

MEMORANDUM

To: MIC3 Commissioners
From: Embry Merritt Womack Nance, PLLC
MIC3 General Counsel
Date: May 18, 2022
Re: Compact Citation Correction

I. Issue Summary

This memo was prepared at the request of the MIC3 Commission to summarize the issues surrounding a citation issue that has been identified in the Interstate Compact on Educational Opportunity for Military Children (the “Compact”), which has been codified in state laws across the country.

There is an incorrect citation in the model language of the Compact in Article II(A) and in Article III(A)(1), both of which refer to “members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. **Section** 1209 and 1211.” (emphasis added). These provisions should both cite instead to 10 U.S.C. **Chapter** 1209 and 1211. This is a scrivener’s (i.e. technical) error in a section of the Compact which controls its coverage area, and as such it is best practice that the citation error should be corrected in each impacted state.

II. Options and Analysis

The worst-case impact of this error is that a strict reading of the Compact could be construed to render the Compact inapplicable to all members of the National Guard and Reserve. Though rules of statutory construction and legislative intent support the argument that the Compact was clearly intended to apply to National Guard and Reserve members who are on active duty pursuant to federal orders, the replacement citations will remove any ambiguity, repair the defect and affirm the Compact’s application of benefits as originally intended.

Correcting these citations can be accomplished in two possible ways: through technical update to the statute, or through a formal amendment. Technical updates are strongly preferred here, and each impacted state is encouraged to pursue making a technical amendment to their Compact statute in order to correct this error. In situations where a technical amendment is not possible, a formal statutory amendment may be necessary. States are cautioned not to make any additional changes to their Compact statutes, as doing so could jeopardize their membership in the Compact. The Compact should be amended as efficiently and quickly as possible, and where that requires a formal amendment to a state’s Compact statute, that state should be careful not to change any other part thereof.

Simultaneously with this effort to amend impacted Compact statutes across the country, a new Rule addressing the interpretation of this section of the Compact is anticipated to be placed under consideration with the Commission. Until your state’s Compact statute has been corrected, please refer to the Commission’s Rules and/or any future legal advisories issued for direction as to how to interpret Article II(A) and Article III(A)(1) of the Compact.

III. Conclusion

The model language of the Interstate Compact on Educational Opportunity for Military Children contains a technical error in a citation to federal law. This error should be corrected as quickly and efficiently as possible in each member state without affecting other provisions of the Compact legislation.