

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 Fiscal Policy

BILL: SB 140

INTRODUCER: Senator Rodriguez

SUBJECT: Fees/Professional Counselors Licensure Compact

DATE: April 19, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Stovall | Brown | HP | Favorable |
| 2. | Howard | Money | AHS | Favorable |
| 3. | Stovall | Yeatman | FP | Favorable |

I. Summary:

SB 140 amends the Professional Counselors Licensure Compact found in section 491.017, Florida Statutes, to authorize Florida, a member state, to charge a fee for granting the privilege to practice professional counseling in member states. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) within the Department of Health (DOH) would be responsible for adopting rules to impose the fee if this bill becomes a law.

The Professional Counselors Licensure Compact was enacted into law by the Florida Legislature in 2022.¹ The act's effective date was conditioned upon enactment of the Compact into law by 10 states. Nineteen states have now enacted the Compact into law.² Accordingly, the Professional Counselors Licensure Compact is now effective in Florida.

The Florida Constitution requires that legislation that imposes or authorizes new state taxes or fees,³ or that raises existing state taxes or fees,⁴ must be approved by two-thirds of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill that contains no other subject.⁵ SB 140 authorizes the imposition of fees on Florida-licensed mental health professionals who desire to practice in member states pursuant to the compact. As such, the Florida Constitution may require that such a fee provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

The bill has no fiscal impact on the DOH.

¹ Ch. 2022-63, Laws of Florida.

² See the 2023 Compact Map, available at: <https://counselingcompact.org/map/> (last visited Mar 22, 2023). The member states are Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, Tennessee, Utah, West Virginia, and Wyoming.

³ FLA. CONST. art VII, s. 19(a).

⁴ FLA. CONST. art VII, s. 19(b).

⁵ FLA. CONST. art VII, s. 19(e).

The bill takes effect on July 1, 2023.

II. Present Situation:

Professional Counselors Licensure Compact

The Professional Counselors Licensure Compact (counseling compact) was enacted into law in the 2022 Legislative Session⁶ and is now effective. The act's effective date was conditioned upon enactment of the Compact into law by 10 states. Nineteen states have now enacted the Compact into law⁷ and are considered member states.

The counseling compact facilitates interstate practice of licensed professional counseling by counselors licensed in their home state⁸ to practice in a member state without the necessity to obtain an additional license from the member state. It also facilitates the delivery of professional counseling services through telehealth technology.⁹

The counseling compact defines a "licensed professional counselor" to mean a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.¹⁰ Within the definition section of ch. 491, F.S., relating to clinical, counseling, and psychotherapy, "licensed professional counselor" means a clinical social worker, marriage and family therapist, or mental health counselor authorized to provide services under [the counseling compact].¹¹

The counseling compact establishes the Counseling Compact Commission that is an instrumentality of the compact states consisting of one voting delegate, appointed by each member state's licensing board.¹²

The board within the DOH is the licensing board responsible for rulemaking and administering ch. 491, F.S., and in particular, the counseling compact. The board has appointed a delegate who is participating in the activities of the Commission.¹³ The duties of the Commission include, among other things, to provide for the development, operation, and maintenance of a data system and to adopt rules to achieve the purposes of the compact.¹⁴ The data system and rules are under

⁶ *Supra* note 1.

⁷ *Supra* note 2.

⁸ "Home State" is defined in the counseling compact to mean the member state that is the licensee's primary state of residence. See Article II (11) of the Professional Counselor Licensure Compact in s. 491.017, F.S.

⁹ Section 456.47, F.S., authorizes certain Florida-licensed health care practitioners, that includes a clinical social worker, marriage and family therapist, or mental health counselor licensed under ch. 491, F.S.; practitioners licensed under a multistate health care licensure compact of which Florida is a member; or a licensed health care professional in another state who registers with the applicable board in Florida to provide services through telehealth for persons located in Florida. However, it does not authorize the Florida-licensed health care practitioners to provide services to out-of-state patients. Whether Florida licensed practitioners can treat patients in other states is governed by laws in those states.

¹⁰ See Article II (15) of the Professional Counselor Licensure Compact in s. 491.017, F.S.

¹¹ Section 491.003(5), F.S.

¹² See Article IX (1) and (2) of the Professional Counselor Licensure Compact in s. 491.017, F.S.

¹³ Email from the Department of Health to staff of the Senate Health Policy Committee, January 27, 2023, on file with the Senate Committee on Health Policy.

¹⁴ See Articles X and XII of the Professional Counselor Licensure Compact in s. 491.017, F.S.

development so full implementation and the issuance of the privilege to practice under the counseling compact is anticipated but is not yet available.

There are approximately 16,682 Licensed Mental Health Counselors in the state. The number of applicants who will apply for a privilege to practice under the compact is indeterminate; applications are expected to open in late 2023 or early 2024.¹⁵

Fee Authority

The Counseling Compact Model Legislation¹⁶ includes a provision that member states may charge a fee for granting the privilege to practice. However, the counseling compact enacted by the 2022 Florida Legislature, did not include this provision ostensibly because of the Constitutional requirement for a separate bill for new state taxes or fees. See Section IV of this analysis.

In 2016, the Florida Legislature enacted the Nurse Licensure Compact that similarly authorizes Registered Nurses (RN) and Licensed Practical Nurses (LPN) with a multistate license to practice in other member states.¹⁷ An RN or LPN in Florida applying for the multistate upgrade to their license must pay a one-time \$100 fee.¹⁸

III. Effect of Proposed Changes:

The bill amends the Professional Counselors Licensure Compact to authorize a member state to charge a fee for granting the privilege to practice professional counseling in member states. If enacted, the board may impose a fee for licensing or otherwise designating licensed practitioners to practice in member states in accordance with the counseling compact. This fee might offset the cost of implementing and administering the counseling compact.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁵ Department of Health, *Florida Department of Health Agency Bill Analysis for SB 140*, January 27, 2023, on file with the Senate Committee on Health Policy.

¹⁶ Counseling Compact Model Legislation, at line 3, available at: https://counselingcompact.org/wp-content/uploads/2022/03/Final_Counseling_Compact_3.1.22.pdf (last visited Mar 22, 2023).

¹⁷ Ch. 2016-130, Laws of Florida.

¹⁸ Florida. Bd. of Nursing, Florida Department of Health, Frequently Asked Questions, Question “When I renew, will I receive the multi-state license automatically?” at <https://floridasnursing.gov/enhanced-nurse-licensure-compact-faqs/> (last visited Mar 22, 2023).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, section 19, of the Florida Constitution requires that 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 Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for services, fee or cost for licenses, and charge for service.

The bill authorizes the imposition of fees for a license for the privilege to practice professional counseling in member states. As such, the Florida Constitution may require that such a fee provision be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill conforms Florida law to the terms of the compact ensuring Florida’s participation in the compact giving Florida discretion to collect fees for the privilege to practice under the compact.

B. Private Sector Impact:

Obtaining a license to practice professional counseling in member states pursuant to the compact is optional. The exact amount of the fee that may be adopted by rule is unknown at this time. However, under the Nurse Licensure Compact an RN or LPN in Florida applying for the multistate upgrade to their license must pay a one-time \$100 fee.

C. Government Sector Impact:

The bill does not authorize the DOH to collect a fee but rather states that these type of fees are allowable under the compact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 491.017 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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
