bylaws of the compact commission.
- 10 b. The executive committee must be composed of nine members:
- 11 (1) The chair and vice chair of the compact commission, which must be voting
12 members of the executive committee;
- 13 (2) Five voting members from the current membership of the compact
14 commission, elected by the compact commission;
- 15 (3) One ex officio, nonvoting member from a recognized professional
16 association representing dietitians; and
- 17 (4) One ex officio, nonvoting member from a recognized national credentialing
18 organization for dietitians.
- 19 c. The compact commission may remove any member of the executive committee
20 as provided in the compact commission's bylaws.
- 21 d. The executive committee shall meet at least annually.
- 22 (1) Executive committee meetings must be open to the public, except that the
23 executive committee may meet in a closed, nonpublic meeting as provided
24 in subdivision b of subsection 6.
- 25 (2) The executive committee shall give thirty days notice of its meetings, posted
26 on the website of the compact commission and as determined to provide
27 notice to persons with an interest in the business of the compact
28 commission.
- 29 (3) The executive committee may hold a special meeting in accordance with
30 paragraph 2 of subdivision a of subsection 6.

- 1 5. The compact commission shall adopt and provide to the member states an annual
2 report.
- 3 6. Meetings of the compact commission.
- 4 a. All meetings must be open to the public, except that the compact commission
5 may meet in a closed, nonpublic meeting as provided in subdivision b of
6 subsection 6.
- 7 (1) Public notice for all meetings of the full compact commission must be given
8 in the same manner as required under the rulemaking provisions in
9 article X, except that the compact commission may hold a special meeting
10 as provided in paragraph 2 of subdivision a of subsection 6.
- 11 (2) The compact commission may hold a special meeting when it must meet to
12 conduct emergency business by giving twenty-four hours notice to all
13 member states, on the compact commission's website, and other means as
14 provided in the compact commission's rules. The compact commission's
15 legal counsel shall certify that the compact commission's need to meet
16 qualifies as an emergency.
- 17 b. The compact commission or the executive committee or other committees of the
18 compact commission may convene in a closed, nonpublic meeting for the
19 compact commission or executive committee or other committees of the compact
20 commission to receive legal advice or to discuss:
- 21 (1) Noncompliance of a member state with its obligations under the compact;
22 (2) The employment, compensation, discipline, or other matters, practices, or
23 procedures related to specific employees;
- 24 (3) Current or threatened discipline of a licensee by the compact commission or
25 by a member state's licensing authority;
- 26 (4) Current, threatened, or reasonably anticipated litigation;
- 27 (5) Negotiation of contracts for the purchase, lease, or sale of goods, services,
28 or real estate;
- 29 (6) Accusing a person of a crime or formally censuring a person;
- 30 (7) Trade secrets or commercial or financial information that is privileged or
31 confidential;

- 1 (8) Information of a personal nature if disclosure would constitute a clearly
2 unwarranted invasion of personal privacy;
- 3 (9) Investigative records compiled for law enforcement purposes;
- 4 (10) Information related to any investigative reports prepared by or on behalf of
5 or for use of the compact commission or other committee charged with
6 responsibility of investigation or determination of compliance issues
7 pursuant to the compact;
- 8 (11) Matters specifically exempted from disclosure by federal or member state
9 law; or
- 10 (12) Other matters as specified in the rules of the compact commission.
- 11 c. If a meeting or portion of a meeting is closed, the presiding officer shall state the
12 meeting will be closed and reference each relevant exempting provision and the
13 reference must be recorded in the minutes.
- 14 d. The compact commission shall keep minutes that fully and clearly describe all
15 matters discussed in a meeting and provide a full and accurate summary of
16 actions taken and the reasons for taking the action, including a description of the
17 views expressed. The documents considered in connection with an action must
18 be identified in the minutes. The minutes and documents of a closed meeting
19 must remain under seal, subject to release only by a majority vote of the compact
20 commission or order of a court of competent jurisdiction.
- 21 7. Financing of the compact commission.
- 22 a. The compact commission shall pay, or provide for the payment of, the reasonable
23 expenses of the commission's establishment, organization, and ongoing
24 activities.
- 25 b. The compact commission may accept all appropriate revenue sources as
26 provided in subdivision m of subsection 3.
- 27 c. The compact commission may levy on and collect an annual assessment from
28 each member state and impose fees on licensees of member states to whom it
29 grants a compact privilege to cover the cost of the operations and activities of the
30 compact commission and its staff which must, in a total amount, be sufficient to
31 cover its annual budget as approved each year for which revenue is not provided

1 by other sources. The aggregate annual assessment amount for member states
2 must be allocated based upon a formula that the compact commission shall
3 promulgate by rule.

4 d. The compact commission may not incur an obligation before securing the funds
5 adequate to meet the obligation, nor shall the compact commission pledge the
6 credit of any of the member states, except by and with the authority of the
7 member state.

8 e. The compact commission shall keep accurate accounts of all receipts and
9 disbursements. The receipts and disbursements of the compact commission
10 must be subject to the financial review and accounting procedures established
11 under its bylaws. However, all receipts and disbursements of funds handled by
12 the compact commission must be subject to an annual financial review by a
13 certified or licensed public accountant and the report of the financial review must
14 be included in and become part of the annual report of the compact commission.

15 8. Qualified immunity, defense, and indemnification.

16 a. The members, officers, executive director, employees, and representatives of the
17 compact commission must be immune from suit and liability, both personally and
18 in their official capacity, for any claim for damage to or loss of property or
19 personal injury or other civil liability caused by or arising out of any actual or
20 alleged act, error, or omission that occurred, or that the individual against whom
21 the claim is made had a reasonable basis for believing occurred within the scope
22 of compact commission employment, duties, or responsibilities provided that
23 nothing in this subdivision may be construed to protect the individual from suit or
24 liability for any damage, loss, injury, or liability caused by the intentional, willful, or
25 wanton misconduct of that individual. The procurement of insurance of any type
26 by the compact commission may not compromise or limit the immunity granted
27 hereunder.

28 b. The compact commission shall defend any member, officer, executive director,
29 employee, and representative of the compact commission in any civil action
30 seeking to impose liability arising out of any actual or alleged act, error, or
31 omission that occurred within the scope of compact commission employment.

1 duties, or responsibilities, or as determined by the compact commission that the
2 individual against whom the claim is made had a reasonable basis for believing
3 occurred within the scope of compact commission employment, duties, or
4 responsibilities provided that nothing herein may be construed to prohibit that
5 individual from retaining the individual's own counsel at the individual's own
6 expense and provided further that the actual or alleged act, error, or omission did
7 not result from that individual's intentional, willful, or wanton misconduct.

8 c. The compact commission shall indemnify and hold harmless any member, officer,
9 executive director, employee, and representative of the compact commission for
10 the amount of any settlement or judgment obtained against that individual arising
11 out of any actual or alleged act, error, or omission that occurred within the scope
12 of compact commission employment, duties, or responsibilities, or that the
13 individual had a reasonable basis for believing occurred within the scope of
14 compact commission employment, duties, or responsibilities provided that the
15 actual or alleged act, error, or omission did not result from the intentional, willful,
16 or wanton misconduct of that individual.

17 d. Nothing herein may be construed as a limitation on the liability of any licensee for
18 professional malpractice or misconduct, which must be governed solely by any
19 other applicable state laws.

20 e. Nothing in this compact may be interpreted to waive or otherwise abrogate a
21 member state's state action immunity or state action affirmative defense with
22 respect to antitrust claims under the Sherman Act, Clayton Act, or any other state
23 or federal antitrust or anticompetitive law or regulation.

24 f. Nothing in this compact may be construed to be a waiver of sovereign immunity
25 by the member states or by the compact commission.

ARTICLE IX - DATA SYSTEM

- 27 1. The compact commission shall provide for the development, maintenance, operation,
28 and utilization of a coordinated data system.
- 29 2. The compact commission shall assign each applicant for a compact privilege a unique
30 identifier, as determined by the rules.

- 1 3. Notwithstanding any other provision of state law to the contrary, a member state shall
2 submit a uniform data set to the data system on all individuals to whom this compact is
3 applicable as required by the rules of the compact commission, including:
 - 4 a. Identifying information;
 - 5 b. Licensure data;
 - 6 c. Adverse actions against a license or compact privilege and information related to
7 the adverse action;
 - 8 d. Nonconfidential information related to alternative program participation, the
9 beginning and ending dates of the participation, and other information related to
10 the participation not made confidential under member state law;
 - 11 e. Any denial of application for licensure, and the reason for the denial;
 - 12 f. The presence of current significant investigative information; and
 - 13 g. Other information that may facilitate the administration of this compact or the
14 protection of the public, as determined by the rules of the compact commission.
- 15 4. The records and information provided to a member state pursuant to this compact or
16 through the data system, when certified by the compact commission or an agent of the
17 commission, shall constitute the authenticated business records of the compact
18 commission, and must be entitled to any associated hearsay exception in a relevant
19 judicial, quasi-judicial, or administrative proceeding in a member state.
- 20 5. Current significant investigative information pertaining to a licensee in any member
21 state will be available only to other member states.
- 22 6. It is the responsibility of the member states to report any adverse action against a
23 licensee and to monitor the data system to determine whether any adverse action has
24 been taken against a licensee. Adverse action information pertaining to a licensee in
25 any member state will be available to any other member state.
- 26 7. Member states contributing information to the data system may designate information
27 that may not be shared with the public without the express permission of the
28 contributing state.
- 29 8. Any information submitted to the data system which is subsequently expunged
30 pursuant to federal law or the laws of the member state contributing the information
31 must be removed from the data system.

ARTICLE X - RULEMAKING

- 1
- 2 1. The compact commission shall promulgate reasonable rules to effectively and
- 3 efficiently implement and administer the purposes and provisions of the compact. A
- 4 rule has no force or effect if a court of competent jurisdiction holds the rule is invalid
- 5 because the compact commission exercised its rulemaking authority in a manner that
- 6 is beyond the scope and purposes of the compact, or the powers granted under the
- 7 compact, or based upon another applicable standard of review.
- 8 2. The rules of the compact commission must have the force of law in each member
- 9 state, provided that if the rules conflict with the laws or regulations of a member state
- 10 that relate to the procedures, actions, and processes a licensed dietitian is permitted
- 11 to undertake in that state and the circumstances under which the licensed dietitian
- 12 may do so, as held by a court of competent jurisdiction, the rules of the compact
- 13 commission are ineffective in that state to the extent of the conflict.
- 14 3. The compact commission shall exercise its rulemaking powers pursuant to the criteria
- 15 and rules set forth and adopted under this section. Rules become binding on the day
- 16 following adoption or as of the date specified in the rule or amendment, whichever is
- 17 later.
- 18 4. If a majority of the legislatures of the member states rejects a rule or portion of a rule,
- 19 by enactment of a statute or resolution in the same manner used to adopt the compact
- 20 within four years of the date of adoption of the rule, then the rule has no further force
- 21 and effect in any member state.
- 22 5. Rules must be adopted at a regular or special meeting of the compact commission.
- 23 6. Before adoption of a proposed rule, the compact commission shall hold a public
- 24 hearing and allow individuals to provide oral and written comments, data, facts,
- 25 opinions, and arguments.
- 26 7. Before adoption of a proposed rule by the compact commission, and at least thirty
- 27 days in advance of the meeting at which the compact commission will hold a public
- 28 hearing on the proposed rule, the compact commission shall provide a notice of
- 29 proposed rulemaking:
- 30 a. On the website of the compact commission or other publicly accessible platform;

- 1 b. To persons who have requested notice of the compact commission's notices of
2 proposed rulemaking; and
- 3 c. In such other way as the compact commission may by rule specify.
- 4 8. The notice of proposed rulemaking must include:
- 5 a. The time, date, and location of the public hearing at which the compact
6 commission will hear public comments on the proposed rule and, if different, the
7 time, date, and location of the meeting at which the compact commission will
8 consider and vote on the proposed rule;
- 9 b. If the hearing is held via telecommunication, video conference, or other means of
10 communication, the compact commission shall include the mechanism for access
11 to the hearing in the notice of proposed rulemaking;
- 12 c. The text of the proposed rule and the reason for the rule;
- 13 d. A request for comments on the proposed rule from any interested person; and
- 14 e. The manner in which interested persons may submit written comments.
- 15 9. All hearings will be recorded. A copy of the recording and all written comments and
16 documents received by the compact commission in response to the proposed rule
17 must be available to the public.
- 18 10. Nothing in this section may be construed as requiring a separate hearing on each rule.
19 Rules may be grouped for the convenience of the compact commission at hearings
20 required by this section.
- 21 11. The compact commission shall, by majority vote of all members, take final action on
22 the proposed rule based on the rulemaking record and the full text of the rule.
- 23 a. The compact commission may adopt changes to the proposed rule provided the
24 changes do not enlarge the original purpose of the proposed rule.
- 25 b. The compact commission shall provide an explanation of the reasons for
26 substantive changes made to the proposed rule as well as reasons for
27 substantive changes not made that were recommended by commenters.
- 28 c. The compact commission shall determine a reasonable effective date for the rule.
29 Except for an emergency as provided in subsection 12 of article X, the effective
30 date of the rule must be no sooner than thirty days after issuing the notice that
31 the commission adopted or amended the rule.

- 1 12. Upon determination that an emergency exists, the compact commission may consider
2 and adopt an emergency rule with twenty-four hours notice and with opportunity to
3 comment, provided that the usual rulemaking procedures provided in the compact and
4 in this section must be retroactively applied to the rule as soon as reasonably possible,
5 in no event later than ninety days after the effective date of the rule. For the purposes
6 of this provision, an emergency rule is one that must be adopted immediately in order
7 to:
8 a. Meet an imminent threat to public health, safety, or welfare;
9 b. Prevent a loss of compact commission or member state funds;
10 c. Meet a deadline for the promulgation of a rule that is established by federal law
11 or rule; or
12 d. Protect public health and safety.
- 13 13. The compact commission or an authorized committee of the compact commission may
14 direct revision to a previously adopted rule for purposes of correcting typographical
15 errors, errors in format, errors in consistency, or grammatical errors. Public notice of
16 any revision must be posted on the website of the compact commission. The revision
17 must be subject to challenge by any person for a period of thirty days after posting.
18 The revision may be challenged only on grounds that the revision results in a material
19 change to a rule. A challenge must be made in writing and delivered to the compact
20 commission before the end of the notice period. If no challenge is made, the revision
21 will take effect without further action. If the revision is challenged, the revision may not
22 take effect without the approval of the compact commission.
- 23 14. A member state's rulemaking requirements may not apply under this compact.

24 **ARTICLE XI - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

- 25 1. Oversight.
26 a. The executive and judicial branches of state government in each member state
27 shall enforce this compact and take all actions necessary and appropriate to
28 implement this compact.
29 b. Except as otherwise provided in this compact, venue is proper and judicial
30 proceedings by or against the compact commission must be brought solely and
31 exclusively in a court of competent jurisdiction where the principal office of the

1 compact commission is located. The compact commission may waive venue and
2 jurisdictional defenses to the extent it adopts or consents to participate in
3 alternative dispute resolution proceedings. Nothing herein shall affect or limit the
4 selection or propriety of venue in any action against a licensee for professional
5 malpractice, misconduct, or any such similar matter.

6 c. The compact commission must be entitled to receive service of process in any
7 proceeding regarding the enforcement or interpretation of the compact and shall
8 have standing to intervene in that proceeding for all purposes. Failure to provide
9 the compact commission service of process shall render a judgment or order void
10 as to the compact commission, this compact, or promulgated rules.

11 2. Default, technical assistance, and termination.

12 a. If the compact commission determines a member state has defaulted in the
13 performance of its obligations or responsibilities under this compact or the
14 promulgated rules, the compact commission shall provide written notice to the
15 defaulting state. The notice of default shall describe the default, the proposed
16 means of curing the default, and any other action that the compact commission
17 may take and shall offer training and specific technical assistance regarding the
18 default.

19 b. The compact commission shall provide a copy of the notice of default to the other
20 member states.

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

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

- 1 5. A state that has been terminated is responsible for all assessments, obligations, and
2 liabilities incurred through the effective date of termination, including obligations that
3 extend beyond the effective date of termination.
- 4 6. Upon the termination of a state's membership from this compact, that state shall
5 immediately provide notice to all licensees within that state of the termination. The
6 terminated state shall continue to recognize all compact privileges granted pursuant to
7 this compact for a minimum of six months after the date of the notice of termination.
- 8 7. The compact commission may not bear any costs related to a state that is found to be
9 in default or that has been terminated from the compact, unless agreed upon in writing
10 between the compact commission and the defaulting state.
- 11 8. The defaulting state may appeal the action of the compact commission by petitioning
12 the United States district court for the District of Columbia or the federal district where
13 the compact commission has its principal offices. The prevailing party must be
14 awarded all costs of the litigation, including reasonable attorney's fees.
- 15 9. Dispute resolution.
 - 16 a. Upon request by a member state, the compact commission shall attempt to
17 resolve disputes related to the compact that arise among member states and
18 between member and nonmember states.
 - 19 b. The compact commission shall promulgate a rule providing for both mediation
20 and binding dispute resolution for disputes as appropriate.
- 21 10. Enforcement.
 - 22 a. By supermajority vote, the compact commission may initiate legal action against
23 a member state in default in the United States district court for the District of
24 Columbia or the federal district where the compact commission has its principal
25 offices to enforce compliance with the provisions of the compact and its
26 promulgated rules. The relief sought may include both injunctive relief and
27 damages. In the event judicial enforcement is necessary, the prevailing party
28 must be awarded all costs of the litigation, including reasonable attorney's fees.
29 The remedies herein may not be the exclusive remedies of the compact
30 commission. The compact commission may pursue any other remedies available
31 under federal or the defaulting member state's law.

- 1 b. A member state may initiate legal action against the compact commission in the
2 United States district court for the District of Columbia or the federal district
3 where the compact commission has its principal offices to enforce compliance
4 with the provisions of the compact and its promulgated rules. The relief sought
5 may include both injunctive relief and damages. In the event judicial enforcement
6 is necessary, the prevailing party must be awarded all costs of the litigation,
7 including reasonable attorney's fees.
- 8 c. No party other than a member state may enforce this compact against the
9 compact commission.

10 **ARTICLE XII - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT**

- 11 1. The compact shall come into effect on the date on which the compact statute is
12 enacted into law in the seventh member state.
- 13 a. On or after the effective date of the compact, the compact commission shall
14 convene and review the enactment of each of the first seven member states,
15 "charter member states", to determine if the statute enacted by each charter
16 member state is materially different than the model compact statute.
- 17 (1) A charter member state whose enactment is found to be materially different
18 from the model compact statute must be entitled to the default process set
19 forth in article XI.
- 20 (2) If any member state is later found to be in default, is terminated, or
21 withdraws from the compact, the compact commission shall remain in
22 existence and the compact shall remain in effect even if the number of
23 member states is less than seven.
- 24 b. Member states enacting the compact subsequent to the seven initial charter
25 member states must be subject to the process set forth in subdivision u of
26 subsection 3 of article VIII to determine if the member state's enactments are
27 materially different from the model compact statute and whether the member
28 states qualify for participation in the compact.
- 29 c. All actions taken for the benefit of the compact commission or in furtherance of
30 the purposes of the administration of the compact before the effective date of the
31 compact or the compact commission coming into existence must be considered

- 1 to be actions of the compact commission unless specifically repudiated by the
2 compact commission.
- 3 d. Any state that joins the compact subsequent to the compact commission's initial
4 adoption of the rules and bylaws is subject to the rules and bylaws as the rules
5 and bylaws exist on the date on which the compact becomes law in that state.
6 Any rule that has been adopted previously by the compact commission must
7 have the full force and effect of law on the day the compact becomes law in that
8 state.
- 9 2. Any member state may withdraw from this compact by enacting a statute repealing the
10 compact.
- 11 a. A member state's withdrawal may not take effect until one hundred eighty days
12 after enactment of the repealing statute.
- 13 b. Withdrawal may not affect the continuing requirement of the withdrawing state's
14 licensing authority to comply with the investigative and adverse action reporting
15 requirements of this compact before the effective date of withdrawal.
- 16 c. Upon the enactment of a statute withdrawing from this compact, a state
17 immediately shall provide notice of the withdrawal to all licensees within that
18 state. Notwithstanding any subsequent statutory enactment to the contrary, the
19 withdrawing state shall continue to recognize all compact privileges granted
20 pursuant to this compact for a minimum of one hundred eighty days after the date
21 of the notice of withdrawal.
- 22 3. Nothing contained in this compact may be construed to invalidate or prevent any
23 licensure agreement or other cooperative arrangement between a member state and a
24 nonmember state that does not conflict with the provisions of this compact.
- 25 4. This compact may be amended by the member states. No amendment to this compact
26 may become effective and binding upon any member state until it is enacted into the
27 laws of all member states.

ARTICLE XIII - CONSTRUCTION AND SEVERABILITY

- 28
- 29 1. This compact and the compact commission's rulemaking authority must be liberally
30 construed so as to effectuate the purposes and the implementation and administration
31 of the compact. Provisions of the compact expressly authorizing or requiring the

- 1 promulgation of rules may not be construed to limit the compact commission's
2 rulemaking authority solely for those purposes.
- 3 2. The provisions of this compact must be severable and if any phrase, clause, sentence,
4 or provision of this compact is held by a court of competent jurisdiction to be contrary
5 to the constitution of any member state, a state seeking participation in the compact,
6 or of the United States, or the applicability thereof to any government, agency, person,
7 or circumstance is held to be unconstitutional by a court of competent jurisdiction, the
8 validity of the remainder of this compact and the applicability thereof to any other
9 government, agency, person, or circumstance shall not be affected thereby.
- 10 3. Notwithstanding subsection 2, the compact commission may deny a state's
11 participation in the compact or, in accordance with the requirements of subsection 2 of
12 article XI, terminate a member state's participation in the compact, if it determines that
13 a constitutional requirement of a member state is a material departure from the
14 compact. Otherwise, if this compact must be held to be contrary to the constitution of
15 any member state, the compact shall remain in full force and effect as to the remaining
16 member states and in full force and effect as to the member state affected as to all
17 severable matters.

18 **ARTICLE XIV - CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS**

- 19 1. Nothing herein may prevent or inhibit the enforcement of any other law of a member
20 state that is not inconsistent with the compact.
- 21 2. Any laws, statutes, regulations, or other legal requirements in a member state in
22 conflict with the compact are superseded to the extent of the conflict.
- 23 3. All permissible agreements between the compact commission and the member states
24 are binding in accordance with the terms of the agreement.