

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 385 Professional Counselors Licensure Compact

SPONSOR(S): Healthcare Regulation Subcommittee, Porras and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 140

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Vetoed

SUMMARY ANALYSIS

CS/HB 385 was passed by the House on April 20, 2023, and subsequently passed by the Senate on April 27, 2023.

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states. Interstate compacts have model legislation which sets forth the terms and conditions of the compact. States join interstate compacts by adopting the model legislation into law and may not alter its terms and conditions. A compact may suspend the membership of any state that alters the terms and conditions of the model legislation.

In 2020, the National Center for Interstate Compacts adopted model legislation for the Professional Counselors Licensure Compact (compact) which authorizes both telehealth and in-person practice across state lines in compact states. Professional counselors may only utilize the compact if their home state joins the compact. Professional counselors must obtain the privilege to practice from other compact states in order to provide services to clients in those states, and compact states may charge a fee for granting the privilege.

Florida joined the compact in 2022. Florida was the eighth state to join the compact which currently has 17 member states. The compact became active on April 19, 2022, upon its enactment in the 10th member state. The language adopted by Florida is a modified version of the model legislation. Specifically, current law omits model legislation language that gives states the discretion to collect fees for the privilege to practice under the compact.

CS/HB 385 reinserts the original model legislation language of the compact which gives states the discretion to collect fees into current law. This conforms Florida law to the terms of the compact and ensures Florida's participation in the compact.

The bill does not authorize the Department of Health (DOH) to collect a fee, but rather states that fees of this kind are allowable under the compact. In order for DOH to have requisite authority to collect fees, the Legislature would have to enact legislation in the practice act expressly authorizing DOH to collect such fees.

The bill has no fiscal impact on state or local government.

The effective date of this bill was July 1, 2023, however, this bill was vetoed by the Governor on June 2, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states.¹ Interstate compacts have model legislation which sets forth the terms and conditions of the compact. States join interstate compacts by adopting the model legislation into law and may not alter its terms and conditions.² A compact should not be amended from its original form because it legally functions as the acceptance of a contractual agreement between states.³ A state's membership in a compact may be suspended if a state does not comply with the terms and conditions of the compact.⁴

Licensed Professional Counselors in Florida

A mental health counselor is an individual who uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development.⁵

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, under the Department of Health (DOH), oversees licensure and regulation of professional counselors.⁶ In Florida, clinical social workers, marriage and family therapists, and mental health counselors are licensed separately according to different requirements, but are all considered licensed professional counselors under Florida law.⁷ There are approximately 16,682 mental health counselors currently licensed in the state.⁸

Professional Counselors Licensure Compact

The Professional Counselors Licensure Compact (compact) was created by the National Center for Interstate Compacts as an interstate compact to enable professional mental health counselors to provide in-person or telehealth services to patients across state lines without requiring a counselor to obtain multiple state licenses.⁹ The compact establishes the Counseling Compact Commission (Commission), which is made up of voting delegates representing each member state and is responsible for establishing rules and enforcing the compact.¹⁰

¹ National Center for Interstate Compacts, *What Are Interstate Compacts?* Available at <https://compacts.csg.org/compacts/> (last visited May 1, 2023).

² Florida is a party to multiple interstate compacts, including the Nurse Licensure Compact (s. 464.0095, F.S.), Driver's License Compact (s. 322.44, F.S.), Compact on Adoption and Medical Assistance (s. 409.406, F.S.), the Interstate Compact on Educational Opportunity for Military Children (s. 1000.36, F.S.), and the Professional Counselors Licensure Compact (s. 491.017, F.S.).

³ National Center for Interstate Compacts, *Multistate Problem Solving with Interstate Compacts*, available at <https://compacts.csg.org/wp-content/uploads/2020/11/Compact-Resource-Guide-1-1.pdf> (last visited May 1, 2023).

⁴ Counseling Compact, *Counseling Compact Model Legislation* (Dec. 2020), available at https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last visited May 1, 2023).

⁵ Ss. 491.003(6) and (9), F.S.

⁶ S. 491.004, F.S.

⁷ S. 491.003(5), F.S.

⁸ Department of Health, *Agency Analysis of 2023 House Bill 385*, p. 2. (January 27, 2023).

⁹ Counseling Compact, *Counseling Compact Finalized*, available at <https://counselingcompact.org/first-post/> (last visited May 1, 2023).

¹⁰ S. 491.017(9), F.S.

Under the compact, a Florida-licensed professional counselor¹¹ is eligible to provide services to patients in compact states upon being granted compact privileges.¹² The compact also allows out-of-state licensed professional counselors in compact states to provide telehealth or in-person services to Florida patients upon being granted compact privileges.¹³

To exercise the privilege to practice under the terms of the compact, the licensee must:¹⁴

- Hold a license in the home state;
- Have a valid United States social security number or national practitioner identifier;
- Be eligible for a privilege to practice in any member state;
- Have no encumbrance or restriction against any license or privilege to practice within the previous two years;
- Notify the Commission that the licensee is seeking the privilege to practice within a remote state or states;
- Pay any applicable fees, including any state fee, for the privilege to practice;
- Meet any continuing competence or education requirements established by the home state;
- Meet any jurisprudence requirements established by the remote state or states in which the licensee is seeking a privilege to practice; and
- Report to the Commission any adverse action, encumbrance, or restriction on a license taken by any non-member state within 30 days from the date the action is taken.

Florida joined the compact in 2022¹⁵ as the eighth member state.¹⁶ The compact became active on April 19, 2022 upon its enactment in the 10th member state.¹⁷ There are currently 17 states participating in the compact.¹⁸ Applications for compact privileges are not yet open, but are expected to open between late 2023 and early 2024.¹⁹

Professional Counselors Compact Map²⁰

¹¹ In Florida, “licensed professional counselor” includes licensed clinical social workers, marriage and family therapists, and mental health counselors. See, s. 491.003(5), F.S.

¹² Counseling Compact, *Counseling Compact Model Legislation* (Dec. 2020), available at https://counselingcompact.org/wp-content/uploads/2021/06/Final_Counseling_Compact_With_Cover.pdf (last visited May 1, 2023).

¹³ *Id.*

¹⁴ S. 491.017, F.S.

¹⁵ Ch. 2022-63, L.O.F.

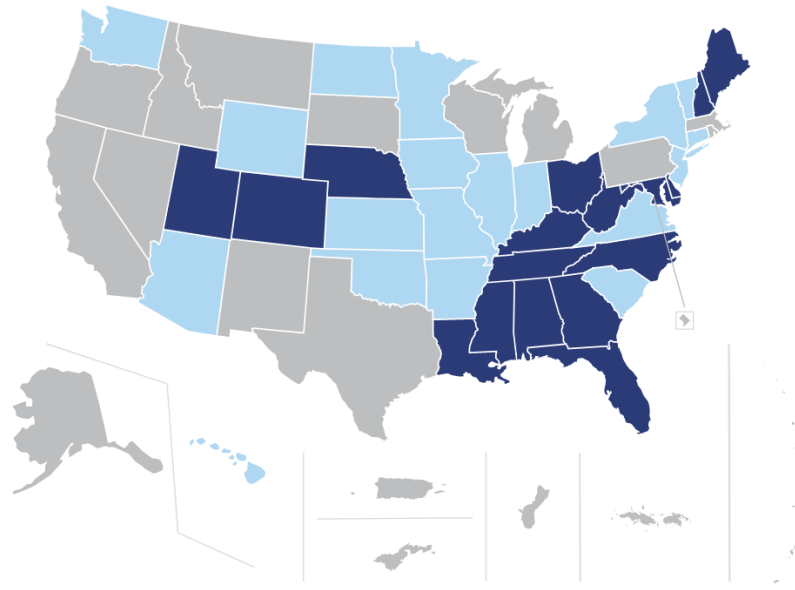
¹⁶ Counseling Compact, *Florida Enacts Counseling Compact*, available at <https://counselingcompact.org/florida-enacts-counseling-compact/> (last visited May 1, 2023).

¹⁷ Counseling Compact, *Nebraska Becomes Tenth Compact Member*, available at <https://counselingcompact.org/nebraska-becomes-tenth-compact-member/> (last visited May 1, 2023).

¹⁸ Alabama, Colorado, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, Tennessee, Utah, and West Virginia are the 17 states currently participating in the Compact. See also Counseling Compact, *Compact Map*, available at <https://counselingcompact.org/map> (last visited May 1, 2023).

¹⁹ Counseling Compact. *FAQ for Counselors*, available at <https://counselingcompact.org/faq/> (last visited May 1, 2023).

²⁰ *Supra*, note 18.



The language adopted by Florida for the compact is a modified version of the model legislation. Specifically, current law omits model legislation language giving states the discretion to collect fees for the privilege to practice under the compact.²¹ Such language does not impose a fee on states; conversely it simply specifies that such fees are permitted under the terms of the compact.

Effect of the Bill

CS/HB 385 reinserts the original model legislation language of the compact giving states the discretion to collect fees into current law. This conforms Florida law to the terms of the compact and ensures Florida’s participation in the compact.

The bill does not authorize the Department of Health (DOH) to collect a fee, but rather states that fees of this kind are allowable under the compact. In order for DOH to have requisite authority to collect fees, the Legislature would have to enact legislation in the applicable practice act expressly authorizing DOH to collect such fees.

The bill provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²¹ *Supra*, note 4 at p. 7.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.