

SENATE BILL NO. 233

INTRODUCED BY W. CURDY, D. ZOLNIKOV, E. BUTTREY, M. DUNWELL, J. MORIGEAU, S. WEBBER, J.
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A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE INTERSTATE MASSAGE COMPACT;
PROVIDING DEFINITIONS; PROVIDING FOR A MULTISTATE LICENSE FOR MASSAGE THERAPISTS;
PROVIDING FOR CRIMINAL BACKGROUND CHECKS FOR MULTISTATE LICENSURE; PROVIDING
RULEMAKING AUTHORITY; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Enactment -- provisions.** The interstate massage compact is enacted
into law and entered into with all other jurisdictions joining the compact in the form substantially as follows:

ARTICLE 1

PURPOSE

The purpose of this compact is to reduce the burdens on state governments and to facilitate the
interstate practice and regulation of massage therapy with the goal of improving public access to, and the
safety of, massage therapy services. Through this compact, the member states seek to establish a regulatory
framework that provides for a new multistate licensing program. Through this additional licensing pathway, the
member states seek to provide increased value and mobility to licensed massage therapists in the member
states, while ensuring the provision of safe, competent, and reliable services to the public.

(1) This compact is designed to achieve the following objectives, and the member states hereby
ratify the same intentions by subscribing hereto:

(a) increase public access to massage therapy services by providing for a multistate licensing
pathway;

(b) enhance the member states' ability to protect the public's health and safety;

(c) enhance the member states' ability to prevent human trafficking and licensure fraud;

(d) encourage the cooperation of member states in regulating the multistate practice of massage

- 1 therapy;
- 2 (e) support relocating military members and their spouses;
- 3 (f) facilitate and enhance the exchange of licensure, investigative, and disciplinary information
- 4 between the member states;
- 5 (g) create an interstate commission that will exist to implement and administer the compact;
- 6 (h) allow a member state to hold a licensee accountable, even where that licensee holds a
- 7 multistate license;
- 8 (i) create a streamlined pathway for licensees to practice in member states, thus increasing the
- 9 mobility of duly licensed massage therapists; and
- 10 (j) serve the needs of licensed massage therapists and the public receiving their services.
- 11 (2) Nothing in this compact is intended to prevent a state from enforcing its own laws regarding the
- 12 practice of massage therapy.

13 ARTICLE 2

14 DEFINITIONS

15 As used in this compact, except as otherwise provided and subject to clarification by the rules of the

16 commission, the following definitions govern the terms herein:

17 (1) "Active military member" means any person with full-time duty status in the armed forces of the

18 United States, including members of the national guard and reserve.

19 (2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a

20 member state's laws that is imposed by a licensing authority or other regulatory body against a licensee,

21 including actions against an individual's authorization to practice, such as revocation, suspension, probation,

22 surrender in lieu of discipline, monitoring of the licensee, limitation of the licensee's practice, or any other

23 encumbrance on licensure affecting an individual's ability to practice massage therapy, including the issuance

24 of a cease and desist order.

25 (3) "Alternative program" means a nondisciplinary monitoring or prosecutorial diversion program

26 approved by a member state's licensing authority.

27 (4) "Authorization to practice" means a legal authorization by a remote state pursuant to a

28 multistate license permitting the practice of massage therapy in that remote state, which must be subject to the

1 enforcement jurisdiction of the licensing authority in that remote state.

2 (5) "Background check" means the submission of an applicant's criminal history record
3 information, as further defined in 28 C.F.R. § 20.3(d), as amended from the federal bureau of investigation and
4 the agency responsible for retaining state criminal records in the applicant's home state.

5 (6) "Charter member states" means member states who have enacted legislation to adopt this
6 compact where such legislation predates the effective date of this compact as defined in article 12.

7 (7) "Commission" means the government agency whose membership consists of all states that
8 have enacted this compact, which is known as the interstate massage compact commission as defined in
9 article 8, that shall operate as an instrumentality of the member states.

10 (8) "Continuing competence" means a requirement, as a condition of license renewal, to provide
11 evidence of participation in, and completion of, educational or professional activities that maintain, improve, or
12 enhance massage therapy fitness to practice.

13 (9) "Current significant investigative information" means investigative information that a licensing
14 authority, after an inquiry or investigation that complies with a member state's due process requirements, has
15 reason to believe is not groundless and, if proved true, would indicate a violation of that state's laws regarding
16 the practice of massage therapy.

17 (10) "Data system" means a repository of information about licensees who hold multistate licenses,
18 which may include but is not limited to license status, investigative information, and adverse actions.

19 (11) "Disqualifying event" means any event that must disqualify an individual from holding a
20 multistate license under this compact, which the commission may by rule specify.

21 (12) "Encumbrance" means a revocation or suspension of, or any limitation or condition on, the full
22 and unrestricted practice of massage therapy by a licensing authority.

23 (13) "Executive committee" means a group of delegates elected or appointed to act on behalf of,
24 and within the powers granted to them by, the commission.

25 (14) "Home state" means the member state that is a licensee's primary state of residence where the
26 licensee holds an active single-state license.

27 (15) "Investigative information" means information, records, or documents received or generated by
28 a licensing authority pursuant to an investigation or other inquiry.

(16) "Licensee" means an individual who currently holds a license from a member state to fully practice massage therapy, whose license is not a student, provisional, temporary, inactive, or other similar status.

(17) "Licensing authority" means a state's regulatory body responsible for issuing massage therapy licenses or otherwise overseeing the practice of massage therapy in that state.

(18) "Massage therapy", "massage therapy services", and the "practice of massage therapy" means the care and services provided by a licensee as set forth in the member state's statutes and regulations in the state where the services are being provided.

(19) "Member state" means any state that has adopted this compact.

(20) "Multistate license" means a license that consists of authorizations to practice massage therapy in all remote states pursuant to this compact, which must be subject to the enforcement jurisdiction of the licensing authority in a licensee's home state.

(21) "National licensing examination" means a national examination developed by a national association of massage therapy regulatory boards, as defined by commission rule, that is derived from a practice analysis and is consistent with generally accepted psychometric principles of fairness, validity, and reliability, and is administered under secure and confidential examination protocols.

(22) "Remote state" means any member state other than the licensee's home state.

(23) "Rule" means any opinion or regulation promulgated by the commission under this compact, which must have the force of law.

(24) "Single-state license" means a current, valid authorization issued by a member state's licensing authority allowing an individual to fully practice massage therapy that is not a restricted, student, provisional, temporary, or inactive practice authorization and authorizes practice only within the issuing state.

(25) "State" means a state, territory, possession of the United States, or the District of Columbia.

ARTICLE 3

MEMBER STATE REQUIREMENTS

(1) To be eligible to join this compact and to maintain eligibility as a member state, a state shall:

(a) license and regulate the practice of massage therapy;

(b) have a mechanism or entity in place to receive and investigate complaints from the public,

1 regulatory or law enforcement agencies, or the commission about licensees practicing in that state;

2 (c) accept passage of a national licensing examination as a criterion for massage therapy
3 licensure in that state;

4 (d) require that licensees satisfy educational requirements prior to being licensed to provide
5 massage therapy services to the public in that state;

6 (e) implement procedures for requiring the background check of applicants for a multistate license
7 and for the reporting of any disqualifying events, including but not limited to:

8 (i) obtaining and submitting, for each licensee holding a multistate license and each applicant for
9 a multistate license, fingerprint or other biometric-based information to the federal bureau of investigation for
10 background checks;

11 (ii) receiving the results of the federal bureau of investigation record search on background checks
12 and

13 (iii) considering the results of such a background check in making licensure decisions;

14 (f) have continuing competence requirements as a condition for license renewal;

15 (g) participate in the data system, including through the use of unique identifying numbers as
16 described in article 9;

17 (h) notify the commission and other member states, in compliance with the terms of the compact
18 and rules of the commission, of any disciplinary action taken by the state against a licensee practicing under a
19 multistate license in that state, or of the existence of investigative information or current significant investigative
20 information regarding a licensee practicing in that state pursuant to a multistate license;

21 (i) comply with the rules of the commission; and

22 (j) accept licensees with valid multistate licenses from other member states as established by this
23 compact.

24 (2) Individuals not residing in a member state may continue to be able to apply for a member
25 state's single-state license as provided under the laws of each member state. However, the single-state license
26 granted to those individuals may not be recognized as granting a multistate license for massage therapy in any
27 other member state.

28 (3) Nothing in this compact may affect the requirements established by a member state for the

1 issuance of a single-state license.

2 (4) A multistate license issued to a licensee must be recognized by each remote state as an
3 authorization to practice massage therapy in each remote state.

4 ARTICLE 4

5 MULTISTATE LICENSE REQUIREMENTS

6 (1) To qualify for a multistate license under this compact and to maintain eligibility for such a
7 license, an applicant:

8 (a) must hold an active single-state license to practice massage therapy in the applicant's home
9 state;

10 (b) must have completed at least 625 clock hours of massage therapy education or the substantial
11 equivalent, which the commission may approve by rule;

12 (c) must have passed a national licensing examination or the substantial equivalent, which the
13 commission may approve by rule;

14 (d) shall submit to a background check;

15 (e) may not have been convicted or found guilty, or have entered into an agreed disposition, of a
16 felony offense under applicable state or federal criminal law, within 5 years prior to the date of their application,
17 where such a time period may not include any time served for the offense, and provided that the applicant has
18 completed any and all requirements arising as a result of any such offense;

19 (f) may not have been convicted or found guilty, or have entered into an agreed disposition, of a
20 misdemeanor offense related to the practice of massage therapy under applicable state or federal criminal law,
21 within 2 years prior to the date of their application where such a time period may not include any time served for
22 the offense, and provided that the applicant has completed any and all requirements arising as a result of any
23 such offense;

24 (g) may not have been convicted or found guilty, or have entered into an agreed disposition, of any
25 offense, whether a misdemeanor or a felony, under state or federal law, at any time, relating to any of the
26 following:

27 (i) kidnapping;

28 (ii) human trafficking;

- 1 (iii) human smuggling;
- 2 (iv) sexual battery, sexual assault, or any related offenses; or
- 3 (v) any other category of offense that the commission may by rule designate.
- 4 (h) may not have previously held a massage therapy license that was revoked by, or surrendered
- 5 in lieu of, discipline to an applicable licensing authority;
- 6 (i) may not have a history of any adverse action on any occupational or professional license within
- 7 2 years prior to the date of their application; and
- 8 (j) shall pay all required fees.

9 (2) A multistate license granted pursuant to this compact may be effective for a definite period of
10 time concurrent with the renewal of the home state license.

11 (3) A licensee practicing in a member state is subject to all scope of practice laws governing
12 massage therapy services in that state.

(4) The practice of massage therapy under a multistate license granted pursuant to this compact will subject the licensee to the jurisdiction of the licensing authority, the courts, and the laws of the member state in which the massage therapy services are provided.

ARTICLE 5

AUTHORITY OF INTERSTATE MESSAGE COMPACT COMMISSION

AND MEMBER STATE LICENSING AUTHORITIES

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

23 (2) Nothing in this compact, nor any rule of the commission, may be construed to limit, restrict, or
24 in any way reduce the ability of a member state to take adverse action against a licensee's single-state license
25 to practice massage therapy in that state.

(3) Nothing in this compact, nor any rule of the commission, may be construed to limit, restrict, or in any way reduce the ability of a remote state to take adverse action against a licensee's authorization to practice in that state.

(4) Nothing in this compact, nor any rule of the commission, may be construed to limit, restrict, or in any way reduce the ability of a licensee's home state to take adverse action against a licensee's multistate license based upon information provided by a remote state.

(5) Insofar as practical, a member state's licensing authority shall cooperate with the commission and with each entity exercising independent regulatory authority over the practice of massage therapy according to the provisions of this compact.

ARTICLE 6

ADVERSE ACTIONS

(1) A licensee's home state must have exclusive power to impose an adverse action against a licensee's multistate license issued by the home state.

(2) A home state may take adverse action on a multistate license based on the investigative information, current significant investigative information, or adverse action of a remote state.

(3) A home state shall retain authority to complete any pending investigations of a licensee practicing under a multistate license who changes their home state during the course of such an investigation. The licensing authority must also be empowered to report the results of such an investigation to the commission through the data system as described herein.

(4) Any member state may investigate actual or alleged violations of the scope of practice laws in any other member state for a massage therapist who holds a multistate license.

(5) A remote state must have the authority to:

(a) take adverse actions against a licensee's authorization to practice;

(b) issue cease and desist orders or impose an encumbrance on a licensee's authorization to practice in that state;

(c) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as the production of evidence. Subpoenas issued by a licensing authority in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings before it. The issuing licensing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service

1 statutes of the state in which the witnesses or evidence are located.

2 (d) if otherwise permitted by state law, recover from the affected licensee the costs of
3 investigations and disposition of cases resulting from any adverse action taken against that licensee; and

4 (e) take adverse action against the licensee's authorization to practice in that state based on the
5 factual findings of another member state.

6 (6) If an adverse action is taken by the home state against a licensee's multistate license or single-
7 state license to practice in the home state, the licensee's authorization to practice in all other member states
8 must be deactivated until all encumbrances have been removed from such license. All home state disciplinary
9 orders that impose an adverse action against a licensee must include a statement that the massage therapist's
10 authorization to practice is deactivated in all member states during the pendency of the order.

11 (7) If adverse action is taken by a remote state against a licensee's authorization to practice, that
12 adverse action applies to all authorizations to practice in all remote states. A licensee whose authorization to
13 practice in a remote state is removed for a specified period of time is not eligible to apply for a new multistate
14 license in any other state until the specific time for removal of the authorization to practice has passed and all
15 encumbrance requirements are satisfied.

16 (8) Nothing in this compact may override a member state's authority to accept a licensee's
17 participation in an alternative program in lieu of adverse action. A licensee's multistate license must be
18 suspended for the duration of the licensee's participation in any alternative program.

19 (9) Joint investigations:

20 (a) In addition to the authority granted to a member state by its respective scope of practice laws
21 or other applicable state law, a member state may participate with other member states in joint investigations of
22 licensees.

23 (b) Member states shall share any investigative, litigation, or compliance materials in furtherance
24 of any joint or individual investigation initiated under the compact.

25 ARTICLE 7

26 ACTIVE MILITARY MEMBERS

27 AND THEIR SPOUSES

28 Active military members or their spouses shall designate a home state where the individual has a

1 current license to practice massage therapy in good standing. The individual may retain their home state
2 designation during any period of service when that individual or their spouse is on active duty assignment.

3 ARTICLE 8

4 ESTABLISHMENT AND OPERATION OF

5 INTERSTATE MESSAGE COMPACT COMMISSION

6 (1) The compact member states hereby create and establish a joint government agency whose
7 membership consists of all member states that have enacted the compact known as the interstate message
8 compact commission. The commission is an instrumentality of the compact states acting jointly and not an
9 instrumentality of any one state. The commission shall come into existence on or after the effective date of the
10 compact as set forth in article 12.

11 (2) Membership, voting, and meetings:

12 (a) Each member state must have and be limited to one delegate selected by that member state's
13 state licensing authority.

14 (b) The delegate must be the primary administrative officer of the state licensing authority or their
15 designee.

16 (c) The commission shall by rule or bylaw establish a term of office for delegates and may by rule
17 or bylaw establish term limits.

18 (d) The commission may recommend removal or suspension of any delegate from office.

19 (e) A member state's state licensing authority shall fill any vacancy of its delegate occurring on the
20 commission within 60 days of the vacancy.

21 (f) Each delegate must be entitled to one vote on all matters that are voted on by the commission.

22 (g) The commission shall meet at least once during each calendar year. Additional meetings may
23 be held as set forth in the bylaws. The commission may meet by telecommunication, video conference, or other
24 similar electronic means.

25 (3) The commission must have the following powers:

26 (a) establish the fiscal year of the commission;

27 (b) establish code of conduct and conflict of interest policies;

28 (c) adopt rules and bylaws;

- 1 (d) maintain its financial records in accordance with the bylaws;
- 2 (e) meet and take such actions as are consistent with the provisions of this compact, the
3 commission's rules, and the bylaws;
- 4 (f) initiate and conclude legal proceedings or actions in the name of the commission, provided that
5 the standing of any state licensing authority to sue or be sued under applicable law may not be affected;
- 6 (g) maintain and certify records and information provided to a member state as the authenticated
7 business records of the commission, and designate an agent to do so on the commission's behalf;
- 8 (h) purchase and maintain insurance and bonds;
- 9 (i) borrow, accept, or contract for services of personnel, including but not limited to employees of a
10 member state;
- 11 (j) conduct an annual financial review;
- 12 (k) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals
13 appropriate authority to carry out the purposes of the compact, and establish the commission's personnel
14 policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel
15 matters;
- 16 (l) assess and collect fees;
- 17 (m) accept any and all appropriate gifts, donations, grants of money, other sources of revenue,
18 equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all
19 times the commission shall avoid any appearance of impropriety or conflict of interest;
- 20 (n) lease, purchase, retain, own, hold, improve, or use any property real, personal, or mixed, or
21 any undivided interest therein;
- 22 (o) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
23 property real, personal, or mixed;
- 24 (p) establish a budget and make expenditures;
- 25 (q) borrow money;
- 26 (r) appoint committees, including standing committees, composed of members, state regulators,
27 state legislators or their representatives, and consumer representatives and such other interested persons as
28 may be designated in this compact and the bylaws;

1 (s) accept and transmit complaints from the public, regulatory or law enforcement agencies, or the
2 commission to the relevant member state(s) regarding potential misconduct of licensees;

3 (t) elect a chair, vice chair, secretary, and treasurer and such other officers of the commission as
4 provided in the commission's bylaws;

5 (u) establish and elect an executive committee, including a chair and a vice chair;

6 (v) adopt and provide to the member states an annual report;

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

9 (x) perform such other functions as may be necessary or appropriate to achieve the purposes of
10 this compact.

11 (4) The executive committee:

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

14 (i) overseeing the day-to-day activities of the administration of the compact, including compliance
15 with the provisions of the compact, the commission's rules and bylaws, and other such duties as deemed
16 necessary;

17 (ii) recommending to the commission changes to the rules or bylaws, changes to this compact
18 legislation, fees charged to compact member states, fees charged to licensees, and other fees;

19 (iii) ensuring compact administration services are appropriately provided, including by contract;

20 (iv) preparing and recommending the budget;

21 (v) maintaining financial records on behalf of the commission;

22 (vi) monitoring compact compliance of member states and providing compliance reports to the
23 commission;

24 (vii) establishing additional committees as necessary;

25 (viii) exercising the powers and duties of the commission during the interim between commission
26 meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any other
27 powers and duties expressly reserved to the commission by rule or bylaw; and

28 (ix) other duties as provided in the rules or bylaws of the commission.

(b) (i) The executive committee must be composed of seven voting members and up to two ex-officio members as follows:

(A) the chair and vice chair of the commission and any other members of the commission who serve on the executive committee must be voting members of the executive committee; and

(B) other than the chair, vice-chair, secretary, and treasurer, the commission shall elect three voting members from the current membership of the commission.

(ii) The commission may elect ex-officio, nonvoting members as necessary as follows:

(A) one ex-officio member who is a representative of the national association of state massage therapy regulatory boards; and

(B) one ex-officio member as specified in the commission's bylaws.

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

(d) The executive committee shall meet at least annually.

(i) Executive committee meetings must be open to the public, except that the executive committee may meet in a closed, nonpublic session of a public meeting when dealing with any of the matters covered under subsection (6)(d) of this article.

(ii) The executive committee shall give 5 business days' advance notice of its public meetings, posted on its website and as determined to provide notice to persons with an interest in the public matters the executive committee intends to address at those meetings.

(e) The executive committee may hold an emergency meeting when acting for the commission to:

(i) meet an imminent threat to public health, safety, or welfare;

(ii) prevent a loss of commission or participating state funds; or

(iii) protect public health and safety.

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

(6) Meetings of the commission:

(a) All meetings of the commission that are not closed pursuant to this subsection (6) must be open to the public. Notice of public meetings must be posted on the commission's website at least 30 days prior to the public meeting.

(b) Notwithstanding subsection (6)(a) of this article, the commission may convene an emergency public meeting by providing at least 24 hours' prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under article 10, subsection (12). The commission's legal counsel shall certify that one of the reasons justifying an emergency public meeting has been met.

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

(d) The commission may convene in a closed, nonpublic meeting for the commission to discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current or threatened discipline of a licensee by the commission or by a member state's licensing authority;

(iv) current, threatened, or reasonably anticipated litigation;

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

(vi) accusing any person of a crime or formally censuring any person;

(vii) trade secrets or commercial or financial information that is privileged or confidential;

(viii) information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(ix) investigative records compiled for law enforcement purposes;

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

(xi) legal advice;

(xii) matters specifically exempted from disclosure to the public by federal or member state law; or

(xiii) other matters as promulgated by the commission by rule.

(e) If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting

1 will be closed and reference each relevant exempting provision, and such reference must be recorded in the
2 minutes.

3 (f) The commission shall keep minutes that fully and clearly describe all matters discussed in a
4 meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a
5 description of the views expressed. All documents considered in connection with an action must be identified in
6 such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release only
7 by a majority vote of the commission or order of a court of competent jurisdiction.

8 (7) Financing of the commission:

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

11 (b) The commission may accept any and all appropriate sources of revenue, donations, and grants
12 of money, equipment, supplies, materials, and services.

13 (c) The commission may levy on and collect an annual assessment from each member state and
14 impose fees on licensees of member states to whom it grants a multistate license to cover the cost of the
15 operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its
16 annual budget as approved each year for which revenue is not provided by other sources. The aggregate
17 annual assessment amount for member states must be allocated based upon a formula that the commission
18 shall promulgate by rule.

19 (d) The commission may not incur obligations of any kind prior to securing the funds adequate to
20 meet the same, nor may the commission pledge the credit of any member states, except by and with the
21 authority of the member state.

22 (e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts
23 and disbursements of the commission must be subject to the financial review and accounting procedures
24 established under its bylaws. All receipts and disbursements of funds handled by the commission must be
25 subject to an annual financial review by a certified or licensed public accountant, and the report of the financial
26 review must be included in and become part of the annual report of the commission.

27 (8) Qualified immunity, defense, and indemnification:

28 (a) The members, officers, executive director, employees, and representatives of the commission

1 must be immune from suit and liability, both personally and in their official capacity, for any claim for damage to
2 or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act,
3 error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for
4 believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing
5 in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury,
6 or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of
7 insurance of any type by the commission may not in any way compromise or limit the immunity granted
8 hereunder.

9 (b) The commission shall defend any member, officer, executive director, employee, and
10 representative of the commission in any civil action seeking to impose liability arising out of any actual or
11 alleged act, error, or omission that occurred within the scope of commission employment, duties, or
12 responsibilities, or as determined by the commission that the person against whom the claim is made had a
13 reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities,
14 provided that nothing herein may be construed to prohibit that person from retaining their own counsel at their
15 own expense, and provided further, that the actual or alleged act, error, or omission did not result from that
16 person's intentional or willful or wanton misconduct.

17 (c) The commission shall indemnify and hold harmless any member, officer, executive director,
18 employee, and representative of the commission for the amount of any settlement or judgment obtained against
19 that person arising out of any actual or alleged act, error, or omission that occurred within the scope of
20 commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing
21 occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or
22 alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

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

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

28 (f) Nothing in this compact may be construed to be a waiver of sovereign immunity by the member

1 states or by the commission.

2 ARTICLE 9

3 DATA SYSTEM

4 (1) The commission shall provide for the development, maintenance, operation, and utilization of a
5 coordinated database and reporting system.

6 (2) The commission shall assign each applicant for a multistate license a unique identifier, as
7 determined by the rules of the commission.

8 (3) Notwithstanding any other provision of state law to the contrary, a member state shall submit a
9 uniform data set to the data system on all individuals to whom this compact is applicable as required by the
10 rules of the commission, including:

11 (a) identifying information;

12 (b) licensure data;

13 (c) adverse actions against a license and information related thereto;

14 (d) nonconfidential information related to alternative program participation, the beginning and
15 ending dates of such participation, and other information related to such participation;

16 (e) any denial of application for licensure and the reason(s) for such denial (excluding the reporting
17 of any criminal history record information where prohibited by law);

18 (f) the existence of investigative information;

19 (g) the existence of current significant investigative information; and

20 (h) other information that may facilitate the administration of this compact or the protection of the
21 public, as determined by the rules of the commission.

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

26 (5) The existence of current significant investigative information and the existence of investigative
27 information pertaining to a licensee in any member state will only be available to other member states.

28 (6) It is the responsibility of the member states to report any adverse action against a licensee who

1 holds a multistate license and to monitor the database to determine whether adverse action has been taken
2 against such a licensee or license applicant. Adverse action information pertaining to a licensee or license
3 applicant in any member state will be available to any other member state.

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

6 (8) Any information submitted to the data system that is subsequently expunged pursuant to
7 federal law or the laws of the member state contributing the information must be removed from the data system.

8 ARTICLE 10

9 RULEMAKING

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

15 (2) The rules of the commission must have the force of law in each member state, provided
16 however that where the rules of the commission conflict with the laws of the member state that establish the
17 member state's scope of practice as held by a court of competent jurisdiction, the rules of the commission must
18 be ineffective in that state to the extent of the conflict.

19 (3) The commission may exercise its rulemaking powers pursuant to the criteria set forth in this
20 article and the rules adopted thereunder. Rules must become binding as of the date specified by the
21 commission for each rule.

22 (4) If a majority of the legislatures of the member states rejects a rule or portion of a rule, by
23 enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of
24 adoption of the rule, then such rule may not have further force and effect in any member state or to any state
25 applying to participate in the compact.

26 (5) Rules may be adopted at a regular or special meeting of the commission.

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

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

4 (a) on the website of the commission or other publicly accessible platform;

5 (b) to persons who have requested notice of the commission's notices of proposed rulemaking;

6 and

7 (c) in such other way(s) as the commission may by rule specify.

8 (8) The notice of proposed rulemaking must include:

9 (a) the time, date, and location of the public hearing at which the commission will hear public
10 comments on the proposed rule and, if different, the time, date, and location of the meeting where the
11 commission will consider and vote on the proposed rule;

12 (b) if the hearing is held via telecommunication, video conference, or other electronic means, the
13 commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking;

14 (c) the text of the proposed rule and the reason therefor;

15 (d) a request for comments on the proposed rule from any interested person; and

16 (e) the manner in which interested persons may submit written comments.

17 (9) All hearings will be recorded. A copy of the recording and all written comments and documents
18 received by the commission in response to the proposed rule must be available to the public.

19 (10) Nothing in this article may be construed as requiring a separate hearing on each rule. Rules
20 may be grouped for the convenience of the commission at hearings required by this article.

21 (11) The commission shall, by majority vote of all commissioners, take final action on the proposed
22 rule based on the rulemaking record.

23 (a) The commission may adopt changes to the proposed rule provided the changes do not enlarge
24 the original purpose of the proposed rule.

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

28 (c) The commission shall determine a reasonable effective date for the rule. Except for an

1 emergency as provided in subsection 12 of this article, the effective date of the rule may not be sooner than 30
2 days after the commission issuing the notice that it adopted or amended the rule.

3 (12) Upon determination that an emergency exists, the commission may consider and adopt an
4 emergency rule with 24 hours' notice, provided that the usual rulemaking procedures provided in the compact
5 and in this article must be retroactively applied to the rule as soon as reasonably possible, in no event later than
6 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that
7 must be adopted immediately to:

8 (a) meet an imminent threat to public health, safety, or welfare;

9 (b) prevent a loss of commission or member state funds;

10 (c) meet a deadline for the promulgation of a rule that is established by federal law or rule; or

11 (d) protect public health and safety.

12 (13) The commission or an authorized committee of the commission may direct revisions to a
13 previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency,
14 or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The
15 revision may be subject to challenge by any person for a period of 30 days after posting. The revision may be
16 challenged only on grounds that the revision results in a material change to a rule. A challenge must be made
17 in writing and delivered to the commission prior to the end of the notice period. If no challenge is made, the
18 revision will take effect without further action. If the revision is challenged, the revision may not take effect
19 without the approval of the commission.

20 (14) No member state's rulemaking requirements may apply under this compact.

21 ARTICLE 11

22 OVERSIGHT, DISPUTE RESOLUTION,

23 AND ENFORCEMENT

24 (1) Oversight:

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

27 (b) Venue is proper and judicial proceedings by or against the commission must be brought solely
28 and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The

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

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

8 (2) Default, technical assistance, and termination:

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

14 (b) The commission shall provide a copy of the notice of default to the other member states.

15 (3) If a state in default fails to cure the default, the defaulting state may be terminated from the
16 compact upon an affirmative vote of a majority of the delegates of the member states, and all rights, privileges,
17 and benefits conferred on that state by this compact may be terminated on the effective date of termination. A
18 cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of
19 default.

20 (4) Termination of membership in the compact may be imposed only after all other means of
21 securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the
22 commission to the governor, the majority and minority leaders of the defaulting state's legislature, the defaulting
23 state's state licensing authority, and each of the member states' state licensing authority.

24 (5) A state that has been terminated is responsible for all assessments, obligations, and liabilities
25 incurred through the effective date of termination, including obligations that extend beyond the effective date of
26 termination.

27 (6) Upon the termination of a state's membership from this compact, that state shall immediately
28 provide notice to all licensees who hold a multistate license within that state of such termination. The terminated

1 state shall continue to recognize all licenses granted pursuant to this compact for a minimum of 180 days after
2 the date of said notice of termination.

3 (7) The commission may not bear any costs related to a state that is found to be in default or that
4 has been terminated from the compact unless agreed upon in writing between the commission and the
5 defaulting state.

6 (8) The defaulting state may appeal the action of the commission by petitioning the U.S. district
7 court for the District of Columbia or the federal district where the commission has its principal offices. The
8 prevailing party must be awarded all costs of such litigation, including reasonable attorney fees.

9 (9) Dispute resolution:

10 (a) Upon request by a member state, the commission shall attempt to resolve disputes related to
11 the compact that arise among member states and between member and nonmember states.

12 (b) The commission shall promulgate a rule providing for both mediation and binding dispute
13 resolution for disputes as appropriate.

14 (10) Enforcement:

15 (a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions of this
16 compact and the commission's rules.

17 (b) By majority vote as provided by commission rule, the commission may initiate legal action
18 against a member state in default in the United States district court for the District of Columbia or the federal
19 district where the commission has its principal offices to enforce compliance with the provisions of the compact
20 and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event
21 judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including
22 reasonable attorney fees. The remedies herein may not be the exclusive remedies of the commission. The
23 commission may pursue any other remedies available under federal or the defaulting member state's law.

24 (c) A member state may initiate legal action against the commission in the U.S. district court for the
25 District of Columbia or the federal district where the commission has its principal offices to enforce compliance
26 with the provisions of the compact and its promulgated rules. The relief sought may include both injunctive relief
27 and damages. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of
28 such litigation, including reasonable attorney fees.

1 (d) No individual or entity other than a member state may enforce this compact against the
2 commission.

3 ARTICLE 12

4 EFFECTIVE DATE, WITHDRAWAL,
5 AND AMENDMENT

6 (1) The compact must come into effect on the date on which the compact statute is enacted into
7 law in the seventh member state.

8 (a) On or after the effective date of the compact, the commission shall convene and review the
9 enactment of each of the charter member states to determine if the statute enacted by each such charter
10 member state is materially different than the model compact statute.

11 (i) A charter member state whose enactment is found to be materially different from the model
12 compact statute must be entitled to the default process set forth in article 11.

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

16 (b) Member states enacting the compact subsequent to the charter member states must be subject
17 to the process set forth in article 8(3)(w) to determine if their enactments are materially different from the model
18 compact statute and whether they qualify for participation in the compact.

19 (c) All actions taken for the benefit of the commission or in furtherance of the purposes of the
20 administration of the compact prior to the effective date of the compact or the commission coming into
21 existence must be considered to be actions of the commission unless specifically repudiated by the
22 commission.

23 (d) Any state that joins the compact must be subject to the commission's rules and bylaws as they
24 exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted
25 by the commission must have the full force and effect of law on the day the compact becomes law in that state.

26 (2) Any member state may withdraw from this compact by enacting a statute repealing that state's
27 enactment of the compact.

28 (a) A member state's withdrawal may not take effect until 180 days after enactment of the

1 repealing statute.

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

5 (c) Upon the enactment of a statute withdrawing from this compact, a state shall immediately
6 provide notice of such withdrawal to all licensees within that state. Notwithstanding any subsequent statutory
7 enactment to the contrary, such withdrawing state shall continue to recognize all licenses granted pursuant to
8 this compact for a minimum of 180 days after the date of such notice of withdrawal.

9 (3) Nothing contained in this compact may be construed to invalidate or prevent any licensure
10 agreement or other cooperative arrangement between a member state and a nonmember state that does not
11 conflict with the provisions of this compact.

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

14 ARTICLE 13

15 CONSTRUCTION AND SEVERABILITY

16 (1) This compact and the commission's rulemaking authority must be liberally construed so as to
17 effectuate the purposes and the implementation and administration of the compact. Provisions of the compact
18 expressly authorizing or requiring the promulgation of rules may not be construed to limit the commission's
19 rulemaking authority solely for those purposes.

20 (2) The provisions of this compact must be severable, and if any phrase, clause, sentence, or
21 provision of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any
22 member state, a state seeking participation in the compact, or of the United States, or the applicability thereof
23 to any government, agency, person, or circumstance is held to be unconstitutional by a court of competent
24 jurisdiction, the validity of the remainder of this compact and the applicability thereof to any other government,
25 agency, person, or circumstance may not be affected thereby.

26 (3) Notwithstanding subsection (2) of this article, the commission may deny a state's participation
27 in the compact or, in accordance with the requirements of article 11, subsection (2), terminate a member state's
28 participation in the compact, if it determines that a constitutional requirement of a member state is a material

1 departure from the compact. Otherwise, if this compact must be held to be contrary to the constitution of any
2 member state, the compact must remain in full force and effect as to the remaining member states and in full
3 force and effect as to the member state affected as to all severable matters.

4 ARTICLE 14

5 CONSISTENT EFFECT AND CONFLICT

6 WITH OTHER STATE LAWS

7 Nothing herein may prevent or inhibit the enforcement of any other law of a member state that is not
8 inconsistent with the compact. Any laws, statutes, regulations, or other legal requirements in a member state in
9 conflict with the compact are superseded to the extent of the conflict. All permissible agreements between the
10 commission and the member states are binding in accordance with their terms.

11
12 NEW SECTION. **Section 2. Criminal background check for multistate licensure.** (1) Each
13 applicant for multistate licensure to practice massage therapy shall submit a full set of the applicant's
14 fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

15 (2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state
16 and federal criminal history background check.

17 (3) The board may require a licensee renewing a license to submit a full set of the licensee's
18 fingerprints to the board for the purpose of obtaining a state and federal criminal history background check.

19 (4) The Montana department of justice may share the fingerprint data obtained under subsection
20 (1) or (3) with the federal bureau of investigation.

21
22 NEW SECTION. **Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an
23 integral part of Title 37, chapter 33, and the provisions of Title 37, chapter 33, apply to [section 1].

24 (2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 33, part 5, and the
25 provisions of Title 37, chapter 33, part 5, apply to [section 2].

26
27 NEW SECTION. **Section 4. Contingent effective date.** [This act] is effective on the date that the
28 compact has been legislatively enacted into law by the seventh member state. The department of labor and

1 industry shall notify the code commissioner within 15 days of the occurrence of the contingency.

2 - END -