

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 358

INTRODUCER: Health Policy Committee and Senator Rodriguez

SUBJECT: Professional Counselors Licensure Compact

DATE: February 21, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>Money</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 358 authorizes Florida to participate in the Professional Counselors Licensure Compact (counseling compact or compact) for the licensure of mental health counselors. The compact takes effect upon its enactment by 10 states, and to date, only two states have enacted the compact. The bill grants a licensed professional counselor who is licensed in his or her primary state of residence (the licensee’s “home state”) the ability to apply and be granted a privilege to practice professional counseling in another member state, both in-person and through telehealth.

The bill also:

- Requires the Department of Health (department) to report any significant investigatory information relating to a health care practitioner practicing under the compact to the compact’s licensure data system.
- Provides for the participation of impaired practitioners who are practicing under the compact in impaired practitioner programs.
- Requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) to appoint an individual to serve as Florida’s delegate on the Counseling Compact Commission (commission).
- Authorizes the Board to take adverse action against a social worker’s, a marriage and family therapist’s, or a mental health counselor’s privilege to practice under the compact and authorizes the Board to impose grounds for discipline.
- Designates the state delegate and other members or employees of the commission as state agents for the purpose of applying waivers of sovereign immunity.

According to the department, the bill will have a significant fiscal impact on the department requiring one additional full-time equivalent (FTE) position to support the workload associated with processing applications and issuing initial and renewal licenses and privileges to practice. The bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and the department indicates that the fiscal impact cannot be calculated.¹

The commission may collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities. The annual membership cost with the Professional Counselors Licensure Compact is unknown at this time.

The bill provides an effective date contingent on the enactment of the compact into law by 10 states and requires the department to notify the Division of Law Revision in that event.

II. Present Situation:

Occupational Licensure Compacts

Interstate compacts are authorized under the U.S. Constitution, Article I, Section 10, cl. 3.² Compacts that affect a power delegated to the federal government or that affect or alter the political balance within the federal system require the consent of Congress.³ The licensing of professions is predominantly a state responsibility as each state has developed its own regulations, oversight boards, and requirements for dozens of professions and occupations.

In September 2018, the Federal Trade Commission (FTC) looked at the issue of state-by-state occupational licensure and its unintended consequences. In particular, the FTC noted that state-by-state licensing can have a particularly hard effect on those in the military and their spouses who are required to move frequently, those who provide services across state lines, or deliver services through telehealth.⁴ The FTC also suggested that improved licensed portability would enhance competition, choice, and access for consumers, especially where services may be in short supply.⁵

According to the Council of State Governments (CSG), since January 2016, 170 separate pieces of licensure compact legislation have been passed in the United States.⁶ To date, 42 states and territories have enacted occupational licensure compacts for nurses, physicians, physical

¹ Department of Health, 2022 Senate Bill 358 Legislative Bill Analysis (Oct. 25, 2021) (on file with the Senate Committee on Health Policy).

² “No state shall, without the Consent of Congress...enter into any Agreement or Compact with another State, or with a foreign Power[.]” *see* U.S. CONST. art. I, s. 10, cl. 3. While the language of the provision says congressional approval is required, not all compacts require congressional approval.

³ *Virginia v. Tennessee*, 148 U.S. 503 (1893).

⁴ Federal Trade Commission, *Policy Perspectives, Options to Enhance Occupational License Portability* (September 2018), available at https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf (last visited Oct. 31, 2021).

⁵ *Id.*

⁶ *Supra* note 1.

therapists, emergency medical technicians, psychologists, speech therapists, audiologists, occupational therapists, and counselors.⁷

Nurse Licensure Compact

On January 19, 2018, licensed Florida nurses became eligible to apply for a multi-state license under the enhanced Nurse Licensure Compact (eNLC).⁸ The eNLC allows registered nurses and licensed practical nurses who hold licensure in one Compact state to practice in any of the 27 Compact states without obtaining additional state licenses. The Department of Health (department) reports that the eNLC has effectively reduced regulatory requirements by eliminating the need for nurses to obtain a separate license to practice in different states.⁹ Florida joined the Nurse Licensure Compact upon the passage of HB 1061 during the 2016 regular Legislative Session.¹⁰ The eNLC was officially enacted when North Carolina Governor Roy Cooper, signed legislation to become the 26th state to join the compact on July 20, 2017.¹¹ That date became the effective date for the start of the compact commission, an agency governing the compact.¹²

Interstate Compact for Licensed Professional Counselors

The Interstate Compact for Licensed Professional Counselors (counseling compact or compact) will become effective after 10 states enact the legislation for the compact. The counseling compact has passed and been signed into law in two states. On May 10, 2021, Georgia Governor Brian Kemp signed HB 395 and subsequently on May 18, 2021, Maryland Gov. Larry Hogan signed SB 571/HB 736.¹³ The compact has also been introduced this year in Tennessee (SB 1027 HB 0959), Nebraska (LB 554), Ohio (SB 204), and North Carolina (HB 791).¹⁴

Interstate Licensure Compact for Social Work¹⁵

The National Association of Social Workers is beginning to pursue its own Interstate Licensure Compact for Social Work. That draft compact has not yet been finalized.

Model of Marriage and Family Therapy License Portability¹⁶

Rather than pursue a compact, the American Association for Marriage and Family Therapy has created a Model of Marriage and Family Therapy (MFT) License Portability. This portability model is a full endorsement model, meaning that a state will license an applicant as a licensed

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Chapter 2016-139, Laws of Fla.

¹¹ Debra Wood, RN., *The Enhanced Nurse Licensure Compact* (July 28, 2017) available at <https://www.nursechoice.com/blog/profiles-and-features/the-enhanced-nurse-licensure-compact-explained/> (last visited Oct. 31, 2021).

¹² *Id.*

¹³ Counseling Compact, *News*, available at <https://counselingcompact.org/news/> (last visited Oct. 31, 2021).

¹⁴ Counseling Compact, *Maps*, available at <https://counselingcompact.org/map/> (last visited Oct. 31, 2021).

¹⁵ National Association of Social Workers, *Interstate Licensure Compact*, <https://www.socialworkers.org/Advocacy/Social-Justice/Interstate-Licensure-Compact-for-Social-Work> (last visited Oct. 31, 2021).

¹⁶ American Association for Marriage and Family Therapy, *MFT License Portability*, https://www.aamft.org/AAMFT/ADVANCE_the_Profession/License_Portability/Advocacy/MFT%20License%20Portability.aspx (last visited Nov. 4, 2021).

marriage and family therapist if the applicant has a valid and unrestricted license to practice marriage and family therapy in another state.

Mental Health Counseling in Florida

The licensed Mental Health Counseling profession continues to expand in Florida and has reported an average growth in recent years of more than 1,000 new licensees per year, increasing the total licensed population to 15,518 practitioners.¹⁷

Florida law delineates between an application by examination for initial licensure and application by endorsement for mental health counselors who have previously held an active, unencumbered, license in another state. The application for licensure as a mental health counselor includes a mandatory disclosure of criminal history, but applicants are not required to submit fingerprints to complete a criminal background check.¹⁸ Section 456.0135, F.S., provides the department with authority to mandate criminal background checks for specified professions and mental health professions regulated by ch. 491, F.S., are not included in the list of specified professions.

Licensure of Mental Health Counselors by Examination

Pursuant to s. 491.005(4), F.S., the department shall license an applicant as a mental health counselor, if he or she:

- Pays the appropriate fee;
- Possesses a minimum of a master's degree from a regionally accredited program in Mental Health Counseling or a closely related field that consists of at least 60 semester hours or 80 quarter hours and specific graduate coursework, including: Counseling Theories and Practice, Human Growth and Development, Diagnosis and Treatment of Psychopathology, Human Sexuality, Group Theories and Practice, Individual Evaluation and Assessment, Career and Lifestyle Assessment, Research and Program Evaluation, Social and Cultural Foundations, Substance Abuse, and Legal, Ethical, and Professional Standards Issues. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) which consists of at least 60 semester hours or 80 quarter hours to be licensed;¹⁹
- Has had at least two years of clinical experience in mental health counseling. Initial applicants must provide documentation to demonstrate completion of a 700-hour university-sponsored clinical practicum or internship with at least 280 hours of direct client services. After graduation, registered mental health counselor interns are required to complete post-graduate supervised experience conducted under the supervision of a board-approved qualified supervisor with at least 100 hours of supervision in no less than 100 weeks. Supervision experience hours are accrued on an hour-for-hour basis by providing face-to-face psychotherapy with clients. Registered interns are required to meet with their qualified supervisor every two weeks to review cases and to receive guidance;
- Has passed the National Clinical Mental Health Counseling Examination (NCMHCE) developed by the National Board for Certified Counselors (NBCC);²⁰

¹⁷ *Supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.; and
- Agrees to complete a two-hour domestic violence course within six months of licensure.²¹

Licensure of Mental Health Counselors by Endorsement

Applicants by endorsement who have practiced mental health counseling in another state for at least three out of the last five years are considered to have completed all minimum education, practicum, and supervision requirements and are required to provide limited documentation to become licensed.²² As a method to streamline licensure for experienced mental health counselors, Florida law does not require endorsement candidates to provide proof of education nor demonstrate completion of supervised experience.²³ Pursuant to s. 491.006, F.S., the department shall license an applicant as a mental health counselor if he or she:

- Pays the appropriate fee;
- Holds a valid license to practice in another state and have practiced for at least three out of the last five years preceding licensure;
- Demonstrates, in a manner designated by rule of the Board, knowledge of the laws and rules governing the practice of mental health counseling in Florida. Rule 64B4-3.0035 requires these applicants to complete an eight hour course and obtain a passing score on a corresponding examination;
- Has passed the NCMHCE or a licensing examination substantially equivalent to the NCMHCE in another state or in this state;
- Completes a three-hour course on HIV/Aids pursuant to s. 491.0065, F.S.;
- Agrees to complete a two-hour domestic violence course within six months of licensure;²⁴ and
- Holds a license in good standing and is not under investigation in Florida or another jurisdiction for an act which would constitute a violation of ch. 491, F.S.

Mental Health Counseling in Florida Through Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.²⁵ It authorized Florida-licensed health care providers, including mental health counselors who are either Florida-licensed or licensed under a multi-state health care licensure compact of which Florida is a member state,²⁶ to use telehealth to deliver health care services within their respective scopes of practice.

²¹ Florida Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling, *Licensed Mental Health Counselor: Requirements available at <https://floridasmentalhealthprofessions.gov/licensing/licensed-mental-health-counselor/#tab-requirements>* (last accessed Oct. 31, 2021).

²² *Supra* note 1.

²³ *Id.*

²⁴ *Id.* at 20.

²⁵ Chapter 2019-137, s. 6, Laws of Fla.

²⁶ Section 456.47(1)(b), F.S.

The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the department or the applicable board²⁷ and meet certain eligibility requirements.²⁸ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

The Legislature also passed HB 7067 in 2019 that would have required an out-of-state telehealth provider to pay an initial registration fee of \$150 and a biennial registration renewal fee of \$150, but the bill was vetoed by the Governor and did not become law.²⁹

On March 21, 2020, Surgeon General Scott Rivkees executed the department's Emergency Order 20-003³⁰ to authorize certain out-of-state clinical social workers, marriage and family therapists, mental health counselors, and psychologists to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. These emergency orders were extended and expired on June 26, 2021.³¹ Out-of-state health care practitioners are no longer authorized to perform telehealth services for patients in Florida unless they become licensed or registered in Florida.

Florida-licensed providers may not provide health care services to clients located in other states without express authorization from each state.

Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law.³²

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.³³ According to subsection (1), individuals may sue the government under circumstances where a private person “would be liable to the claimant, in accordance with the general laws of [the] state . . .” Section 768.28(5),

²⁷ Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the department's Division of Medical Quality Assurance. The

²⁸ Section 456.47(4), F.S.

²⁹ Transmittal Letter from Governor Ron DeSantis to Secretary of State Laurel Lee (June 27, 2019) *available at* <https://www.flgov.com/wp-content/uploads/2019/06/06.27.2019-Transmittal-Letter-3.pdf> (last visited Feb. 14, 2021).

³⁰ Department of Health, State of Florida, *Emergency Order department No. 20-003* (Mar. 21, 2020) *available at* <https://s333330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf> (last visited Oct. 21, 2021).

³¹ Florida Board of Medicine, *Important Updates for Health Care Providers Regarding Expiration of Emergency Orders* (July 1, 2021) *available at* https://r.bulkmail.flhealthsource.gov/mk/mr/JV-U0AMitwBXIP7zcFx3Djqu1KfE1B57JaGN-nNnySmOjEY5xGSSyII28XjOGeZ4yKv9rWQUryqAibmdrixNZdgE9Q61dmUoHRF1Rnyijg-ewyAl_rZBT8c (last visited Oct. 18, 2021).

³² FLA. CONST. art. X, s. 13.

³³ Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

F.S., imposes a \$200,000 limit on the government’s liability to a single person, and a \$300,000 total limit on liability for claims arising out of a single incident.

III. Effect of Proposed Changes:

Section 1 creates the Professional Counselors Licensure Compact as s. 491.017, F.S., which enters Florida into the compact. The compact has 15 articles that establish the compact’s administration and components and prescribe how the commission will oversee the compact and conduct its business. The table below summarizes the new statutory language, by article, which creates the components of the compact.

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
I	Purpose	The primary purpose of the compact is to facilitate the interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.
II	Definitions	<p>Definitions are provided for the following terms:</p> <ul style="list-style-type: none"> • “Active duty military” means full-time duty status in the active uniformed service of the United States, including, but not limited to, members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211. • “Adverse action” means any administrative, civil, or criminal action authorized by a state’s laws which is imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual’s license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, issuance of a cease and desist action, or any other encumbrance on licensure affecting a licensed professional counselor’s authorization to practice. • “Alternative program” means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners. • “Continuing education” means a requirement, as a condition of license renewal, to participate in or complete educational and professional activities relevant to the licensee’s practice or area of work. • “Counseling Compact Commission” or “commission” means the national administrative body whose membership consists of all states that have enacted the compact. • “Current significant investigative information” means: <ul style="list-style-type: none"> ○ Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<p>is not groundless and, if proved true, would indicate more than a minor infraction; or</p> <ul style="list-style-type: none"> ○ Investigative information that indicates that the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed professional counselor has been notified and had an opportunity to respond. ● “Data system” means a repository of information about licensees, including, but not limited to, information relating to continuing education, examinations, licensure statuses, investigations, the privilege to practice, and adverse actions. ● “Encumbered license” means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and said adverse action has been reported to the National Practitioner Data Bank. ● “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board. ● “Executive committee” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission. ● “Home state” means the member state that is the licensee’s primary state of residence. ● “Impaired practitioner” means an individual who has a condition that may impair his or her ability to safely practice as a licensed professional counselor without intervention. Such impairment may include, but is not limited to, alcohol or drug dependence, mental health conditions, and neurological or physical conditions. ● “Investigative information” means information, records, or documents received or generated by a professional counseling licensing board pursuant to an investigation. ● “Jurisprudence requirement,” if required by a member state, means the assessment of an individual’s knowledge of the laws and rules governing the practice of professional counseling in a state. ● “Licensed professional counselor” means a mental health counselor licensed under ch. 491, F.S., or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions. ● “Licensee” means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<ul style="list-style-type: none"> • “Licensing board” means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors. • “Member state” means a state that has enacted the compact. • “Privilege to practice” means a legal authorization, which is equivalent to a license, authorizing the practice of professional counseling in a remote state. • “Professional counseling” means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor. • “Remote state” means a member state, other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice. • “Rule” means a regulation adopted by the commission which has the force of law. • “Single state license” means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state. • “State” means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling. • “Telehealth” means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions. • “Unencumbered license” means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.
III	State Participation	<p>To participate in the compact, a state must currently do all of the following:</p> <ul style="list-style-type: none"> • License and regulate licensed professional counselors. • Require licensees to pass a nationally recognized exam. • Require licensees to have a 60 semester hour, or 90 quarter hour, master’s degree in counseling or 60 semester hours, or 90 quarter hours, of graduate coursework in relevant areas. • Require licensees to complete a supervised postgraduate professional experience, <i>as defined by the commission</i>. • Have a mechanism in place for receiving and investigating complaints about licensees. <p>(Initial Florida applicants must possess a master’s degree from a regionally accredited program in mental health counseling or a closely related field that consists of at least 60 semester hours or 80</p>

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<p>quarter hours and required graduate coursework. Initial Florida applicants must also complete two years of clinical experience in mental health counseling as a registered mental health counselor intern.)</p> <p>A member state must:</p> <ul style="list-style-type: none"> • Participate fully in the compact commission’s licensure data system. • Notify the commission of any adverse action against or of current significant investigative information regarding a licensee. • Conduct criminal background checks of candidates for an initial privilege to practice. • Comply with rules of the commission, established in article IX. • Grant the privilege to practice professional counseling to a licensee holding a valid, unencumbered license in another member state. • Provide for the state’s commissioner to attend the meetings of the commission. <p>A member state may charge a fee for granting a privilege to practice.</p> <p>A licensed professional counselor may only utilize the compact if their home state joins the compact.</p>
IV	Privilege to Practice	<p>A licensee may seek a privilege to practice within a remote state. To exercise the privilege to practice professional counseling within a remote state, a licensee must:</p> <ul style="list-style-type: none"> • Hold a license in his or her home state which must be a member of the compact. • Have had no encumbrance or restriction against any license or privilege to practice within the previous two years. • <i>Meet any continuing education and jurisprudence requirements of the remote state and pay all applicable fees.</i> • Report to the commission any adverse action, encumbrance, or restriction imposed on the licensee by a non-member state within 30 days from the date of the action. <p>A privilege to practice is valid until the expiration date of the practitioner’s home state license.</p>

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<p>A licensee providing professional counseling in a remote state under the privilege to practice must adhere to the laws and regulations of the remote state.</p> <p>If a licensee’s home state license is encumbered, the licensee loses the privilege to practice in any remote state for the next two years.</p> <p>If a licensee’s privilege to practice is removed by a member state, the licensee may lose their privilege to practice in member states for the next two years.</p>
V	Obtaining a New Home State License based on a Privilege to Practice	<p>A licensee may hold a home state license in only one member state at a time. A licensee who moves from one member state to another member state may obtain a new, expedited home state license in the new state of residence if he or she holds a privilege to practice in the new state.</p> <p>The licensee will be required to complete a new FBI fingerprint-based criminal background check if not previously performed, complete any required state-level background check, <i>meet any jurisprudence requirements of the new home state</i>, and pay all applicable fees.</p> <p>(Florida-licensed mental health counselors are not currently required to be fingerprinted and background-screened as a condition of licensure. See s. 456.0135, F.S. If the compact is enacted in Florida, single-state applicants and registered interns would not be required to submit to a criminal history check, but applicants under the compact would be.)</p> <p>If a new home state license is granted, the former home state must convert the former home state license into a privilege to practice.</p>
VI	Active Duty Military Personnel and their Spouses	Active duty military personnel, or their spouse, may designate a home state where the individual has a current license in good standing. This state serves as the individual’s home state for the duration of the service member’s active duty.
VII	Compact Privilege to Practice Telehealth	<p>Member states must recognize the right of a licensed professional counselor to practice professional counseling in any member state through telehealth under a privilege to practice.</p> <p>A licensee providing telehealth services in a remote state must adhere to the laws and regulations of that state.</p>
VIII	Adverse Actions	Only a practitioner’s home state has the power to take adverse action against a home state license. Home states must give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. The

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<p>home state must apply its own state laws to determine appropriate action in such cases.</p> <p>Remote states may take adverse action against a counselor’s privilege to practice within that member state and may issue enforceable subpoenas for witnesses and evidence from other member states.</p> <p>A member state, if authorized by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of any cases resulting from adverse action taken against that licensed professional counselor.</p> <p>Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.</p> <p>If a member state takes adverse action, it must promptly notify the administrator of the data system. The administrator shall promptly notify the licensee’s home state of any adverse actions by remote states.</p> <p>The bill maintains the right for state boards to require licensees to participate in impaired practitioner programs.</p>
IX	Establishment of Counseling Compact Commission	<p>The Counseling Compact Commission (commission) is established by the member states as a joint public agency.</p> <p>Judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent that it adopts or consents to participate in alternative dispute resolution proceedings. <i>Nothing in the compact may be construed as a waiver of sovereign immunity.</i></p> <p>Each member state is entitled to one delegate appointed by each member state’s licensing board who must be either a licensed professional counselor, a public member, or an administrator of the board. Each delegate has one vote on commission affairs. The commission is directed to establish a term of office for delegates and may establish term limits.</p> <p>The commission must meet at least once during each calendar year and all meetings must be open to the public. The commission, or the executive committee or other committees of the commission may</p>

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		<p>convene in a closed, nonpublic meeting under certain circumstances. (See “Public Records/Open Meetings Issues” in Section IV of this analysis.) The commission must keep detailed minutes.</p> <p>The commission may establish and maintain a code of ethics, bylaws, rules, a budget, financial records, and may initiate or prosecute legal proceedings or actions in the name of the commission, in order to carry out the compact.</p> <p>The commission must select an executive committee composed of up to eleven members: seven members of the commission and up to four ex-officio, nonvoting members from four recognized national professional counselor organizations. The executive committee must meet at least annually and must, at a minimum, do all of the following:</p> <ul style="list-style-type: none"> • Make recommendations to the commission for any changes to the rules, bylaws, compact legislation, fees paid by member states, and fees charged to licensees for the privilege to practice. • Prepare and recommend the budget. • Maintain financial records. • Monitor compliance of member states and provide compliance reports to the commission. • Establish additional committees as necessary. <p>The commission must pay or provide for the payment of certain reasonable expenses and may accept appropriate revenue. The commission may not incur obligations of any kind before securing funds adequate to meet the same. Receipts and disbursements of funds handled by the commission must be audited annually by a certified or licensed public accountant.</p> <p>The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.</p> <p>Commission members and employees are immune from liability related to their positions except in cases of wanton misconduct.</p>

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
X	Data System	<p>The Commission must provide for the development, operation, and maintenance of a coordinated database and reporting system (the data system) containing licensure, adverse action, and investigative information on all licensed professional counselors in member states. A member state must submit a uniform data set to the data system on all licensees to whom the compact is applicable, as required by the rules of the commission.</p> <p>Investigative information pertaining to a licensee in any member state may be made available only to other member states. The commission must promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license.</p> <p>Member states reporting information to the data system may designate information that may not be shared with the public without the express permission of the reporting state. (See “Public Records/Open Meetings Issues” in Section IV of this analysis.)</p>
XI	Rulemaking	<p>The Commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of the compact. If the commission issues a rule that exceeds its authority under the compact, such a rule is void and has no force or effect.</p> <p>Rules carry the force of law in all member states. If a majority of the legislatures of member states reject a rule by enactment of a statute or a resolution in the same manner used to adopt the compact within 4 years after the date of the adoption of a rule, such rule does not have further force or effect in any member state.</p> <p>Before adoption of a final rule by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission must file a notice of proposed rulemaking, which must include the text of the proposed rule, on the commission’s website and on the website of each member state’s professional licensing board. Interested persons may submit notice to the commission of their intention to attend a public hearing and may submit written comments before the commission may adopt a proposed rule. The commission must grant an opportunity for a public hearing if it is requested by at least 25 independent persons, a state or federal governmental subdivision or agency, or an association that has at least 25 members. Rules may be grouped at public hearings for the convenience of the commission.</p>

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		The commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing under certain circumstances.
XII	Oversight; Default, Technical Assistance, and Termination Dispute Resolution; and Enforcement	<p>If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or adopted rules, the commission must provide written notice, remedial training, and technical assistance to the state. If a state fails to cure a default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states and only after all other means of securing compliance have been exhausted.</p> <p>The commission shall attempt to resolve any compact-related disputes that may arise between states.</p> <p>The commission is responsible for enforcing the provisions and rules of the compact.</p>
XIII	Date of Implementation of the Counseling Compact Commission and Associated Rules, Withdrawal, and Amendment	<p>The compact becomes effective on the date on which the compact is enacted into law in the 10th member state. Thereafter, the commission must meet and exercise rulemaking powers necessary for the implementation and administration of the compact.</p> <p>States that join the compact after this date are subject to the rules of the commission as they exist on the date when the compact becomes law in that state.</p> <p>Member states withdraw from the compact by enacting a statute repealing the compact. <i>A state's withdrawal takes effect 6 months after enactment of the repealing statute.</i></p> <p>The member states may amend the compact, but changes do not take effect until enacted into the laws of all member states.</p>
XIV	Binding Effect of Compact and Other Laws	<p>A licensee providing professional counseling services in a remote state under the privilege to practice must adhere to the laws and regulations, including scope of practice, of the remote state.</p> <p>All rules and bylaws properly adopted by the commission are binding on the member states.</p> <p><i>In the event of a conflict between a law of a member state and the compact, the state law is superseded to the extent of the conflict.</i></p>
IV	Construction and Severability	The compact is to be liberally construed so as to effectuate its purposes.

Provisions of the Professional Counselors Licensure Compact		
Article	Title	Description
		The compact’s provisions are severable. If a provision of the compact is declared to conflict with the United States Constitution, all other provisions remain valid for all member states. If a provision is held contrary to a member state’s constitution, the compact retains its full force in all other states, and all other provisions remain valid in the affected state.

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact.

Section 2 amends s. 456.073, F.S., to require the department to report any significant investigatory information relating to a health care practitioner practicing under the compact to the data system. Investigatory information is typically gathered as the department investigates complaints and assesses the need to discipline a licensee.

Section 3 amends s. 456.076, F.S., to require a consultant (who operates an approved impaired practitioner program) entering into a participant contract with an impaired practitioner who is practicing under the compact, to establish terms in the monitoring contract that include the impaired practitioner’s withdrawal from all practice under the compact.

Section 4 amends s. 491.004, F.S., to require the Board to appoint an individual to serve as the state’s delegate on the commission.

Section 5 amends s. 491.005, F.S., to exempt a person licensed as a clinical social worker, marriage and family therapist, or mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by examination requirements, as applicable.

Section 6 amends s. 491.006, F.S., to exempt a person licensed as a clinical social worker, marriage and family therapist, or mental health counselor in another state who is practicing under the compact pursuant to s. 491.017, F.S., and only within the scope provided therein, from licensure by endorsement requirements, as applicable.

Section 7 amends s. 491.009, F.S., to authorize the Board to take adverse action against a clinical social worker’s, a marriage and family therapist’s, or a mental health counselor’s privilege to practice under the compact and authorizes the Board impose grounds for discipline if the clinical social worker, marriage and family therapist, or mental health counselor commits an act specified in subsection (1) of this section or in s. 456.072(1), F.S.

Section 8 amends s. 768.28, F.S., to designate as agents of the state, the individual appointed as the state’s delegate on the commission when serving in that capacity, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of his or her employment, duties, or responsibilities in this state, for the purpose of

applying waivers of sovereign immunity. This section also requires the commission to pay certain claims or judgments and authorizes the commission to maintain insurance coverage to pay such claims or judgments.

Section 9 requires the department to notify the Division of Law Revision upon the enactment of the compact into law by 10 states.

Section 10 provides an effective date contingent on the enactment of the compact into law by 10 states.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, may be entered into the system by the Department of Health (department) or the Board or may be obtained by the department or the Board from the data system as reported by another state.

A meeting or a portion of a meeting of the commission, or the executive committee or other committees of the commission may be closed if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss any of the following:

- Noncompliance of a member state with its obligations under the compact.
- 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.
- Current, threatened, or reasonably anticipated litigation.
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.
- Accusing any person of a crime or formally censuring any person.
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure of investigative records compiled for law enforcement purposes.
- 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.
- Matters specifically exempted from disclosure by federal or member state law.

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.

These issues are addressed in linked bill, SB 590.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, Section 19, of the State Constitution requires that the imposition of, or the authorization of, a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, Section 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.” The bill authorizes the counseling compact commission and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to impose a new state tax or fee.

Lines 337-338 of the bill authorize member states to charge a fee for granting a privilege to practice in their state. Lines 368-369 of the bill require a licensee seeking to practice under the compact to pay any applicable fees, including any state fee, for the privilege to practice. Lines 430-436 and 460-462 of the bill require a compact counselor who changes his or her primary state of residence by moving between two member states to pay all applicable fees to his or her new home state.

Lines 737-745 of the bill authorize the commission to levy and collect an annual assessment from each member state or impose fees *on other parties* to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

Section 491.004(5), F.S., requires the Board to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, which may include the imposition of a fee for granting a privilege to practice in this state granting and a fee to cover the cost of the operations and activities of the commission, pursuant to the compact.

E. Other Constitutional Issues:

The compact authorizes the commission to “adopt reasonable rules to effectively and efficiently achieve the purposes of the compact,” and these rules carry the force of law in member states, which is potentially an unlawful delegation of legislative authority. If

enacted into law, the state will bind itself to rules not yet promulgated and adopted by the commission.

The Legislature delegated similar rulemaking powers to the Nurse Licensure Compact when it adopted the compact language into statute. The rules adopted by the Nurse Licensure Compact are now applicable to Florida without the Legislature's subsequent approval, similar to what the state would encounter with the counseling compact adoption and included rulemaking provision. In the case of the counseling compact, should Florida find that rules adopted by the commission are not acceptable, the compact provides a mechanism for a majority of state legislatures to override commission rules. Furthermore, the state maintains the ability to withdraw from the compact.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Lines 737-745 of the bill authorize the commission to levy and collect an annual assessment *from each member state* or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff. Such assessments and fees must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based on a formula to be determined by the commission, which must adopt a rule binding on all member states.

B. Private Sector Impact:

CS/SB 358 could lead to more licensed mental health counselors practicing in Florida. It could also lead to more Florida-licensed mental health counselors practicing through telehealth and providing care to patients in other member states. The fiscal result to the private sector is indeterminate.

C. Government Sector Impact:³⁴

The Department of Health (department) reports that its Division of Medical Quality Assurance (MQA) may experience an increase in revenues if the compact is enacted in Florida, as the bill authorizes member states to charge a fee for granting a privilege to practice under the compact. The number of applicants for compact licensure is indeterminate and a fiscal impact cannot be calculated.

MQA may experience a recurring increase in workload associated with processing applications and issuing initial and renewal licenses to participate in the compact. The department projects needing a minimum of one full-time equivalent (FTE), a Regulatory Specialist III (PG 19), with a projected cost of \$71,147 (\$48,963/Salary \$21,878/Expense \$306/HR).

³⁴ *Supra* note 1.

MQA may experience a recurring increase in workload associated with the additional complaints and investigations due to the new compact license. At this time, the impact is indeterminate.

The bill authorizes the commission to levy and collect an annual assessment from each member state. The annual membership cost with the Licensed Professional Counselors Compact is unknown at this time, yet the department anticipates that existing budget authority is adequate to absorb this recurring cost.

If the bill is enacted and if the compact becomes effective, MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification Search Site, and board website to support multistate licensing. Additionally, MQA will be required to establish a process for sharing information with the data system and update existing data exchange services with the Agency for Health Care Administration.

The total estimated cost for the first year is \$71,147 in the following categories:

- Salary- \$48,963/Recurring
- Expense- \$17,229/Recurring \$4,649/Non-Recurring
- Human Resources - \$306/Recurring

Section 491.004(5), F.S., requires the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to adopt rules to implement and enforce the provisions of ch. 491, F.S. Section 1 of the bill creates the Professional Counseling Licensure Compact as s. 491.017, F.S., thereby requiring the Board to adopt rules to implement and enforce the compact, once it becomes effective.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The counseling compact model compact legislation³⁵ defines a “licensed professional counselor” as a counselor licensed by a member state, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.” Under Florida law, a mental health counselor, clinical social worker, and a marriage and family therapist may be interpreted to fit the definition of a licensed professional counselor. For this reason, the bill at lines 235-239 defines a “licensed professional counselor” as “a mental health counselor licensed under chapter 491 or a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.”

This means that in Florida, only a licensed mental health counselor may apply for and be granted a privilege to practice in another member state. In other member states, a professional who meets

³⁵ Counseling Compact, *Model Legislation* (Dec. 4, 2020) available at https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last accessed Oct. 31, 2021).

that member state's definition of a licensed professional counselor, regardless of what title the professional holds, may apply for and be granted a privilege to practice in another member state. To be granted a privilege to practice under the compact, a licensed professional counselor applicant must pass a nationally recognized exam approved by the compact commission, have 60 hours of graduate coursework in specified topic areas or have a master's degree in counseling; and have completed supervised postgraduate professional experience as defined by the commission.

The bill acknowledges that a person from another member state who is granted a privilege to practice in Florida may be licensed as a practitioner other than a mental health counselor. (See lines 1159-1161 and 1168-1169.) If it is the intent that a licensed professional counselor be granted a privilege to practice in this state only if he or she holds a license that is substantially similar to that of a Florida mental health counselor, then this bill should be amended.

Statutes Affected:

This bill creates section 491.017 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 491.004, 491.005, 491.006, 491.009, and 768.28.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on November 3, 2021:

The CS changes the effective date of the underlying bill from July 1, 2022, to reflect that the bill's provisions become effective only after the compact is enacted into law by 10 states. The CS also requires the Department of Health to notify the Division of Law Revision when the compact has been enacted into law by 10 states.

B. Amendments:

None.