

§18438. Establishment of commission

1. Commission established. The participating states hereby create and establish a joint government agency whose membership consists of all participating states that have enacted the compact. The commission is an instrumentality of the compact states acting jointly and is not an instrumentality of any one state. The commission comes into existence on or after the effective date of the compact as set forth in section 18442.

[PL 2023, c. 664, §1 (NEW).]

2. Membership, voting and meetings. Membership, voting and meetings are governed by this subsection.

A. Each participating state has and is limited to one commissioner selected by that participating state's licensing board or, if the state has more than one licensing board, selected collectively by the participating state's licensing boards. [PL 2023, c. 664, §1 (NEW).]

B. The commissioner must be a member or designee of a participating state's licensing boards. [PL 2023, c. 664, §1 (NEW).]

C. The commission may by rule establish a term of office for commissioners and may by rule or bylaw establish term limits. [PL 2023, c. 664, §1 (NEW).]

D. The commission may recommend to a state licensing board or boards, as applicable, that a commissioner be removed or suspended as a participating state's commissioner. [PL 2023, c. 664, §1 (NEW).]

E. The participating state licensing board or boards, as applicable, shall fill any vacancy of its commissioner on the commission within 60 days of the vacancy. [PL 2023, c. 664, §1 (NEW).]

F. Each commissioner is entitled to one vote on all matters that are voted on by the commission. [PL 2023, c. 664, §1 (NEW).]

G. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telecommunication, videoconference or other means of communication. [PL 2023, c. 664, §1 (NEW).]

H. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in this compact and the bylaws. The commission may meet by telecommunication, videoconferencing or other similar electronic means. [PL 2023, c. 664, §1 (NEW).]

[PL 2023, c. 664, §1 (NEW).]

3. Powers and duties. The commission has the following powers and duties:

A. Establish a code of ethics for the commission; [PL 2023, c. 664, §1 (NEW).]

B. Establish the fiscal year of the commission; [PL 2023, c. 664, §1 (NEW).]

C. Adopt rules and bylaws; [PL 2023, c. 664, §1 (NEW).]

D. Maintain its financial records in accordance with the bylaws; [PL 2023, c. 664, §1 (NEW).]

E. Meet and take actions that are consistent with the provisions of this compact, commission rules and the bylaws; [PL 2023, c. 664, §1 (NEW).]

F. Initiate and conclude legal proceedings or actions in the name of the commission, as long as the standing of any state licensing board to sue or be sued under applicable law is not affected; [PL 2023, c. 664, §1 (NEW).]

- G. Maintain and certify records and information provided to a participating state as the authenticated business records of the commission and designate a person to do so on the commission's behalf; [PL 2023, c. 664, §1 (NEW).]
- H. Purchase and maintain insurance and bonds; [PL 2023, c. 664, §1 (NEW).]
- I. Borrow, accept or contract for services of personnel, including, but not limited to, employees of a participating state; [PL 2023, c. 664, §1 (NEW).]
- J. Conduct an annual financial review; [PL 2023, c. 664, §1 (NEW).]
- K. Hire employees, elect or appoint officers, fix compensation, define duties and grant such individuals appropriate authority to carry out the purposes of the compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters; [PL 2023, c. 664, §1 (NEW).]
- L. Charge a fee, as provided in commission rules, to a licensee for the grant of a compact privilege in a remote state and thereafter, as may be established by commission rule, charge the licensee a compact privilege renewal fee for each renewal period in which that licensee exercises or intends to exercise the compact privilege in that remote state. This paragraph may not be construed to prevent a remote state from charging a licensee a fee for a compact privilege or renewals of a compact privilege, or a fee for the jurisprudence requirement if the remote state imposes such a requirement for the grant of a compact privilege; [PL 2023, c. 664, §1 (NEW).]
- M. Accept appropriate gifts, donations, grants of money or other sources of revenue or supplies, materials and services and receive, utilize and dispose of the same, as long as at all times the commission avoids any appearance of impropriety or conflict of interest; [PL 2023, c. 664, §1 (NEW).]
- N. Lease, purchase, retain, own, hold, improve or use any property, real, personal or mixed, or any undivided interest therein; [PL 2023, c. 664, §1 (NEW).]
- O. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed; [PL 2023, c. 664, §1 (NEW).]
- P. Establish a budget and make expenditures; [PL 2023, c. 664, §1 (NEW).]
- Q. Borrow money; [PL 2023, c. 664, §1 (NEW).]
- R. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives and consumer representatives and such other interested persons as may be designated in this compact and the bylaws; [PL 2023, c. 664, §1 (NEW).]
- S. Provide and receive information from, and cooperate with, law enforcement agencies; [PL 2023, c. 664, §1 (NEW).]
- T. Elect a chair, vice-chair, secretary and treasurer and such other officers of the commission as provided in the bylaws; [PL 2023, c. 664, §1 (NEW).]
- U. Establish and elect an executive board; [PL 2023, c. 664, §1 (NEW).]
- V. Determine whether a state's enacted compact legislation is materially different from the model compact language such that a state would not qualify for participation in the compact; [PL 2023, c. 664, §1 (NEW).]
- W. Adopt and provide to the participating states an annual report; and [PL 2023, c. 664, §1 (NEW).]
- X. Perform any other functions as may be necessary or appropriate to achieve the purposes of this compact. [PL 2023, c. 664, §1 (NEW).]
[PL 2023, c. 664, §1 (NEW).]

4. Meetings of the commission. Meetings of the commission are governed by this subsection.

A. Except as provided in paragraphs B and C, all meetings must be open to the public, and public notice of meetings must be posted on the commission's publicly accessible website at least 30 days prior to a public meeting. [PL 2023, c. 664, §1 (NEW).]

B. The commission may convene a public meeting for any of the reasons it may dispense with notice of proposed rulemaking under section 18440 by providing at least 24 hours' notice on the commission's publicly accessible website and by any other means described in the rules. [PL 2023, c. 664, §1 (NEW).]

C. The commission may convene in a closed, nonpublic meeting or convene in a closed meeting for part of an otherwise public meeting to receive legal advice or to discuss:

- (1) Noncompliance of a participating state with its obligations under the compact;
- (2) 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;
- (3) Current or threatened discipline of a licensee or compact privilege holder by the commission or by a participating state's licensing authority;
- (4) Current, threatened or reasonably anticipated litigation;
- (5) Negotiation of contracts for the purchase, lease or sale of goods, services or real estate;
- (6) Accusing any person of a crime or formally censuring any person;
- (7) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- (8) Disclosure of information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (9) Disclosure of investigative records compiled for law enforcement purposes;
- (10) Disclosure of 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;
- (11) Legal advice;
- (12) Matters specifically exempted from disclosure by federal or participating state statute; or
- (13) Other matters as promulgated by commission rule. [PL 2023, c. 664, §1 (NEW).]

D. If a meeting, or portion of a meeting, is closed pursuant to paragraph B, the presiding officer of the meeting shall state that the meeting is closed and shall reference each relevant exempting provision and that reference must be recorded in the minutes. [PL 2023, c. 664, §1 (NEW).]

E. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction. [PL 2023, c. 664, §1 (NEW).]

[PL 2023, c. 664, §1 (NEW).]

5. Financing of the commission. Financing of the commission is governed by this subsection.

A. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities. [PL 2023, c. 664, §1 (NEW).]

B. The commission may receive revenue from any appropriate sources and accept donations and grants of money, equipment, supplies, materials and services. [PL 2023, c. 664, §1 (NEW).]

C. The commission may levy on and collect an annual assessment from each participating state or impose compact privilege fees on licensees of participating states to whom a compact privilege is granted to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each fiscal year for which revenue is not provided by other sources. The aggregate annual assessment amount levied on participating states must be allocated based upon a formula to be determined by commission rule. [PL 2023, c. 664, §1 (NEW).]

D. The commission may not incur obligations of any kind prior to securing the funds adequate to meet those obligations, and the commission may not pledge the credit of any of the participating states, except by and with the authority of the participating state. [PL 2023, c. 664, §1 (NEW).]

E. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the financial review and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission are subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review must be included in and become part of the annual report of the commission. [PL 2023, c. 664, §1 (NEW).]

[PL 2023, c. 664, §1 (NEW).]

6. Executive board. The establishment of an executive board is governed by this subsection.

A. The executive board has the power to act on behalf of the commission according to the terms of this compact and commission rules. [PL 2023, c. 664, §1 (NEW).]

B. The executive board is composed of up to 7 members:

(1) The chair, vice-chair, secretary and treasurer of the commission and any other members of the commission who serve on the executive board are voting members of the executive board; and

(2) Other than the chair, vice-chair, secretary and treasurer, the commission may elect up to 3 voting members from the current membership of the commission. [PL 2023, c. 664, §1 (NEW).]

C. The commission may remove any member of the executive board as provided in the bylaws. [PL 2023, c. 664, §1 (NEW).]

D. The executive board shall meet at least once annually. [PL 2023, c. 664, §1 (NEW).]

E. The executive board shall:

(1) Oversee the day-to-day activities of the administration of the compact including compliance with the provisions of the compact, the commission's rules and bylaws;

(2) Recommend to the commission changes to the rules or bylaws, changes to this compact legislation, fees charged to participating states, fees charged to licensees and other fees;

(3) Ensure compact administration services are appropriately provided, including by contract;

(4) Prepare and recommend the budget;

(5) Maintain financial records on behalf of the commission;

(6) Monitor compact compliance of participating states and provide compliance reports to the commission;

(7) Establish additional committees as necessary;

(8) Exercise the powers and duties of the commission during the interim between commission meetings, except for adopting or amending commission rules or bylaws, or exercising any other powers and duties exclusively reserved to the commission by the commission's rules or bylaws; and

(9) Perform other duties as provided in rules or bylaws. [PL 2023, c. 664, §1 (NEW).]
[PL 2023, c. 664, §1 (NEW).]

7. Qualified immunity, defense and indemnification. Qualified immunity, defense and indemnification are governed by this subsection.

A. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission may not in any way compromise or limit the immunity granted under this subsection. [PL 2023, c. 664, §1 (NEW).]

B. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or as determined by the commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph may be construed to prohibit that person from retaining that person's own counsel, and as long as the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct. [PL 2023, c. 664, §1 (NEW).]

C. Notwithstanding paragraph A, if any member, officer, executive director, employee or representative of the commission is held liable for the amount of any settlement or judgment arising out of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, the commission shall indemnify and hold harmless that individual as long as the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person. [PL 2023, c. 664, §1 (NEW).]

D. This subsection may not be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws. [PL 2023, c. 664, §1 (NEW).]

E. This compact may not be interpreted to waive or otherwise abrogate a participating state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act or any other state or federal antitrust or anticompetitive law or regulation. [PL 2023, c. 664, §1 (NEW).]

F. This compact may not be construed to be a waiver of sovereign immunity by the participating states or by the commission. [PL 2023, c. 664, §1 (NEW).]
[PL 2023, c. 664, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 664, §1 (NEW).

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