The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1316
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Grimsley
SUBJECT:	Nurse Licensure Compact
DATE:	March 2, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1316 authorizes Florida to enter the revised Nurse Licensure Compact (NLC), a multi-state agreement that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. The bill enacts the NLC into law, which is a prerequisite for joining the compact.

A nurse who is issued a multi-state license from a state that is a party to the NLC is permitted to practice in any state that is also a party to the compact. However, the nurse must comply with the practice laws of the state in which he or she is practicing or where the patient is located. A party state may continue to issue a single-state license, authorizing practice only in that state.

The bill has an indeterminate fiscal impact on the Department of Health (DOH).

The bill is effective on December 31, 2018, or upon enactment of the NLC into law by 26 states, whichever occurs first.

II. Present Situation:

The Nurse Practice Act, ch. 464, F.S., governs the licensure and regulation of nurses in Florida. The Department of Health (DOH) is the licensing agency and the Board of Nursing (board) is the

regulatory authority. The board comprises 13 members appointed by the Governor and confirmed by the Senate.[1]

To be licensed as a nurse by examination, an individual must:
- Submit an application with the appropriate fee;
- Satisfactorily complete a criminal background screening;
- Demonstrate English competency;
- Successfully complete an approved nursing educational program; and
- Pass a licensure exam.[2]

A nurse from out of state who wishes to work temporarily in the state of Florida may obtain licensure via examination or endorsement. Requirements for licensure by endorsement can be found in s. 464.009, F.S., and include:
- Holding a valid license to practice professional or practical nursing in another state or territory of the United States, provided that, when the applicant secured his or her original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time;
- Meeting the qualifications for Florida licensure examination and having successfully completed a state, regional, or national examination which is substantially equivalent to or more stringent than the Florida examination; or
- Having actively practiced nursing in another state, jurisdiction, or territory of the United States for two of the preceding three years without a license being acted against by the licensing authority of any jurisdiction.

Any applicant for temporary licensure via endorsement must submit to an electronic fingerprint scanning procedure through the Florida Department of Law Enforcement (FDLE) for the purpose of a criminal history records check. An applicant who has ever been found guilty of, or pled guilty or no contest/nolo contendere to, any charge other than a minor traffic offense must list each offense on the application.[3]

Health care boards or the DOH are not permitted to issue a license, certificate, or registration to any candidate if the applicant:
- Has been convicted of, or entered a plea of nolo contendere to, regardless of adjudication, a felony, under ch. 409, F.S., (relating to social and economic assistance), ch. 817, F.S., (relating to fraudulent practices), ch. 893, F.S., (relating to drug abuse prevention and control), or similar felony offense(s) in another state or jurisdiction;
- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss 801-970 (relating to controlled substances) or 42 U.S.C. ss 1395-1396 (relating to public health, welfare, Medicare, and Medicaid issues);

[1] Section 464.004(1), F.S.
[2] Section 464.008, F.S., For its licensure examination, the department uses the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.
[3] Florida Board of Nursing, *Licensed Practical Nurse & Registered Nurse by Endorsement* (page modified November 20, 2015) *available at* http://floridasnursing.gov/licensing/licensed-practical-nurse-registered-nurse-by-endorsement/ (last visited Feb. 2, 2016).

- Has been terminated for cause from the Medicaid program pursuant to s. 409.913, F.S., unless the candidate has been in good standing for the most recent five years;
- Has been terminated for cause, pursuant to the appeals procedures established by the state or federal government, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent five years and the termination occurred at least 20 years before the date of application; or
- Is currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.[4]

Licenses are renewed biennially.[5] Each renewal period, a registered nurse (RN) or licensed practical nurse (LPN) must document completion of one contact hour of continuing education for each calendar month of the licensure cycle.[6] As part of the total continuing education hours required, all licensees must complete a two-hour course on the prevention of medical errors and a two-hour course in Florida laws and rules.[7] Effective August 1, 2017, all licensees must also complete a two-hour course in recognizing impairment in the workplace.[8]

Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governing authority, or establish uniform guidelines, standards, or procedures for the compact's member states.[9] Article I, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other, without the consent of Congress. Interstate agreements that encroach on the federal government's power are subject to congressional approval, however.[10] Florida is a party to at least 25 interstate compacts, including the Interstate Compact on Educational Opportunity for Military Children, Compact on Adoption and Medical Assistance, and the Compact on the Placement of Children.[11]

The Nurse Licensure Compact

The National Council of State Boards of Nursing (council) administers the Nurse Licensure Compact (NLC). The council is a non-profit organization that coordinates the efforts of the member states. The council includes the boards of nursing in the 50 states, the District of Columbia, and four U.S. Territories.

[4] Id.
[5] Section 464.013, F.S.
[6] Rule 64B9-5.002, F.A.C. A course in HIV/AIDS is required in the first biennium only and a domestic violence course is required every third biennium.
[7] Rule 64b9-5.011, F.A.C.
[8] *Supra* note 5 and Rule 64B9-5.014, F.A.C.
[9] Council of State Governments, *Capitol Research: Interstate Compacts*, http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history (last visited Feb. 2, 2016).
[10] *See Virginia v. Tennessee*, 148 U.S. 503 (1893) and *New Hampshire v. Maine*, 426 U.S. 363 (1976).
[11] OPPAGA, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report* (November 20, 2015) (on file in the Senate Committee on Health Policy).

The NLC allows RNs and LPNs the ability to practice in all member states by maintaining a single license in their primary state of residence.[12] A second compact covers Advanced Practice Registered Nurses, such as nurse anesthetists, nurse practitioners, nurse midwives, and clinical nurse specialists. Currently, 25 states have enacted the original NLC legislation,[13] and 1.4 million of the nation's nurses hold a multistate license.[14]

To join the NLC, a state must pass the NLC model legislation, the state board of nursing must implement the compact, and the state licensing agency must pay an annual fee of $6,000.[15] States that adopted the NLC prior to revisions made in 2015 must adopt the revised NLC to become members of the new compact.[16]

The council also manages NURSYS™, the national database for verification of nurse licensure, discipline, and practice privileges for RNs licensed by participating boards of nursing, including all states in the compact. Fifty-three states or territories participate in the NURSYS™ database, including Florida.

There are three publicly available components to the verification system:
- e-Notify which provides real-time licensure and publicly available discipline data to institutions about nurses employed by that institution and for nurses to manage their licenses statuses and renewals;
- Licensure QuickConfirm that allows employers and recruiters to receive licensure and discipline information in one location; and
- Nurse Licensure Verification service which enables nurses to verify their licenses from a participating board when applying for endorsement for $30 per license type, per each board.[17]

2015 Revised Nurse Licensure Compact

Under the NLC, an applicant for a license to practice as an RN or LPN has to apply in his or her home state for a multistate license.[18] The home state is the applicant's primary state of residence.[19] The NLC has 11 articles covering areas such as general jurisdiction, application process, governance, and rule-making.

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[12] The compact model rules defined "primary state of residence" to mean the state of a person's declared, fixed permanent and principal home for legal purposes.
[13] Id. The 25 states are: Arizona, Arkansas, Colorado, Delaware, Idaho, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin.
[14] Florida Dep't of Health, *House Bill 1061 Analysis* (January 11, 2016) (on file with the Senate Committee on Health Policy).
[15] *Supra* note 16.
[16] *Supra* note 15.
[17] National Council of State Boards of Nursing, *License Verification (Nursys.com)* https://www.ncsbn.org/license-verification.htm (last visited Feb. 2, 2016).
[18] A multistate license is a license to practice as an RN or LPN/LVN issued by a home state licensing board that authorizes the license holder to practice in all party states under a multistate licensure privilege.
[19] Pursuant to the model rules developed under the prior NLC, a nurse's home state may be evidenced by a drivers' license with a home address, voter registration card with a home address, federal income tax return, military documentation of state of legal residence, or a W2 from the U.S. government or any bureau, division, or agency thereof. *See* Nurse Licensure Compact Administrators, *Nurse Licensure*

OPPAGA Review of the NLC

2006 OPPAGA Report

In 2006, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the possibility of Florida adopting the original NLC.[20] The OPPAGA concluded that adopting the NLC would allow the state to alleviate short-term nursing shortages but would not resolve the state's long-term nursing shortage. The report identified several benefits that would be realized by adopting the NLC.

Conversely, the report also identified several disadvantages to joining the compact at that time:

- Potentially, there could be an increase in disciplinary cases, both domestic and multistate, which could have a negative fiscal impact on the DOH;
- Florida's continuing education requirements would not apply to a nurse working in Florida but whose home state is not Florida;
- A nurse whose home state was not Florida may not be subject to a criminal background screening because some party states did not a require criminal background screening for licensure;
- Public access to licensure and disciplinary action may be impaired; and
- The DOH and board will incur some initial start-up costs in implementing the NLC.

Additionally, OPPAGA identified barriers to implementing the original NLC legislation:

- The provisions of the original NLC language may conflict with Florida's public records and open meetings laws;
- The original NLC provided general and broad authorization for the compact administrators to develop rules that were required to be adopted by party states, which raised concern about an unlawful delegation of legislative authority;
- The DOH and the board would need to educate nurses and employers on the NLC and its requirements for the NLC to operate as intended; and
- A compact nurse is not required to notify the board when he or she enters the state to practice nursing, making it difficult for the workforce data to be captured.

The report made several recommendations, including seeking approval to use alternative compact language to address the barriers identified in the report. Other recommendations including authorizing the board to require employers to report employment data, providing a later effective date to allow for education of the public regarding the NLC, and requiring the board to report information to the legislature on the effect of the NLC two years after its implementation.

Compact Model Rules and Regulations, (Rev. Nov. 13, 2012, Aug. 4, 2008, Sept. 16, 2004), *available at* https://www.ncsbn.org/NLC_Model_Rules.pdf (last visited Feb. 2, 2016).

[20] OPPAGA, *Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nursing Shortage*, Report No. 06-02 (Jan. 2006) *available at* http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-02 (last visited Feb. 2, 2016).

2015 OPPAGA Memorandum

In 2015, the OPPAGA reviewed the revised NLC to determine if it adequately addresses concerns identified in the 2006 report.[21] The OPPAGA found that the revised NLC resolved some of the barriers and disadvantages listed above, and specifically it found:

- The revised NLC partially addresses the concerns regarding constitutional issues related to public meetings but did not address public records concerns:
  - Under the revised NLC, there are provisions requiring the commission to publicly notice meetings on its website, as well as the websites of party states. However, the commission is allowed to have closed door meetings to address certain issues. Such meetings may be deemed inconsistent with Florida's open meetings law.
  - A party state may still designate information it provides as confidential and restrict the sharing of such information. However, once the information is in the possession of the board, it may be considered a public record under Florida law, available through the board.
- The revised NLC addresses the issue of delegation of legislative authority, by limiting the scope of the rules the commission may adopt to only those rules that would facilitate and coordinate the implementation and administration of the NLC. The OPPAGA suggests that the Legislature include an expiration date, an automatic repeal provision, or a required review of the NLC to provide the legislature with an opportunity to review the rules adopted by the commission;
- The revised NLC does not become effective until it has been enacted by 26 states or December 31, 2018, whichever is earlier. This provides the state with the time needed to educate nurses and employers about the NLC.
- The revised NLC does not require employers of compact nurses who are practicing in a state under a multistate licensure privilege to report such employment to the state's board of nursing;
- Public access to nurse disciplinary information has improved due to the increased state participation in NURSYS®, the coordinated licensure information system;
- The revised NLC requires a criminal background screening for licensees. However, this requirement only applies to new multistate licensure applicants, and a nurse who currently holds a multistate license will not have to undergo a criminal background screening unless required by his or her home state; and
- The NLC does not address continuing education requirements. Although most states require some continuing education, not all states do. Florida authorities would be unable to enforce continuing education requirements for those practicing in the state under the multistate licensing privilege.

The OPPAGA advises that the revised NLC does not affect the benefits it identified in its 2006 report. In addition to those benefits, it noted that as a member of the NLC, the processing time and resources required to process a licensure by endorsement would be reduced or eliminated. Florida would also be able to access investigative information earlier and would be able to open its own investigation if the nurse is practicing in this state.

[21] OPPAGA, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report,* A Presentation to the House Select Committee on Affordable Healthcare Access (December 1, 2015) *available at* http://www.oppaga.state.fl.us/Presentations.aspx (last visited Feb 2, 2016).

Florida Nursing Workforce

The Florida Center for Nursing was established by the Legislature in 2001, to address the issues of supply and demand for nursing, including the recruitment, retention, and utilization of nurse workforce resources.[22] The Florida Center for Nursing is authorized to request any information held by the board regarding nurses licensed in this state, holding a multistate license, or any information reported by employers of such nurses, other than personally identifiable information.

The Florida Center for Nursing prepares long-range forecasts of nurse supply and demand periodically to assist with the state's planning. The last published report was posted in October 2010 for the forecasting period of 2010-2025. The nursing supply shortage was projected to worsen beginning in 2014 with the combination of health care reform, an aging population requiring more health care services, and as older nurses retired from the workforce.[23]The 2010 model projected a shortage of 50,000 RNs by 2025.[24] The shortage of LPNs was projected to be 13,250 by 2025.[25]

The Long-Term Employment projections program of the Department of Economic Opportunity identifies Registered Nurses as an occupation where employment is expected to grow from 168,885 individuals to 196,503 or 16.4 percent in the next eight years.[26] Nurse Practitioners, while a smaller occupational group, have a higher expected growth rate of 30.9 percent over the 8 year span growing from 7,199 individuals to 9,421.[27] Nursing and residential care facilities rank fifth overall in the Florida's fastest growing industries, with a minimum of 10,000 jobs.

Nursing is the eighth fastest growing occupation, with a 30.9 percent growth rate and a median hourly wage in 2015 of $44.22 for nurse practitioners.[28] Registered nurses are expected to gain the fifth most jobs in the state over the next eight years, more than 52,000. These jobs have a median hourly rate in 2015 of $29.89 and require a minimum education level of an associate's degree.[29]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars

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[22] Chapter 2001-277, L.O.F. and s. 464.0195, F.S.
[23] Florida Center for Nursing, *Technical Report: Forecasting Nurse Supply and Demand in Florida* (Oct. 2010) p. 16, *available at* https://www.flcenterfornursing.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=14&PortalId=0&TabId=151 (last visited Feb. 2, 2016).
[24] Id at 17.
[25] Id at 18.
[26] Department of Economic Opportunity, *Florida Jobs by Occupation - 2015-2013 Projections Statewide,* http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/employment-projections (last visited Feb. 2, 2016).
[27] Id.
[28] Id at *Fastest Growing Occupations* Tab.
[29] Id at *Occupations Gaining the Most New Jobs* Tab.

lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[30] The sovereign immunity recovery limits do not prevent a plaintiff from obtaining a judgment in excess of the limitation, but the plaintiff cannot recover the excess damages without action by the Legislature.[31]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[32] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[33]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[34] The court explained:

> Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[35] Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility

[30] Section 768.28(5), F.S.
[31] *Id.*
[32] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[33] *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).
[34] *Id.* at 703.
[35] Florida Department of Health and Rehabilitative Services.

> to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[36]

III. Effect of Proposed Changes:

The bill adopts the revised Nurse Licensure Compact (NLC) into state law.

Section 1 amends s. 456.073, F.S., relating to disciplinary proceedings for boards within the Department of Health (DOH's) jurisdiction. The DOH is required to report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure system pursuant to s. 464.0095, F.S. This reporting is a requirement of the NLC.

Section 2 amends s. 456.076, F.S., relating to treatment programs for impaired practitioners. The bill requires the consultant under the impaired practitioner program to disclose to the DOH, upon the DOH's request, whether an applicant for a multistate license under s. 464.0095, F.S., is participating in a treatment program and must report to the DOH when a nurse holding a multistate license under s. 464.0095, F.S., enters a treatment program. A nurse holding a multistate license under s. 464.0095, F.S., must report to the DOH within two business days after entering a treatment program pursuant to this section.

Section 3 amends s. 464.003, F.S., to modify definitions to recognize that a nurse may hold a multistate license.

Section 4 amends s. 464.004, F.S., to appoint the executive director of the Board of Nursing or his or her designee as the state administrator of the Nurse Licensure Compact, as required under the NLC.

Section 5 amends 464.008, F.S., relating to licensure by examination to incorporate the multistate licensure process. The bill authorizes an applicant who resides in this state, meets the licensure requirements, and meets the criteria for multistate licensure, to request the issuance of a multistate license from the DOH.

[36] *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

A nurse who holds a single-state license in this state and applies to the DOH for a multistate license must meet the eligibility criteria for a multistate license under s. 464.0095, F.S., and must pay an application and licensure fee to change his or her licensure status. A person who holds an active multistate license in another state pursuant to the NLC is exempt from the licensure requirements in Florida.

The bill requires the DOH to conspicuously distinguish a multistate license from a single-state license.

Section 6 amends s. 464.009, F.S., relating to licensure by endorsement, to exempt a person who holds an active multistate license in another state from the requirements of licensure by endorsement in Florida.

Section 7 enacts the NLC under s. 464.0095, F.S., and enters Florida into the compact with all other jurisdictions legally joining the NLC. The compact includes 11 Articles and is substantially similar to the model compact language.

Article I provides the general findings and declaration of purpose for the compact. The general findings under Article I include:

- The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- The expanded mobility of nurses and the use of advanced communication technologies as part of the nation's health care delivery system require greater coordination among states in the areas of nurse licensure and regulation;
- New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
- Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

The general purposes for the compact are to:

- Facilitate the states' responsibility to protect the public's health and safety;
- Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- Facilitate the exchange of information among party states in the areas of nurse regulation, investigation, and adverse action;
- Promote compliance with the laws governing the practice of nursing in each jurisdiction;
- Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- Decrease redundancies in the consideration and issuance of nurse licenses; and
- Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II creates the definitions applicable to the compact.

"Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

"Alternative program" means a non-disciplinary monitoring program approved by a licensing program.

"Commission" means the Interstate Commission of Nurse Licensure Administrators established by this compact.

"Compact" means the Nurse Licensure Compact recognized, established, and entered into by the state under this compact.

"Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.

"Current significant investigate information" means:
(a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
(b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

"Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

"Home state" means the party state that is the nurse's primary state of residence.

"Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

"Multistate license" means a license to practice as a registered nurse (RN) or a licensed practical or vocational nurse (LPN/VN) issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

"Multistate licensure privilege" means a legal authorization associated with a multistate licensure permitting the practice of nursing as either an RN or LPN/VN in a remote state.

"Nurse" means an RN or LPN/VN, as those terms are defined in each party state's practice laws.

"Party state" means any state that has adopted this compact.

"Remote state" means a party state other than the home state.

"Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multi-state licensure privilege to practice in any other party state.

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

"State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing disciple. The term does not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Article III provides for the compact's general provisions and jurisdiction as follows:

- Each party state will recognize a multistate license to practice registered or licensed practical or vocational nursing issued by a home state to a resident in that state as authorizing the RN or LPN/VN to practice in its state.
- The state must ensure that each applicant fulfills the following criteria to obtain or retain a multistate license in the home state:
  - Has met the home state's qualifications for licensure or renewal;
  - Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN pre-licensure education program or other approved educational program with a comparable pre-licensure education program.
  - Demonstrates a proficiency in English, if the applicant is a graduate of a foreign pre-licensure program not taught in English;
  - Has successfully passed an NCLEX-RN or NCLEX-PN Examination or recognized predecessor, as applicable;
  - Is eligible for or holds an active, unencumbered license;
  - Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for criminal history check with the FBI and the state's criminal records;
  - Has not been convicted or found guilty, or has entered into an agreed disposition other than a disposition that results in nolle prosequi, of a felony offense under applicable state or federal law;
  - Has not been convicted or found guilty, or entered into an agreed disposition other than a disposition that results in a nolle prosequi, of a misdemeanor offense related to the practice of nursing, as determined on a case by case basis;
  - Is not currently enrolled in an alternative program;
  - Is subject to self-disclosure requirements regarding current participation in an alternative program; and
  - Has a valid social security number.
- All party states are required, in accordance with existing state due process law, to take adverse action against a nurse's multistate license privilege, such as revocation, suspension, probation, or cease and desist actions. If a party state takes such action, the party state is required to notify the administrator of the coordinated licensure information system (CLIS).

The administrator of the CLIS must promptly notify the home state of any such actions by a remote state.

- A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time the service is provided. The practice of nursing is not limited to patient care but includes all nursing practice as defined by the state practice laws of the party state in which the patient is located.
- The practice of nursing in a party state under a multistate license subjects a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the patient is located at the time the service is provided.
- A person not residing in a party state shall continue to be able to apply for a party state's single-state license. The issuance of a single-state license in a party state does not grant a nurse the privilege to practice in any other party state. The compact does not affect the requirements established by a party state for the issuance of a single-state license.
- A nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that the nurse who changes his or her primary state of residence after the effective date meets all of the multistate licensure requirements to obtain a multistate license from a new home state. A nurse who fails to satisfy the multistate licensure requirements due to a disqualifying event occurring after the effective date is ineligible to retain or renew his or her multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with the compact's rules.

Article IV of the compact creates the application process for the multistate license. The application process requires the licensing board in the issuing state to determine, through the CLIS, whether the applicant has ever held, or is the holder of, a license issued by another state, whether there are any encumbrances on any license or multistate licensure privilege, whether any adverse action has been taken against the license or multistate licensure privilege, and whether the applicant is participating in an alternative program.

A nurse may hold a multistate license, issued by a home state, in only one party state at a time. If a nurse moves and changes his or her primary state, the nurse must apply for licensure in the new home state, and the multistate licensure issued by the prior home state must be deactivated. A new license may be applied for in advance of a primary change in residence. However, a new multistate license may not be issued until the nurse provides satisfactory evidence of change in his or her primary state of residence and has satisfied all applicable requirements to obtain a new multistate license in the new home state. If the nurse has moved to a non-party state, the multistate license issued by the prior home state must convert to a single-state license valid only in the prior home state.

Article V vests additional authority in the party state licensing board relating to the multistate licensure privilege. In addition to the powers already granted to the state's Board of Nursing (board), the board may also:

- Take adverse action against a nurse's multistate licensure privilege to practice within that party state.
    - Only the home state has the power to take adverse action against a nurse's license issued by the home state.

    - For purposes of adverse action, the home state licensing board or state agency shall give the same priority and effect to conduct reported by a remote state as it would if such conduct had occurred within the home state. In doing so, the home state shall apply its own state laws to determine appropriate action.
- Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
- Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. Conclusion of such actions must be promptly reported to the administrator of the CLIS. The administrator of the CLIS shall promptly notify the new home state of any such action.
- Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Enforcement of a subpoena to parties in another state will be enforced by courts in the latter state.
- Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the FBI for criminal background checks, receive FBI results, and use the results to make licensure decisions.
- If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
- Take adverse action based on the factual findings of the remote state, provided that the licensing board or state agency follows its own procedures for taking such adverse action.
- If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party state shall be deactivated until all encumbrances are removed from the multistate license. All home state disciplinary orders shall impose adverse action against a nurse's multistate license and shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
- The compact does not override a party state's decision to use an alternative program in lieu of adverse action and the home state licensing board shall deactivate the multistate licensing privilege for the duration of the nurse's participation in the alternative program.

Article VI creates the CLIS and the process for the exchange of information under the NLC. The system requires all party states to participate and to include information on the licensure and discipline history of each nurse, as submitted by the party states, to assist in the coordination of nurse licensure and enforcement efforts. Those coordination efforts include:

- Formulating necessary procedures by the commission, in consultation with the administrator of the system for the identification, collection and exchange of information under the NLC;
- Promptly reporting by all licensing boards any adverse action, any current significant investigative information, denials of applications, the reason for application denials, and nurse participation in alternative programs, regardless of whether such participation is nonpublic or confidential under state law;
- Transmitting through the system current significant investigative information and participation in nonpublic or confidential alternative programs available only to the party states;
- Notwithstanding any other provision of law, providing that all party state licensing boards contributing information to the system may designate information that may not be shared

with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state;
- Providing that any personal identifying information obtained from the system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information;
- Allowing any information contributed to the system which is subsequently required to be expunged by the laws of the party state contributing the information to also be expunged from the system;
- Requiring the compact administrator of each party state to furnish a uniform data set to each other party state that includes, at a minimum:
  - Identifying information;
  - Licensure data;
  - Information related to alternative program participation; and
  - Other information that may facilitate the administration of the compact; and
- Requiring the compact administrator of a party state to provide all investigative documents and information requested by another party state.

Article VII establishes the Interstate Commission of Nurse Licensure Compact Administrators (commission), its authorities, duties and responsibilities. The party states establish the joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators as an instrumentality of the party states. The following provisions are included in the structure of the commission:

Venue - Judicial proceeding by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the commission's principal office is located.[37] The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

Sovereign Immunity - The compact does not waive sovereign immunity except to the extent sovereign immunity is waived in the party states. The administrators, 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 cause 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.

Sovereign immunity under these provisions does not protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

The commission shall defend any administrator, 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 that the person against whom the claim is made had a

[37]The principal office of the commission is located in Chicago, Illinois.

reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct. An individual is not prohibited from retaining his or her own counsel.

The commission shall also indemnify and hold harmless any officer, administrator, executive director, employee or representative of the commission for the amount of any 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 the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

Compact Administrator - Each party state is limited to one administrator. The executive director of the state licensing board or his or her designee serves as the administrator of the compact for each party state. Any administrator may be removed or suspended from office as provided by the laws of the administrator's home state. Any vacancy occurring on the commission shall be filled in accordance with the laws of the party state in which the vacancy occurred.

Voting - Each administrator is entitled to one vote with regard to the adoption of the rules and the creation of the bylaws. The administrator shall have the opportunity to participate in the business and affairs of the commission and shall vote in person or by other means as allowed in the bylaws. The bylaws may also provide for the administrator's participation in commission meetings by telephone or other means of communication.

Meetings - The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the commission's bylaws and rules. All meetings are open to the public, and public notice of the meetings must be given in the same manner as required under Article VIII. Closed meetings are permitted if the commission is discussing:

- Failure of a party state to comply with its obligations under the compact;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase or sale of goods, services or real estate;
- Accusations against any person of a crime or formal censure of any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with this compact; or
- Matters specifically exempted from disclosure by federal or state statute.

If a meeting is closed to the public under this section, the commission's legal counsel or designee shall certify that the meeting, or portion of the meeting is closed and reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed during the closed session and shall provide a full and accurate summary of the action taken and reasons for those actions, including a description of the views expressed. All documents considered during the session must also be identified in the minutes. All minutes and documents from the closed session must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

Commission Bylaws -The commission is also required, by a majority vote of the administrators, to prescribe bylaws or rules to govern its conduct, including but not limited to:

- Establishing the commission's fiscal year;
- Providing reasonable standards and procedures:
  - For the establishment and meetings of other committees.
  - Governing any general or specific delegation of any authority or function of the commission.
- Providing reasonable procedures for calling and conducting meetings, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance by interested parties, with exceptions to protect the public's interest, the privacy of individuals, and proprietary information. The commission may only meet in closed session after a majority of members vote to close the meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy vote allowed.
- Establishing the titles, duties, authority, and reasonable procedures for electing commission officers;
- Providing reasonable standards and procedures for establishing the commission's personnel policies and programs;
- Providing a mechanism for winding up the commission's operations and the equitable distribution of any surplus funds that may exist after the compact's termination upon the payment of all obligations;
- Publishing the commission bylaws and rules, its amendments thereto, in a convenient form on the commission's website;
- Maintaining the commission's financial records in accordance with the bylaws; and
- Meeting and taking action consistent with the compact and bylaws.

Adoption of Rules by the Commission - The commission may also:

- Adopt uniform rules to facilitate and coordinate implementation and administration of the compact. The rules shall have the force and effect of binding law in all party states;
- Bring and prosecute legal proceedings and actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law is not affected;
- Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations;
- Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative staff expenses, office space, or other resources;

- Hire employees, elect or appoint officers, fix compensation, define duties, grant such authority to carry out the compact, and establish personnel policies and programs relating to conflict of interest, qualifications of personnel, and other related personnel matters;
- Accept appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services and dispose of the same while avoiding the appearance of any impropriety or conflict of interest;
- Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, or improve or use any property, whether real, personal, or mixed, provided that, at all times the commission avoids any appearance of impropriety;
- Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property whether real, personal, or mixed;
- Establish a budget and make expenditures;
- Borrow money;
- Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other interested persons;
- Exchange information and cooperate with law enforcement agencies;
- Adopt and use an official seal; and
- Perform other functions as may be necessary to achieve the compact's purpose consistent with the state regulation of nurse licensure and practice.

Financing of the Commission - The commission:

- Shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;
- May levy and collect an annual assessment from each party state to cover the cost of operations, activities, and staff in its annual budget, as approved. The annual assessment amount, if approved, shall be determined by the commission based on a formula determined by the commission and adopted by rule that is binding on all party states;
- May not incur obligations of any kind before securing the adequate funds to meet the obligation and the commission may not pledge the credit of any party states, except by and with the authority of such party state; and
- Shall keep accurate accounts all receipts and disbursements which shall be subject to audit and accounting procedures and audited yearly by a certified or licensed public accountant;

Article VIII establishes the commission's authority for rulemaking. The commission exercises its rulemaking authority under this article and any rules adopted thereunder. Rules and amendments become binding as of the date specified in the rule or the amendment and have the same force and effect as any provision of the compact.

Rulemaking - The commission may adopt rules or amendments to its rules at a regular or special meeting; however, before adoption of a final rule, the commission must file a notice of proposed rulemaking at least 60 days prior to the commission meeting where the rule will be considered and voted upon. Notice of the proposed rule shall be posted on the commission's website and on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

The proposed rule notice must include:

- The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
- The text of the proposed rule or amendment and the reason for the proposed rule;
- A request for comments on the proposed rule from any interested person; and
- The manner in which an interested party may submit notice to the commission of his or her intention to attend the public hearing and his or her written comments.

Before adoption of the proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public. The commission shall also grant an opportunity for a public hearing before it adopts a rule or amendment and publish the place, time, and date of that hearing.

Hearings must allow each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings must be recorded and a copy made available upon request. Rules may be grouped together for the convenience of the commission; a separate hearing is not required for each rule. If no interested person appears at the public hearing, the commission may proceed with the adoption of the proposed rule.

Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing is not held, the commission shall consider all comments received. Action on the proposed rule will be by majority vote of the commission and the commission shall determine the effective date, if any, based on the rulemaking record and the full text of the rule.

Emergency Rulemaking - If a determination is made that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures in this compact and article are applied retroactively to this rule as soon as reasonably possible within 90 days after the effective date of the emergency rule. An emergency rule is one that must be adopted immediately to:

- Meet an imminent threat to public health, safety, or welfare;
- Prevent a loss of commission or party state funds; or
- Meet a deadline for the adoption of an administrative rule that is required by federal law or rule.

The commission may direct revisions to previously adopted rules or amendments to correct typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of these revisions shall be posted on the commission's website. These revisions are subject to challenge for 30 days after posting. Challenges may only be based on the grounds that the revisions results in a material change in the rule. The challenge must be made in writing before the end of the notice period. If there is no challenge, the rule takes effect without the commission's approval.

Article IX establishes the oversight, dispute resolution, and enforcement provisions of the compact. Oversight of the compact will be established by:

- Each party state enforcing the compact and taking all actions necessary and appropriate to effectuate the compact's purposes and intent;

- The commission being entitled to receive service of process in any proceeding that may affect the powers, responsibility, or actions of the commission and having standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such a proceeding to the commission renders a judgment or order void as to the commission, this compact, or its adopted rules;

When the commission determines that a party state has defaulted under the compact:

- The commission shall provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission or provide remedial training and specific technical assistance regarding the default.
- If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of administrators and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of the termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- Termination of compact membership shall be imposed only after all other means of securing compliance have been exhausted. The commission shall give notice of intent to suspend or terminate to the governor of the defaulting state, the executive officer of the state's licensing board, and to all party states.
- A state whose compact membership is terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
- The commission shall not bear any costs related to a state that is found to be in default or whose membership is terminated unless agreed upon in writing between the commission and the defaulting state.
- The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

The commission is also permitted to use a dispute resolution process in the following manner:

- Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise between party states and party and nonparty states;
- The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes, as appropriate; and
- In the event the commission cannot resolve disputes among party states arising under this compact:
    - The party states may submit issues in the dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all party states involved in the dispute.
    - The decision of a majority of the arbitrators is final and binding.

The commission is charged with, in the reasonable exercise of its discretion, enforcement of the compact and its rules. By majority vote, the commission may initiate legal action in the United

States District of Columbia or the federal court in which the commission has its principal office against a party state that is in default to enforce compliance with the compact and the adopted bylaws and rules. Relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

The remedies provided in this Article are not exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Article X establishes the effective date, withdrawal and amendment provisions for the compact as follows:

- The compact becomes effective and binding on the date of legislative enactment of this compact by no fewer than 26 states or on December 31, 2018, whichever occurs first;
- All party states which were also parties to the prior Nurse Licensure Compact ("prior compact,") are deemed to have withdrawn from the prior compact within 6 months after the effective date of this compact;
- Each party start to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state is withdrawn from the prior compact;
- Any party state may withdraw from this compact by enacting a statute repealing the compact; however, a party state's withdrawal does not take effect until 6 months after the enactment of the repealing statute;
- A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminating state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination;
- This compact does not invalidate or prevent any nurse licensure agreement or other cooperative agreement between a party state and a nonparty state that is made in accordance with the other provisions of this compact;
- This compact may be amended by the party states; however, an amendment does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states; and
- Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission on a nonvoting basis, before the adoption of the compact by all party states.

Article XI addresses the construction and severability of the compact. The compact may be liberally construed so as to effectuate its purposes. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability to any government, agency, person, or circumstance is not affected.

If this compact is declared to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable provisions.

Section 8 amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners to recognize that an applicant may hold a multistate license.

Section 9 amends s. 464.015, F.S., relating to titles and abbreviations, to recognize the alternative multistate license available under s. 464.0095, F.S., and to make grammatical changes.

Section 10 amends s. 464.018, F.S., relating to disciplinary actions, to recognize the alternative multistate license available under s. 464.0095, F.S., to align the grounds for denial of a license or disciplinary action with the reasons provided under the compact. Grammatical changes throughout the section are also made to modify "licensee" to "nurse."

The compact modified existing statutes to provide that an individual who entered a plea of guilty to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or the ability to practice nursing becomes grounds for discipline. The bill expands the listed adjudications that constitute grounds for disciplinary action to add "convicted of" and "entering a plea of guilty or nolo contendere" to what had previously said "found guilty of the following offenses."

The grounds for denial of a license or disciplinary action are also made applicable to multistate license applicants or multistate licensees.

The bill authorizes the board to take adverse action against a nurse's multistate license privilege and impose any of the penalties under s. 456.072, F.S., when the nurse is found guilty of violating subsection (1) or s. 456.072(1), F.S.

Section 11 amends s. 464.0195, F.S., relating to the Florida Center for Nursing and its goals. The bill directs the Florida Nursing Center to analyze the current nursing supply and demand in the state and make future projections, including an assessment of the impact of the state's participation in the NLC. The Florida Nursing Center may request information from the board about nurses licensed in the state or holding multistate licenses and other information reported to the board by employers of such nurses, other than personal identifying information.

Section 12 amends s. 768.28, F.S., relating to waiver of sovereign immunity, to provide that the executive director of the Board of Nursing, when serving as the state administrator of the compact, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state. The bill also provides that the commission will pay any claims or judgments pursuant to s. 768.28, F.S., and may maintain insurance coverage to pay any such claim or judgments. These provisions conform state law to the terms of the compact.

Section 13 provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The commission requires most of its meetings to be open to the public and that such meetings, including rulemaking hearings, be publicly noticed 60 days prior to each meeting. Proposed rules must be posted to the commission's website and to the party state's licensing board websites or the publication in which each party state would otherwise publish proposed rules. The public must also be provided a reasonable opportunity for public comment, orally or in writing, for proposed rules.

However, the compact permits the commission to meet in closed, nonpublic meetings if the commission must discuss any of the following circumstances:

- Failure of a party state to comply with its obligations under the compact;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase or sale of goods, services or real estate;
- Accusations against any person of a crime or formal censure any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information or a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or
- Matters specifically exempted from disclosure by federal or state statute.

Closure of a public meetings for some of these reasons may be inconsistent with Florida law.

The commission is required to keep minutes of these closed sessions that fully describe all matters discussed and provide an accurate summary of actions taken. All minutes and documents of a closed meeting shall remain under seal according to the compact's provisions, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The compact authorizes administrators to develop rules that party states must adopt, which is potentially an unlawful delegation of legislative authority. The revised compact limits the rulemaking by the commission to rules that facilitate and coordinate the implementation and administration of the Nurse Licensure Compact.

If enacted into law, the state will bind itself to rules not yet promulgated and adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative authority to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.[38,39] Under this holding, the constitutionality of the bill's adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely addresses this issue in the context of interstate compacts.

The most recent case Florida courts have had to address this issue was in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).[40] The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."[41] The court states that "the precise legal effect of the ICPC compact administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.[42] However, in a footnote, the court provided:

> Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even

[38] *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm'n v. State ex rel Orange State Oil Co.,* 155 Fla. 772 (1945).
[39] This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. *See Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).
[40] 801 So.2d 1047 (Fla. 1st DCA 2001).
[41] Id at 1052.
[42] Id.

> covered by the Florida Administrative Procedure Act. *See Freimuth v. State,* 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.,* 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.,* 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.,* 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.[43]

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill's delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of legislative authority. This case, however, does not appear to be binding as precedent as the court's footnote discussion is dicta.[44]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1316, a Florida nurse converting his or her single-state license would be subject to a fee to convert to a multistate license.

Health care employers, such as hospitals, nursing homes, assisted living facilities and others, may benefit from the availability of additional nurses in the workforce as nurses from other party states move to Florida for employment. According to one report, the number of vacant RN positions for 2015 in Florida was 12,493, and 9,947 new RN positions are expected to be created in Florida by the end of 2016.[45] Hospitals are facing

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[43] *Id.*

[44] Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no biding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

[45] Kathleen McGrory, *Florida Facing a "Nursing Shortage Tsunami" Due to Increased Population, More Insured Patients*, TAMPA BAY TIMES, Feb. 1, 2016, *available at* http://www.tampabay.com/news/health/florida-facing-a-nursing-shortage-tsunami-due-to-increased-population-more/2263588.

an average turnover rate of 18.3 percent in 2015 for registered nurses in hospitals providing additional recruitment opportunities.[46]

C. Government Sector Impact:

The Department of Health's (DOH) office of Medical Quality Assurance (MQA) reports an expected increase in revenues associated with the multistate application initial and renewal fees. The increase of applications in Florida is unknown; therefore, the fiscal impact for this component is indeterminate at this time.[47] There are currently 1.4 million nurses with a multistate license.

The DOH anticipates an increase in workload and recurring expenses for:

- Additional regulations for new licensure;
- Investigation of complaints and investigations related to that new licensure; and
- Processing of initial and renewal applications and related fees.[48]

The DOH is unable to determine the cost of these expenses at this time, but most of these expenses can be absorbed within existing DOH resources.

The annual membership cost with the Nurse Licensure Compact is approximately $6,000 which the DOH indicates can be absorbed within current budget authority.[49]

The DOH also will incur non-recurring costs to update the Nursing application and the Licensing and Information Database System, both of which the DOH indicates can be absorbed within existing resources.[50]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida's continuing education requirements for nurses (24 hours of continuing education over two years) would not apply to compact nurses. Florida's Board of Nursing could not require or enforce these continuing education requirements on nurses from other states that practiced in Florida under a multistate license privilege. Some compact states do not require continuing education.

Florida requires applicants to submit fingerprints for state and federal criminal records checks. The grandfather clause for nurses who are currently holding or renewing a multistate license

[46] Id.
[47] *Supra* note 16, at 6.
[48] Id at 6-7.
[49] Id.
[50] Id.

privilege would exempt nurses from the criminal background screening whose home state does not require criminal background screening.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 464.003, 464.004, 464.008, 464.009, 464.012, 464.015, 464.018, and 464.0195.

This bill creates section 464.0095 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on March 1, 2016:
The committee substitute amends Florida Statutes relating to sovereign immunity to conform to the terms of the compact by providing that certain individuals, when carrying out duties or responsibilities relating to the compact are deemed agents of the state and by providing that the commission will pay any claims or judgments pursuant to a waiver of sovereign immunity and may maintain insurance coverage to pay such claims or judgments.

B. Amendments:

None.