

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 99 Social Work Licensure Interstate Compact

**SPONSOR(S):** Healthcare Regulation Subcommittee, Hunschofsky

**TIED BILLS:** HB 101 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	15 Y, 1 N, As CS	Curry	McElroy
2) Health Care Appropriations Subcommittee		Aderibigbe	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Licensed social workers provide counsel and advocacy for those affected by mental illness, addiction, abuse, and discrimination, among other economic difficulties, and are the largest group of providers of mental and behavioral health services. The Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling within the Department of Health regulates the practices of social work, marriage and family therapy, and mental health counseling.

In 2023, the National Center for Interstate Compacts adopted the model legislation for the Social Work Licensure Interstate Compact (Social Work Compact or compact) which authorizes both telehealth and in person practice across state lines in compact states. Social Workers who are licensed or are eligible for licensure in the compact state where they reside are eligible for a multistate license which authorizes them to practice through either telehealth or in-person in member states.

The compact requires all participating states to report certain licensure information to a shared data system, including identifying information, licensure data, and adverse actions taken against a social worker's license in a compact state.

The compact establishes the Social Work Licensure Interstate Compact Commission (Commission), made up of representatives from each party's state licensing board. The Commission is responsible for administering the compact.

Additionally, the compact allows an active military member or their spouse to designate a home state where the individual has a multistate license and retain his or her home state designation as long as the service member is on active duty.

The compact becomes effective on the date of enactment by the seventh state. Currently, the compact has one member state.

HB 99 enacts the Social Work Licensure Interstate Compact and authorizes Florida to enter into the compact. This allows a social worker licensed or eligible for licensure in Florida to obtain a multistate license to provide services in all member states once the compact is enacted.

The bill will have a significant, negative fiscal impact on DOH and no fiscal impact on local governments. See Fiscal Analysis.

The bill is effective upon the enactment of the Social Work Licensure Interstate Compact into law by seven states.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Health Care Professional Shortage

There is currently a health care provider shortage in the U.S.<sup>1</sup> This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population<sup>2</sup> and the passage of the Patient Protection and Affordable Care Act.<sup>3</sup> Aging populations create a disproportionately higher health care demand. Additionally, as more individuals qualify for health care benefits, there will necessarily be a greater demand for more health care professionals to provide these services.

Currently, the U.S. is facing a growing shortage of licensed behavioral health care specialists, which include psychiatrists, psychologists, and clinical social workers. This shortage has severely limited access to treatment.<sup>4</sup> According to the U.S. Health Resources and Services Administration (HRSA), the U.S. will experience a 15% increase in demand for social workers between 2016 and 2030.<sup>5</sup> According to a 2021 U.S. Bureau of Labor Statistics report, demand for social workers specializing in mental health and treating substance use disorders is projected to increase by 17% between 2019 to 2029.<sup>6</sup> Studies predict that by 2030 there will be a significant deficit (greater than 200,000) in the number of social workers needed to care for children, the elderly and those with addictions, mental health, and other health issues.<sup>7</sup>

#### Social Work Licensure in Florida

Licensed social workers provide counsel and advocacy for those affected by mental illness, addiction, abuse, and discrimination, among other economic difficulties, and are the largest group of providers of mental and behavioral health services.<sup>8</sup> The Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling (Board) within the Department of Health (DOH) regulates the practices of social work, marriage and family therapy, and mental health counseling.<sup>9</sup> Chapter 491,

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<sup>1</sup> For example, as of September 30, 2023, the U.S. Department of Health and Human Services has designated 8,352 Primary Care Health Professional Shortage Area (HPSA) (requiring 17,396 additional primary care physicians to eliminate the shortage), 7,395 Dental HPSAs (requiring 12,757 additional dentists to eliminate the shortage), and 6,622 Mental Health HPSAs (requiring 8,326 additional mental health providers to eliminate the shortage). U.S. Department of Health and Human Services, *Designated Health Professional Shortage Areas Statistics* (September 30, 2023), <https://data.hrsa.gov/Default/GenerateHPSAQuarterlyReport> (last visited December 1, 2023).

<sup>2</sup> According to the U.S. Census Bureau, the U.S. population is expected to increase by nearly 79 million between 2017 and 2060. The nation's 65-and-older population is projected to nearly double (from 49 million to 95 million) between 2016 and 2060. By 2030, one in five Americans is projected to be 65 and over. Jonathan Vespa, Lauren Medina, and David M. Armstrong, U.S. Census Bureau, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060* (February 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf> (last visited December 1, 2023).

<sup>3</sup> U.S. Dep't of Health and Human Services, *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen Health Care*, available at <http://www.hhs.gov/secretary/about/goal5.html> (last visited on May 9, 2023).

<sup>4</sup> Bipartisan Policy Center, *Filing the Gaps in the Behavioral Health Workforce*, (January 2023), at [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/01/BPC\\_2022\\_Behavioral-Health-Integration-Report\\_RV6Final.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/01/BPC_2022_Behavioral-Health-Integration-Report_RV6Final.pdf), (last visited December 1, 2023).

<sup>5</sup> Health Resources Services Administration, *Behavioral Health Workforce Projections, 2016-2030: Social Workers*, <https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/social-workers-2018.pdf>, (last visited December 1, 2023).

<sup>6</sup> Florida Department of State, Division of Library and Information Services, *Social Workers at the Library*, at <https://dos.fl.gov/library-archives/library-development/innovation/stars/social-workers/>, (last visited December 2, 2023).

<sup>7</sup> Quality Improvement Center for Workforce Development, *Social Worker Shortages and The Rise in Competition for a Competent Child Welfare Workforce*, at <https://www.qic-wd.org/blog/social-worker-shortages-and-rise-competition-competent-child-welfare-workforce>, (last visited December 2, 2023).

<sup>8</sup> *The Shortage of Licensed Social Workers in Central Florida*, Helen M. Burrows, Walden University (2019) at <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=8101&context=dissertations>, (last visited December 1, 2023).

<sup>9</sup> Section 491.004, F.S.

F.S., sets forth the licensure requirements for each profession, as well as requirements for licensure renewal, continuing education, discipline, and professional conduct.

DOH must issue a license as a clinical social worker to an applicant whom the Board has certified has meet all of the following criteria:<sup>10</sup>

- Submitted an application and appropriate fees;
- Earned a doctoral degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the U.S. Department of Education, or a master's degree in social work from a graduate school of social work which was accredited by the:
  - Council on Social Work Education (CSWE);
  - Canadian Association of Schools of Social Work (CASSW); or
  - Has been determined to be an equivalent program to programs approved by the CSWE by the Foreign Equivalency Determination Service of the CSWE;
  - Completed all of the following coursework:
    - A supervised field placement during which the applicant provided clinical services directly to clients; and
    - Twenty-four (24) semester hours or thirty-two (32) quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, with a minimum of one course in psychopathology and no more than one course in research;
- Completed at least 2 post graduate years of clinical social work experience under the supervision of a licensed clinical social worker or the equivalent supervisor as determined by the Board;<sup>11</sup>
- Passed a theory and practice examination; and
- Demonstrated in a manner designated by Board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

## Telehealth

A Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,<sup>12</sup> or a registered out-of-state-health care provider is authorized to provide health care services to Florida patients via telehealth.<sup>13</sup> Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.

Under current law, in-state and out-of-state licensed or registered health care practitioners may use telehealth to provide health care services to patients physically located in Florida.<sup>14</sup> The law does not allow health care practitioners, including Florida licensed clinical social workers, to use telehealth to provide services to out-of-state patients.

## 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

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<sup>10</sup> Section 491.005(1), F.S.

<sup>11</sup> Section 491.005(1)(c), F.S. An individual who intends to practice in Florida to satisfy clinical experience requirements must register with the DOH pursuant to s. 491.0045, F.S., before commencing practice.

<sup>12</sup> Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

<sup>13</sup> S. 456.47(4), F.S.

<sup>14</sup> Section 456.47(1) and (4), F.S.

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.<sup>15</sup>

Current law partially waives sovereign immunity, allowing individuals to sue state government and its subdivisions.<sup>16</sup> 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), 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.

### **Impaired Practitioner Program**

The impaired practitioner treatment program was created to provide resources to assist health care practitioners who are impaired as a result of the misuse or abuse of alcohol or drugs, or both, or a mental or physical condition which could affect the practitioners' ability to practice with skill and safety.<sup>17</sup> For a profession that does not have a program established within its individual practice act, the Department of Health (DOH) is required to designate an approved program by rule.<sup>18</sup> By rule, DOH designates the approved program by contract with a consultant to initiate intervention, recommend evaluation, refer impaired practitioners to treatment providers, and monitor the progress of impaired practitioners. The impaired practitioner program may not provide medical services.<sup>19</sup>

### **Interstate Compacts**

An interstate compact is a legal contractual 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.<sup>20</sup> Article 1, 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. However, the case law has provided that not all interstate agreements are subject to congressional approval, but only those that may encroach on the federal government's power.<sup>21</sup>

Florida is a party to multiple interstate health care compacts, including the Nurse Licensure Compact,<sup>22</sup> the Professional Counselors Licensure Compact,<sup>23</sup> and the Psychology Interjurisdictional Compact.<sup>24</sup>

#### Social Work Licensure Interstate Compact

Currently, social workers must seek a separate license in each state in which they chose to practice, which can be labor and time intensive. The compact enables licensed social workers to obtain a multistate license to practice in all compact member states, once the social worker has demonstrated that he or she meets the compact requirements.

The primary purpose of the Social Work Compact is to facilitate interstate practice of regulated social workers by improving public access to competent social work services. Under the compact, a multistate license to practice as a regulated social worker is issued by the licensing authority in the applicant's home state and authorizes the social worker to practice in all compact member states. Member states are required to accept multistate licenses from other compact member states as authorization to practice corresponding to each category of licensure in each member state.

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<sup>15</sup> Fla. Const. art. X, s. 13.

<sup>16</sup> Section 768.28, F.S.<sup>17</sup> Section 456.076, F.S. The provisions of s. 456.076, also apply to veterinarians under s. 474.221, F.S. and radiological personnel under s. 486.315, F.S.

<sup>17</sup> Section 456.076, F.S. The provisions of s. 456.076, also apply to veterinarians under s. 474.221, F.S. and radiological personnel under s. 486.315, F.S.

<sup>18</sup> Section 456.076(1), F.S.

<sup>19</sup> Rule 64B31-10.001(1)(a), F.A.C.

<sup>20</sup> National Center for Interstate Compacts, *What Are Interstate Compacts?*, <https://compacts.csg.org/compacts/> (last visited November 30, 2024).

<sup>21</sup> For example, see *Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976)

<sup>22</sup> Section 464.0095, F.S.

<sup>23</sup> Section 491.017, F.S.

<sup>24</sup> Section 490.0075, F.S.

The compact allows for three categories of social work multistate licensure, clinical, master's and bachelor's. Member states must designate which licensure category will be accepted in that state.

To be eligible for a multistate license, all social workers in a member state must:

- Hold, or be eligible for, an active, unencumbered license to practice social work in the compact member state in which they are domiciled;
- Abide by the laws, regulations, and rules of the state of the member state where the client is located at the time service is provided;
- Submit to a review of criminal history (background screening). (Any disqualifying events are subject to the discretion of the member state.); and
- Pay all applicable fees, including any member state fees and other fees required by the compact, for multistate license.

To be eligible for a clinical-category multistate license a social worker must:

- Fulfill a competency requirement, which shall be satisfied by either:
  - Passing a clinical-category Qualifying National Exam; or
  - Hold and continuously maintain a clinical-category social work license in their home state prior to a Qualifying National Exam being required by the home state as further governed by the rules of the Commission; or
  - Proving clinical competency through a substantially equivalent standard which the Commission may determine by rule.
- Attain at least a master's degree in social work from a program that is accredited, or in candidacy by an institution that subsequently becomes accredited.
- Fulfill the supervised practice requirement, which shall be satisfied by demonstrating completion of:
  - A minimum of 3,000 hours of postgraduate supervised clinical practice; or
  - A minimum two (2) years of full-time postgraduate supervised clinical practice; or
  - Be found to have proven clinical competency through a substantially equivalent standard which the Commission may determine by rule.

To be eligible for a master's category multistate license a social worker must:

- Fulfill a competency requirement, which shall be satisfied by either:
  - Passing a master's-category Qualifying National Exam; or
  - Hold and continuously maintain a master's-category social work license in their home state prior to a Qualifying National Exam being required by the home state as further governed by the Rules of the Commission; or
  - Proving master's-category competency through a substantially equivalent standard which the Commission may determine by rule.
- Attain at least a master's degree in social work from a program that is accredited, or in candidacy by an institution that subsequently becomes accredited.

To be eligible for a bachelor's category multistate license a social worker must:

- Fulfill a competency requirement, which shall be satisfied by either:
  - Passing a bachelor's-category Qualifying National Exam;
  - Hold and continuously maintain a bachelor's-category social work license in their home state prior to a Qualifying National Exam being required by the home state as further governed by the rules of the Commission; or
  - Proving bachelor's-category competency through a substantially equivalent standard which the Commission may determine by rule.
- Attain at least a bachelor's degree in social work from a program that is accredited, or in candidacy by an institution that subsequently becomes accredited.

To maintain a multistate license, a social worker must meet the renewal requirements of their home state.

### State Participation in the Compact

The compact preserves the regulatory authority of member states to protect public health and safety through the current system of state licensure. To join the compact states must enact compact legislation and meet all of the following criteria:

- License and regulate the practice of social work at either the clinical, master's, or bachelor's category;
- Require applicants for licensure to graduate from a program that is accredited, or in candidacy by an institution that subsequently becomes accredited and that corresponds to the licensure sought; and
- Require applicants for clinical licensure to complete a period of supervised practice.

To maintain membership in the compact, a state must:

- Require applicants for a multistate license to pass a Qualifying National Exam corresponding to the category of multistate license sought; and
- Implement procedures for considering the criminal history records (background screening) of applicants for a multistate license.

The compact gives states the discretion to collect fees for social workers to participate in the compact. However, the compact 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 the required authority to collect fees, the Legislature would have to enact legislation in the application practice act expressly authorizing DOH to collect such fees.

### Social Work Licensure Compact Commission

The compact establishes the Social Work Licensure Interstate Compact Commission (Commission) as the governing body and the entity responsible for creating and enforcing the rules and regulations that administer and govern the compact. The Commission membership is composed of compact member states. The licensing authority of each member state must select one delegate to serve on the Commission. The compact requires the Commission to establish and elect an executive committee, which shall have the power to act on behalf of the Commission.

All Commission and executive committee meeting must be open to the public unless confidential or privileged information must be discussed. The compact does not waive sovereign immunity by the member states or by the Commission.

### Shared Data System

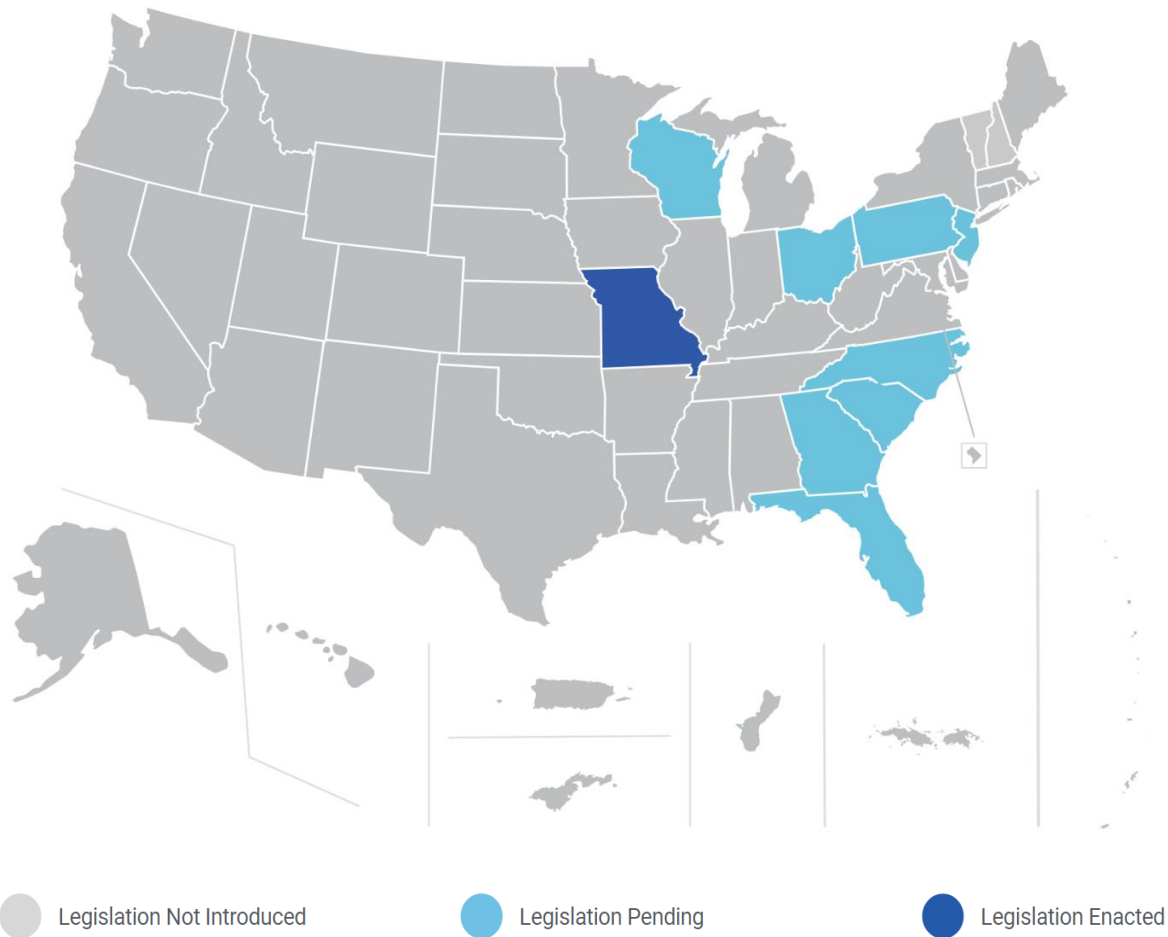
The compact requires member states to use a shared data system which will enable states to verify instantaneously that social workers have met the requirements to practice under the compact and are in good standing with other state regulatory boards. Compact member states must submit licensure information to the data system for all social workers to whom the compact applies, including, identifying information, licensure data, and any adverse actions taken against a social worker's license. The data system will allow for the expedited sharing of licensee, investigative and disciplinary information between member states.<sup>25</sup> Investigative information pertaining to a licensee in any member state will only be available to other member states. A member state may designate information submitted to the data system that may not be shared with the public without the express permission of that member state.

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<sup>25</sup> SWLC, Summary of Key Provisions, at <https://swcompact.org/wp-content/uploads/sites/30/2023/02/Social-Work-Licensure-Compact-Section-by-Section-Summary.pdf>, (last visited December 5, 2023).

## Enactment of Compact

The Social Work Compact is currently not active.<sup>26</sup> The compact becomes effective when enacted into law by seven states.<sup>27</sup> Currently, the compact has one-member state (Missouri). However, legislation is currently pending to enact the compact in eight states, including Florida.



## Effect of the Bill

HB 99 enacts the Social Work Licensure Interstate Compact and authorizes Florida to enter into the compact. The compact allows for three categories of social work multistate licensure, clinical, master's and bachelor's. Member states must designate which licensure category will be accepted in that state. Currently, only individuals who have a master's degree or higher are eligible for licensure as a clinical social worker.

Under the compact, individuals licensed or eligible for licensure as a clinical social worker in Florida will be able to obtain a multistate license to provide services to out-of-state patients through either telehealth or in-person in any of the compact member states. The compact also allows multistate licensed clinical social workers in other compact states to provide services to Florida patients through telehealth and in-person.

The bill amends current law to allow compact implementation. The bill requires DOH to report any significant investigation information relating to a licensed clinical social worker practicing under the compact to the coordinated data system. It requires social workers to withdraw from all practice under

<sup>26</sup> Since the compact is not active yet, multistate licenses for social work are currently not available. SWLC, About, <https://swcompact.org/>, (last visited November 28, 2023).

<sup>27</sup> Social Work Licensure Compact Makes Progress in 2023 Legislative Sessions. (2023), *ASWB Newsletter Volume 33 No. 2*, <https://www.aswb.org/social-work-licensure-compact-makes-progress-in-2023>, (last visited November 28, 2023).

the compact if the social worker is in an impaired practitioner program. It also exempts out-of-state licensed clinical social workers who practice under the compact from licensure requirements in this state. The bill requires the Board to appoint a delegate to serve on the Commission and authorizes the Board to take adverse action against a licensed clinical social worker's authority to practice under the compact and impose disciplinary actions for violation of prohibited acts.

The bill makes conforming changes to statute to reference the compact and the requirements under the compact. The bill does not require changes to Florida's licensure and license renewal requirements.

Additionally, the bill allows an active military member or their spouse to designate a home state where the individual has a multistate license and retain his or her home state designation as long as the service member is on active duty.

The bill is effective upon the enactment of the Social Work Licensure Interstate Compact into law by seven states.

## B. SECTION DIRECTORY:

- Section 1:** Creates s. 491.022, F.S., relating to the Social Work Licensure Interstate Compact.
- Section 2:** Amends s. 456.073, F.S., relating to disciplinary proceedings.
- Section 3:** Amends s. 456.076, F.S., relating to impaired practitioner programs.
- Section 4:** Amends s. 491.004, F.S., relating to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.
- Section 5:** Amends s. 491.005, F.S., relating to licensure by examination.
- Section 6:** Amends s. 491.006, F.S., relating to licensure or certification by endorsement.
- Section 7:** Amends s. 491.009, F.S., relating to discipline.
- Section 8:** Amends s. 768.28, F.S., relating to the waiver of sovereign immunity in tort actions.
- Section 9:** Provides the Department of Health shall notify the Division of Law Revision upon the enactment of the Social Work Licensure Interstate Compact into law by seven states.
- Section 10:** Provides the bill shall take effect upon the enactment of the Social Work Licensure Interstate Compact into law by seven states.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The provisions of this bill do not provide authority to DOH to collect fees, but rather states that fees of this kind are allowable under the compact. In order for DOH to have the required authority to collect fees, the Legislature would have to enact legislation in the application practice act expressly authorizing DOH to collect such fees.

#### 2. Expenditures:

DOH estimates the total cost to comply with the bill is \$491,714 (\$360,000 recurring, \$131,714 non-recurring).<sup>28</sup>

DOH will experience a recurring increase in workload associated with processing applications and issuing initial and renewal licenses, completing background screening requirements, and with additional systems supporting functions including the Licensing and Enforcement Information System Database (LEIDS), updating the Cognitive Virtual Agent (ELI), Continuing Education Tracking System (CE Broker and other supporting systems). This increased workload will require



an additional 3 full-time equivalent (FTE) positions at total estimated cost of \$375,374 (\$327,692/Salary \$46,602/Expense \$1,080/HR).

In addition, updates to fully integrate this bill are estimated to take six months. This reflects a minimum of 927 initial non-recurring contracted hours at a rate of \$120/hr for a total cost of \$111,240 (\$120/hr x 927) and annual recurring system maintenance costs of \$5,100. Total estimated increase in workload and cost is \$116,340 in Contracted Services.

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The compact becomes effective when enacted into law by seven states. Currently, the compact has one-member state (Missouri). Once the compact is fully enacted with a seven-state participation, the Department of Health may request resources needed to implement this act through either the Legislative Budget Request process or through the Legislative Budget Commission.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

As discussed below in the section entitled, "RULE-MAKING AUTHORITY," the bill delegates authority to the Commission to adopt rules that facilitate and coordinate the implementation and administration of the Social Work Licensure Interstate Compact.

If enacted into law, the state will effectively bind itself to rules not yet 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 power to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.<sup>29,30</sup> 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 address this issue in the context of interstate compacts.

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<sup>29</sup> *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)).

<sup>30</sup> 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).

The most recent opportunity Florida courts have had to address this issue appears to be in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).<sup>31</sup> 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.

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 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.

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.<sup>32</sup>

#### B. RULE-MAKING AUTHORITY:

The bill authorizes the Commission to adopt rules to facilitate and coordinate the implementation and administration of the compact. The compact specifies that the rules have the force and effect of law and are binding in all compact states. If a compact state fails to meet its obligations under the compact or the promulgated rules, the state may be subject to remedial training, alternative dispute resolution, suspension, termination, or legal action.

The compact details the rule-making process that must be followed including, notice, an opportunity for public participation, and hearings. The compact also provides a procedure for emergency rule-making in cases of imminent danger to public health, safety, or welfare, to prevent financial loss to the state's or commission, or to comply with federal laws or regulations. All rules and amendments are binding on party state as of the effective date specified.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Healthcare Regulation Subcommittee adopted an amendment and reported the bill favorable. The amendment:

<sup>31</sup> 801 So.2d 1047 (Fla. 1st DCA 2001).

<sup>32</sup> 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 binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

- Requires DOH to report any significant investigatory information relating to a licensed social worker practicing under the compact to a coordinated data system;
- Requires the terms of a monitoring contract for an impaired practitioner who is a licensed clinical social worker to include withdrawal from all practice under the compact;
- Exempts a licensed social worker in a remote state who holds a multi-state license under the compact from Florida licensure requirements;
- Authorizes the Board to delegate a member to serve on the Social Work Licensure Interstate Compact Commission;
- Authorizes the Board to take adverse action against a social worker's license under the compact and impose penalties for specified infractions;
- Recognizes certain individuals, when acting within the official scope of their employment, duties, and responsibilities with the Commission, as agents of the state for sovereign immunity purposes; and
- Requires the Commission to pay any claims or judgements up to the statutory waived amounts of sovereign immunity and authorizes the Commission to maintain insurance coverage to pay any such claims or judgements.
- Makes the bill effective upon the enactment of the compact into law by seven states.

This analysis is drafted to the committee substitute as passed by the Healthcare Regulation Subcommittee.