Health & Human Services Committee

Wednesday, January 27, 2016
9:00 AM – 11:00 AM
Morris Hall

Steve Crisafulli
Speaker

Jason Brodeur
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time:	Wednesday, January 27, 2016 09:00 am
End Date and Time:	Wednesday, January 27, 2016 11:00 am
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 37 Direct Primary Care by Finance & Tax Committee, Costello, Miller
CS/HB 249 Culinary Education Programs by Health Quality Subcommittee, Moskowitz
CS/HB 315 Medical Examiners by Health Quality Subcommittee, Roberson, K.
HB 337 Vision Care Plans by Peters
HB 1061 Nurse Licensure Compact by Pigman
HB 1063 Public Records and Meetings/Nurse Licensure Compact by Pigman

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Tuesday, January 26, 2016.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 26, 2016.

NOTICE FINALIZED on 01/25/2016 3:52PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 37 Direct Primary Care
SPONSOR(S): Costello
TIED BILLS: **IDEN./SIM. BILLS:** SB 132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	13 Y, 1 N	Poche	Calamas
2) Finance & Tax Committee	14 Y, 0 N, As CS	Pewitt	Langston
3) Health & Human Services Committee		Poche	Calamas

SUMMARY ANALYSIS

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between $25 and $100 per individual, to the primary care provider for defined primary care services. After paying the fee, a patient can utilize all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, women's health services, pediatric care, urgent care, wellness education, chronic disease management, and home visits. The Office of Insurance Regulation does not currently regulate DPC agreements.

CS/HB 37 provides that a direct primary care agreement (agreement) and the act of entering into such an agreement are not insurance and not subject to regulation under the Florida Insurance Code (Code), including chapter 636, F.S. The bill also exempts a primary care provider, which includes a primary care group practice, or his or her agent, from any certification or licensure requirements in the Code for marketing, selling, or offering to sell an agreement. An agreement must:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative;
- Allow either party to terminate the agreement by written notice followed by, at least, a 60 day waiting period;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for services not covered under the agreement;
- Specify the duration of the agreement and any automatic renewal provisions;
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason;
- State that the agreement is not health insurance and that the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement for any primary care services covered by the agreement; and
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act, and that patients would need to purchase minimum essential coverage to avoid paying a penalty under the federal law.

The Revenue Estimating Conference has determined that the bill may have either no impact or a negative indeterminate impact on state General Revenue, reflecting uncertainty about whether DPC agreements would be subject to insurance premiums tax in the future under current law.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Office of Insurance Regulation

The Florida Office of Insurance Regulation (OIR) regulates the business of insurance in the state, in accordance with the Florida Insurance Code (Code). The specific chapters under the Code are:

Chapter 624, F.S. – Insurance Code: Administration and General Provisions
Chapter 625, F.S. – Accounting, Investments, and Deposits by Insurers
Chapter 626, F.S. – Insurance Field Representatives and Operations
Chapter 627, F.S. – Insurance Rates and Contracts
Chapter 628, F.S. – Stock and Mutual Insurers; Holding Companies
Chapter 629, F.S. – Reciprocal Insurers
Chapter 630, F.S. – Alien Insurers: Trusteed Assets; Domestication
Chapter 631, F.S. – Insurer Insolvency; Guaranty of Payment
Chapter 632, F.S. – Fraternal Benefit Societies
Chapter 634, F.S. – Warranty Associations
Chapter 635, F.S. – Mortgage Guaranty Insurance
Chapter 636, F.S. – Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations
Chapter 641, F.S. – Health Care Service Programs
Chapter 648, F.S. – Bail Bond Agents
Chapter 651, F.S. – Continuing Care Contracts

The Life and Health Unit (Unit) of OIR provides financial oversight of health insurers, health maintenance organizations, and other regulated entities providing health care coverage. The Unit also reviews and approves some health care coverage products offered in the state. The following chart shows the type and number of each entity in the state:[1]

Authority Category	Authorities
Health Insurers	442
Third Party Administrators	299
Continuing Care Retirement Communities	63
Discount Medical Plan Organizations	42
Health Maintenance Organizations	35
Fraternal Benefit Societies	36
Prepaid Limited Health Service Organizations/Prepaid Health Clinics	27

Direct Primary Care

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between $50 and $100 per individual,[2] to the primary care provider for defined primary care services. Theses primary care services may include:

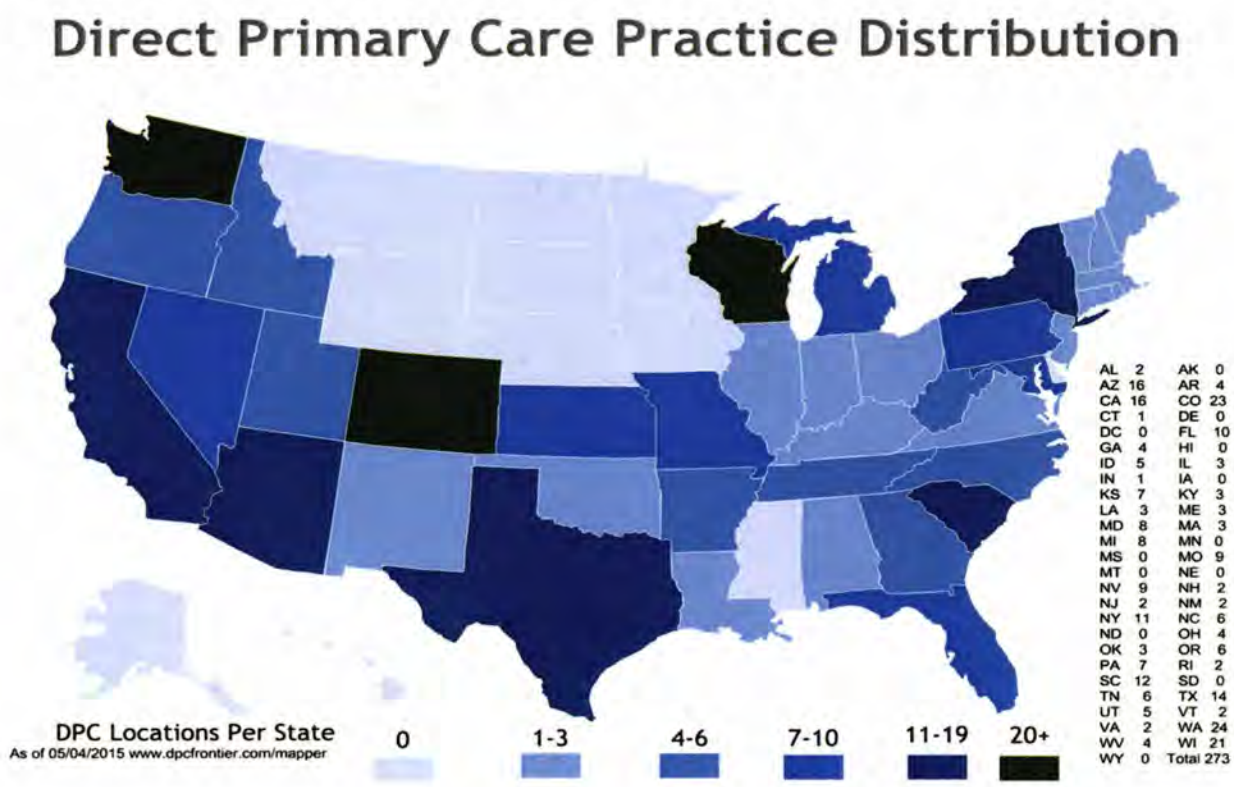
[1] Email correspondence from OIR staff dated November 12, 2015 (on file with Health and Human Services Committee staff).
[2] A recent study of 141 DPC practices found the average monthly fee to be $77.38. Philip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of Family Med., November-December 2015, Vol. 28

- Office visits;
- Annual physical examination;
- Routine laboratory tests;
- Vaccinations;
- Wound care;[3]
- Splinting or casting of fractured or broken bones;
- Other routine testing, e.g. echocardiogram and colon cancer screening; or
- Other medically necessary primary care procedures.

After paying the fee, a patient can access all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, like laboratory tests, mammograms, Pap screenings, vaccinations, and home visits.[4] A primary care provider DPC model can be designed to address the large majority of health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management.

In the DPC practice model, the primary care provider eliminates practice overhead costs associated with filing claims, coding, refiling claims, write-offs, appealing denials, and employing billing staff. The cost and time savings can be reinvested in the practice, allowing more time with patients to address their primary care needs.

The following chart illustrates the concentration of DPC practices in the United States:[5]



No. 6, pg. 797; approximately two thirds of DPC practices charge less than $135 per month. Jen Wieczner, *Is Obamacare Driving Doctors to Refuse Insurance?*, Wall St. J. Marketwatch, Nov. 12, 2013, available at: http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12 (last visited January 23, 2016).

[3] E.g., stitches and sterile dressings.

[4] Direct Primary Care Journal, *DPC Journal Releases Two-Year Industry Analysis of Direct Primary Care Marketplace; Shows Trends, Demographics, DPC Hot Zones*, available at: http://directprimarycarejournal.com/2015/08/24/dpc-journal-releases-two-year-industry-analysis-of-direct-primary-care-marketplace-shows-trends-demographics-dpc-hot-zones/ (last viewed January 23, 2016).

[5] See supra, FN 2, Eskew and Klink.

There are an estimated 4,400 direct primary care physicians nationwide, up from 756 in 2010.[6]

As of July 2015, thirteen states have approved legislation which defines DPC agreements or services as outside the scope of state regulation[7], including:

- Washington
- West Virginia
- Oregon
- Utah
- Arizona
- Louisiana
- Michigan
- Mississippi
- Idaho
- Oklahoma
- Kansas
- Missouri
- Texas

Florida statutes do not specifically address DPC agreements, and OIR has not asserted regulatory authority over them. There is uncertainty about whether OIR might assert such authority in the future. In the event that OIR found that DPC agreements constitute insurance plans subject to regulation under the Insurance Code, the agreements could be subject to the insurance premium tax.

DPC and Health Care Reform

The Patient Protection and Affordable Care Act (PPACA)[8] addresses the DPC practice model. The individual responsibility provision of PPACA requires individuals to obtain health insurance coverage that meets minimum essential coverage standards in the law. Failure to do so results in tax penalties. Direct primary care arrangements alone do not constitute minimum essential coverage because they do not cover catastrophic medical events. A qualified health plan under PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.[9] Patients who are enrolled in a DPC medical home plan are compliant with the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, like cancer, or severe injuries that require lengthy hospital stays and rehabilitation.[10] In Colorado and Washington, qualified health plans are offering DPC medical home coverage on each state-based health insurance exchange.[11]

Effect of Proposed Changes

The bill provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. It exempts both the agreement and the activity from the

[6] Daniel McCorry, *Direct Primary Care: An Innovative Alternative to Conventional Health Insurance*, The Heritage Foundation Backgrounder, No. 2939 (Aug. 6, 2014), available at: http://report.heritage.org/bg2939 (last viewed January 23, 2016).
[7] Direct Primary Care Coalition, *On the Move in the States with DPC*, available at: http://www.dpcare.org (last viewed January 23, 2016).
[8] Pub. L. No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[9] 42 U.S.C. §1802 (a)(3); 45 C.F.R. §156.245
[10] 42 U.S.C. §18021(a)(3); The Secretary of the U.S. Department of Health and Human Services is required to promulgate rules to guide insurers in developing DPC medical home products that provide minimum essential coverage. As of the date of this analysis, those rules have not been promulgated.
[11] Jay Keese, Direct Primary Care Coalition, *Direct Primary Care*, PowerPoint presentation before the House Health Innovation Subcommittee, slide 2, February 17, 2015 (on file with Health and Human Services Committee staff).

Code, including chapter 636, F.S. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the Code to market, sell, or offer to sell a direct primary care agreement.

The bill requires a direct primary care agreement to:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, the patient's legal representative, or an employer;
- Allow either party to terminate the agreement by written notice followed by, at least, a 60 day waiting period;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for services not covered under the agreement;
- Specify the duration of the agreement and any automatic renewal provisions;
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason;
- State that the agreement is not health insurance and that the primary care provider will not bill the patient's health insurance policy or plan for services covered under the agreement; and
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act, and that the patient would need to purchase minimum essential coverage to avoid paying a penalty under the federal law.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Creates s. 624.27, F.S., relating to application of code as to direct primary care agreements.
Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On December 4, 2015, the Revenue Estimating Conference adopted an estimate of the impact of the bill. The bill is estimated to have either no impact or a negative, indeterminate impact to General Revenue, reflecting uncertainty about whether DPC agreements might be subject to regulation by OIR and thus subject to insurance premium tax under current law.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes any regulatory uncertainty as to the status of a direct primary care agreement as insurance. Primary care providers may choose to invest in establishing direct primary care practices throughout the state to provide primary care services, which would increase access to such services, without concern of facing regulatory action by OIR.

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2016, the Finance and Tax Committee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment added a requirement that a direct primary care agreement inform the patient that they would need to purchase a separate catastrophic coverage policy in order to avoid a federal income tax fine. The second amendment required at least 60 days after written notice of cancelation of the agreement before the cancelation would go into effect.

The analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to direct primary care; creating s. 624.27, F.S.; providing definitions; specifying that a direct primary care agreement does not constitute insurance and is not subject to the Florida Insurance Code, including chapter 636, F.S., relating to prepaid limited health service organizations and discount medical plan organizations; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to the code; providing that a certificate of authority is not required to market, sell, or offer to sell a direct primary care agreement; specifying criteria for a direct primary care agreement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

(1) As used in this section, the term:

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer, which meets the criteria

of subsection (4) and does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care provider licensed under chapter 458, chapter 459, or chapter 464, or a primary care group practice, that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to the Florida Insurance Code, including chapter 636. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to the Florida Insurance Code, including chapter 636.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under the Florida Insurance Code, including chapter 636, to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.

(c) Allow a party to terminate the agreement by giving the other party at least 60 days' advance written notice.

(d) Describe the scope of primary care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for primary care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) State that the agreement is not health insurance and that the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement for any primary care services covered by the agreement.

(i) State that the agreement does not qualify as minimum essential coverage that satisfies the individual shared responsibility provision of the Patient Protection and Affordable Care Act pursuant to 26 U.S.C. s. 5000A and that, to avoid paying a penalty, the patient must otherwise obtain minimum essential coverage that satisfies the requirements of the Patient Protection and Affordable Care Act.

Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 37 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health & Human Services Committee

Representative Costello offered the following:

Amendment

Remove line 57 and insert:

other party at least 30 days' advance written notice. The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 37 (2016)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health & Human Services Committee

Representative Costello offered the following:

Amendment

Remove lines 74-77 and insert:

Affordable Care Act pursuant to 26 U.S.C. s. 5000A.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 249 Culinary Education Programs
SPONSOR(S): Health Quality Subcommittee; Moskowitz and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 223, SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Siples	O'Callaghan
2) Appropriations Committee	18 Y, 0 N	Garner	Leznoff
3) Health & Human Services Committee		Siples	Calamas

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates public food service establishments through its Division of Hotels and Restaurants. It also oversees the issuance of licenses for the sale and service of alcoholic beverages in this state through its Division of Alcoholic Beverages and Tobacco (Division).

The bill amends the definition of "public food service establishment" to include a culinary education program that offers, prepares, serves, or sells food to the general public, making it subject to the regulation and oversight of the Division of Hotels and Restaurants. Under current law, a culinary education program is subject to the food safety and sanitation regulations of the Department of Health and will remain subject to its regulation, regardless of whether the culinary education program offers food for public consumption.

The bill defines a culinary education program as one that educates enrolled students in the culinary arts, including preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses. A culinary education program must be inspected by a state agency for compliance with sanitation standards and must be provided by a:

- State university;
- Florida College System institution;
- Nonprofit independent college or university that is located and chartered in this state, meets certain accreditation requirements, and is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or
- Nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.

Current law requires a caterer seeking a license to sell or serve alcohol on the premises of events at which it provides prepared food to derive at least 51% of its gross receipts from the sale of food and nonalcoholic beverages. The bill authorizes the Division to issue a special license to a culinary education program licensed as a public food service establishment for the sale and service of alcoholic beverages on the licensed premises of the culinary education program. For a licensed culinary education program that also provides catering services, the special license will allow it to sell or serve alcoholic beverages on the premises of events for which it provides prepared food, without meeting the requirement of deriving the majority of its gross receipts from the sale of food and nonalcoholic beverages.

The bill explicitly provides that the special license does not authorize the culinary education program to conduct any activities that would violate Florida's Beverage Law, including certain age restrictions, or local law. A culinary education program with a special license may not sell alcoholic beverages by the package for off-premise consumption.

The bill authorizes the DBPR to promulgate rules to administer the bill's provisions.

DBPR estimates that the bill will likely result in an increase of revenue of $142,166 annually ($112,840 in Alcoholic Beverages & Tobacco Trust Fund and $29,326 in the Hotels and Restaurants Trust Fund). Additionally, DBPR indicates that any potential expenditure is insignificant and can be absorbed within current resources.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Food Safety Programs

Three state agencies operate food safety programs in Florida: the Department of Agriculture and Consumer Services (DACS), the Department of Business and Professional Regulation (DBPR), and the Department of Health (DOH). The three agencies carry out similar regulatory activities, but have varying statutory authority, regulate separate sectors of the food service industry, and are funded at different levels because of statutory fee caps.[1] Each agency issues food establishment licenses or permits, conducts food safety and sanitation inspections, and enforces regulations through fines and other disciplinary actions.[2]

Each agency has authority over specific types of food establishments. In general, the DACS regulates grocery stores, supermarkets, bakeries, and convenience stores that offer food service, the DBPR regulates restaurants and caterers, and the DOH regulates facilities that serve high-risk populations such as hospitals, nursing homes, residential care facilities, and schools.[3] While these agencies do not perform duplicate inspections, a single establishment with multiple food operations could be licensed or have food permits from multiple departments.[4]

Florida Food Safety Act[5]

Under the Florida Food Safety Act, the DACS is charged with administering and enforcing the provisions of the Act in order to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food. It is further charged with the regulation of the production, manufacture, transportation, and sale of food, as well as articles entering into, and intended for use as ingredients in the preparation of, food.[6]

An individual seeking to operate a food establishment or retail food store must first obtain a food permit from the DACS.[7] Prior to the issuance of a permit, the DACS performs an inspection of the food establishment, its equipment, and the methods of operation for compliance with the Florida Food Safety Act. Section 500.03(1)(p), F.S., defines "food establishment" as a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include business or activity that is regulated under s. 413, 051, F.S., s. 500.80, F.S., ch. 509, F.S., or ch. 601, F.S.[8]

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[1] Office of Program Policy Analysis and Gov't Accountability, *State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency*, Report No. 08-67 (Dec. 2008), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0867rpt.pdf (last visited Oct. 14, 2015).
[2] *Id.*
[3] Office of Program Policy Analysis and Gov't Accountability, *State's Food Safety Programs Have Improved Performance and Financial Self-Sufficiency*, Report No. 10-44 (June 2010), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1044rpt.pdf (last visited Oct. 14, 2015).
[4] *Supra* note 1.
[5] *See* ch. 500, F.S.
[6] Section 500.032, F.S.
[7] Section 500.12(1), F.S.
[8] This exemption applies to vending stands operated by eligible blind persons, cottage food operations, lodging and food service establishments, and citrus facilities.

Department of Health Food Service Protections

The DOH has been charged with protecting the public from food borne illness.[9] This includes developing and enforcing standards and requirements for the storage, preparation, serving, and display of food in food service establishments. Section 381.0072(2)(c), F.S., defines a "food service establishment" as a:

> detention facility, public or private school, migrant labor camp, assisted living facility, facility participating in the United States Department of Agriculture Afterschool Meal Program located at a facility or site that is not inspected by another state agency for compliance with sanitation standards, adult family-care home, adult day care center, short-term residential treatment center, residential treatment facility, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food events or mobile good units at any facility expressly named in paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether there is a charge for the food.

The DOH utilizes a risk-based inspection program, which means that it more frequently inspects those facilities that pose a greater risk to the public becoming sick from consumption of their product than those that pose a lesser risk.[10] The inspections are performed by the Environmental Health sections of the local County Health Departments.

Department of Business and Professional Regulation's Oversight of Public Food Service Establishments

The Division of Hotels and Restaurants within the DBPR is the state entity charged with enforcing the provisions of part I of ch. 509, F.S., titled Public Lodging and Public Food Service Establishments, and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division of Hotels and Restaurants inspects and licenses public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

> any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.[11]

There are several exclusions from the definition of public food service establishment, including:[12]

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests.

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[9] Section 381.0072(1), F.S.
[10] Florida Department of Health, *Food Safety and Sanitation, available at* http://www.floridahealth.gov/Environmental-Health/food-safety-and-sanitation/index.html (last visited Oct. 14, 2015).
[11] Section 509.013(5)(a), F.S.
[12] Section 509.013(5)(b), F.S.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration, the Department of Children and Families, or other similar place regulated under s. 381.0072, F.S.[13]
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.
- Any place of business where the food available for consumption is limited to ice, beverages, popcorn, or other prepackaged food.
- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods.
- Any research and development test kitchen limited to the use of employees and not open to the general public.

Florida's Beverage Law

Alcoholic beverages are regulated by Florida's Beverage Law.[14] The Division of Alcoholic Beverages and Tobacco, within the DBPR, is responsible for the regulation of the manufacture, packaging, distribution, and sale of alcoholic beverages within the state.[15]

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" are defined by s. 565.01, F.S., to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor, along with beer and wine, that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. This is commonly known as a quota license. Due to the limitation on the number of quota licenses that may be issued, a prospective applicant must either purchase an existing license or enter a drawing to win the right to apply for a newly authorized quota license.[16] This limitation on the number of licenses per county does not apply to a:

- Bona fide hotel, motel, or motor court of a certain size and deriving a majority of its gross profits from the rental of hotel or motel rooms;
- Condominium licensed under ch. 590, F.S.;

[13] *See supra* note 2.
[14] Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.
[15] Section 561.02, F.S.
[16] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *FAQs – Frequently Asked Questions*, *available at* http://www.myfloridalicense.com/dbpr/abt/documents/abt_frequently_asked_questions_000.pdf (last visited Oct. 14, 2015).

- Restaurant of a certain size and deriving at least 51% of its gross profits from the sale of food and nonalcoholic beverages; and
- Caterer, licensed by the Division of Hotels and Restaurants under ch. 509, F.S., deriving at least 51% of its gross revenue from the sale of food and nonalcoholic beverages, and selling or serving alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food.[17]

The annual fee for a quota license that allows for the consumption of alcoholic beverages on the premises will vary based on county population but ranges from $624 to $1,820.[18] However, at the initial issuance of a new license, the licensee must pay a one-time fee of $10,750.[19] For the purchase and transfer of an existing license, a licensee must pay a transfer fee (not to exceed $5,000). The cost of purchasing an existing license is determined by the market condition for quota licenses.[20]

A qualified, licensed caterer's annual fee for a license to sell or serve alcoholic beverages on the premises of events at which the caterer is also providing prepared food is $1,820.[21]

Culinary Education Programs

A culinary education program prepares individuals for a career in the culinary arts, which includes developing knowledge of food science, diet, and nutrition.[22] Culinary education programs vary widely and can result in the award of a certificate, an Associate's Degree, or a Bachelor's Degree. Additionally, culinary education can be obtained as a concentration in another degree program, such as Hospitality Management or Business Administration, and may also be obtained as part of an established apprenticeship program.

There does not appear to be a single entity that accredits or oversees culinary education programs. Depending on the program, it may be subject to oversight by local and state education entities or may be accredited by an independent accreditation organization.[23] The Florida Department of Education reports that there are a total of 75 postsecondary culinary education programs under its purview.[24]

Effect of Proposed Changes

Department of Health Food Service Protections

Current law provides that all food service establishments are subject to the food safety and sanitation regulations adopted by the DOH, unless it is licensed under ch. 500, F.S., or ch. 509, F.S. The bill maintains this requirement, but also expressly provides that a public food service establishment that is a culinary education program licensed under ch. 509, F.S., remains subject to the food sanitation regulations of the DOH. The bill includes a culinary education program that prepares food intended for individual portion service, whether there is a charge, or whether the program is inspected by another state agency for compliance with sanitation standards, in the definition of "food service establishments."

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[17] Section 561.20(2)(a), F.S. Other special licenses are permitted under s. 561.20(2), F.S.
[18] Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *Licenses and Permits for Alcoholic Beverages*, (Aug. 28, 2015), *available at* http://www.myfloridalicense.com/dbpr/abt/licensing/ABTLicenses.pdf (last visited Oct. 15, 2015).
[19] *Supra* note 16.
[20] *Id.*
[21] *Supra* note 18.
[22] Course Advisor, *What is Culinary Education?*, *available at* http://resources.courseadvisor.com/culinary-hospitality/culinary-education-cooking-schools (last visited Oct. 15, 2015).
[23] For an example of an independent accrediting body, *see* American Culinary Federation, *Accreditation for Culinary Arts and Baking and Pastry Programs*, *available at* http://www.acfchefs.org/ACF/Education/Accreditation/ACF/Education/Accreditation/ (last visited Oct. 15, 2015).
[24] E-mail correspondence with Department of Education staff (Oct. 15, 2015). There are 16 culinary schools licensed by the Commission for Independent Education, 36 Postsecondary Adult Vocational programs, and 23 programs offered by state colleges.

Culinary Education Programs

The bill defines a culinary education program as a program that educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses. A culinary education program must be inspected by a state agency for compliance with sanitation standards and provided by:

- A state university;[25]
- A Florida College System institution;[26]
- A nonprofit independent college or university that is located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program;[27] or
- A nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.[28]

Culinary education programs located in secondary schools are not included in this definition.[29]

Public Food Establishments

The Division of Hotels and Restaurants, within the DBPR, inspects and regulates public food service establishments. The bill amends the definition of "public food service establishments" to include a culinary education program that offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another agency, making it subject to the regulation of the DBPR.

Sale and Service of Alcoholic Beverages

The Division of Alcoholic Beverages and Tobacco, within the DBPR, regulates the sale of alcoholic beverages in this state. Current law provides that a caterer seeking to sale or serve alcoholic beverages for consumption at events it caters must be duly licensed by the Division of Alcoholic Beverages and Tobacco, and must derive at least 51% of its gross profits from the sale of food and nonalcoholic drinks. The bill exempts a licensed culinary education program providing catering services from the requirement that it must derive 51% of its gross profits from the sale of food and nonalcoholic beverages.

The bill provides that a duly licensed culinary education program is not subject to the provisions of law that limit the number of alcoholic beverage licenses that may be issued in each county. The bill provides that a duly licensed culinary education program may be granted a special license that will permit the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. At the time of application for the special license, the culinary education program

[25] Pursuant to s. 1000.21(6), F.S., "state university" refers to the 12 state universities and any branch campuses, centers, or other affiliates of the institutions.
[26] Pursuant to s. 1000.21(3), F.S., "Florida College System institution" refers to the 28 state colleges and any branch campuses, centers, or other affiliates of the institutions.
[27] The William L. Boyd, IV, Florida Resident Access Grant Program provides tuition assistance to Florida undergraduate students attending an eligible independent, non-profit college or university located in Florida. *See* s. 1009.89, F.S.
[28] Pursuant to s. 1005.02(11), F.S., a nonpublic postsecondary educational institution means any postsecondary education al institution that operates in this state or makes application to operate in this state, and is not provided, operated, or supported by the State of Florida, is political subdivisions, or the federal government.
[29] The term "secondary school" generally refers to a high school or similar institution providing instruction for students between elementary school and college and usually offering general, technical, vocational, or college-preparatory courses. *See* http://www.merriam-webster.com/dictionary/secondary%20school (last visited October 20, 2015).

must specify designated areas in its facility where alcoholic beverages may be consumed. Alcoholic beverages sold for consumption on the premises must be consumed on the licensed premises only.[30]

For a culinary education program that also provides catering services, the bill provides that the special license will also allow for the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. The bill provides that the culinary education program will be assessed an annual fee of $1,820 annually in compliance with s. 565.02(1)(b), F.S. regardless of the population of the county where the license is issued.[31] The culinary education program must prominently display its beverage license at any catered event at which it will be selling or serving alcoholic beverages. The licensee is required to maintain records for 3 years to demonstrate compliance with state law.

If a culinary education program also has any other license under the Beverage Law, the special license, provided under the bill's provisions, does not authorize the holder to conduct activities on the premises that are governed by the other license or licenses that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this bill authorizes a licensee to conduct activities that are prohibited by the Beverage Law or local law.

The bill places certain limitations on a culinary education program possessing a special license provided under its provisions. The bill prohibits a licensed culinary education program from selling alcoholic beverages by the package for off-premise consumption. The bill also requires a licensed culinary education program to comply with age requirements for vendors as provided under the Beverage Law.[32]

The bill authorizes the Division of Alcoholic Beverages and Tobacco within the DBPR to promulgate rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0072, F.S., relating to food service protection.
Section 2. Amends s. 509.013, F.S., relating to definitions.
Section 3. Amends s. 561.20, F.S., relating to limitation upon the number of licenses issued.
Section 4. Provides an effective date of July 1, 2016.

[30] Pursuant to s. 561.01(11), F.S., "licensed premises" means not only the rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law.
[31] Dep't of Business and Professional Regulation, *2016 Agency Legislative Bill Analysis of House Bill 249* (November 10, 2015) (on file with the Government Operations Appropriations Subcommittee).
[32] Sections 562.11(4) and 562.111(2), F.S., allows alcoholic beverages to be served to a student who is at least 18 years of age and the alcoholic beverage is delivered as part of the student's required curriculum at an accredited postsecondary educational institution if the student is enrolled in the college and required to taste alcoholic beverages for instructional purposes only during class under the supervision of authorized personnel. Section 562.13, F.S., prohibits the employment of a person under the age of 18 by vendors licensed under the Beverage Law; however, this prohibition does not apply to employees under the age of 18 for certain types of establishments, such as drug stores, grocery stores, hotels, bowling alleys, etc.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The new special alcoholic beverage license type will generate additional revenue for the state. Each license fee will generate $1,820 annually regardless of the population of the county where the license is issued.[33] The anticipated number of new licenses is contingent upon the number of entities which currently meet the license qualifications or are subsequently established in accordance with the license qualifications. Approximately 62 entities are currently known to operate culinary education programs in the state which could pursue application for the new license.

DBPR estimates that if the known 62 current culinary education programs that may be affected by this bill purchased the new special alcoholic beverage license type, the new licenses would generate total annual revenue of $112,840 which will be deposited into the Alcoholic Beverages and Tobacco Trust Fund (with cities and counties receiving 38% and 24%). Revenue could increase if additional entities meet the requirements of the bill and apply for a license with DBPR.

DBPR estimates that the revenue increase associated with the food service license provisions of the bill to be approximately $29,326 annually, which will be deposited into the Hotels and Restaurants Trust Fund.

2. Expenditures:

In order to comply with the provisions of the bill, the DBPR advises that it will need to modify software applications it currently uses to accommodate the changes made by the provisions of the bill. The bill will also increase the number of food safety and sanitation inspections that must be performed, as each licensee will require at least two inspections per year. The DBPR indicates that these costs can be absorbed by existing resources.[34]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Cities and counties receive 38% and 24% of the license fees for each new license issued in its jurisdiction. If the known 62 current culinary education programs that may be affected by this bill purchased an alcoholic beverage license, the new licenses would generate total annual revenue of $112,840 with cities and counties receiving $42,879 and $27,082. Therefore, the bill may provide a positive fiscal impact on those cities and counties in which there is a culinary education program licensed to sell or serve alcoholic beverages.[35]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The initial fee for a culinary education program seeking to be licensed as a caterer by the Division of Hotels and Restaurants, within the DBPR, is $473 and the annual renewal fee is $273. If a licensed culinary education program seeks to obtain a license to sell or serve alcoholic beverages, it must also pay the licensure fee for that additional license, which will be $1,820 per year.[36]

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[33] Dep't of Business and Professional Regulation, *2016 Agency Legislative Bill Analysis of House Bill 249* (November 10, 2015) (on file with the Government Operations Appropriations Subcommittee).
[34] Dep't of Business and Professional Regulation, *2016 Agency Legislative Bill Analysis of House Bill 249* (Oct. 19, 2015) (on filed with the Health Quality Subcommittee).
[35] *Id. See also* s. 561.342, F.S.
[36] *Supra* note 33.

With the ability to provide alcoholic beverages as a caterer, some culinary education programs may be able to generate additional revenue for its programs and students. Existing catering businesses may experience a decrease in business due to the increased competition from the culinary education programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Alcoholic Beverages and Tobacco within the DBPR to promulgate rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR respectively noted in their departmental bill analysis, "that as created in this bill, the new special alcoholic beverage license would expand privileges for the sale and service of liquor in Florida as an additional exception to the quota beverage license which is otherwise restricted in number based on county population size. The standards of qualification as a culinary education program as defined in this bill are beyond the jurisdiction of the Division [of Alcoholic Beverages and Tobacco], and accordingly, the evolution of this special license exception will be primarily controlled by the manner in which other agencies establish, interpret, modify, or enforce the core qualifications of a culinary education program". [37]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 20, 2015, the Health Quality Subcommittee adopted a technical amendment to specify a "public food service establishment" licensed under ch. 509, F.S., rather than a "food service establishment."

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

[37] *Supra* note 33.

A bill to be entitled

An act relating to culinary education programs; amending s. 381.0072, F.S.; providing for the applicability of Department of Health sanitation rules to a licensed culinary education program; defining the term "culinary education program"; including certain culinary education programs under the definition of "food service establishment" and providing for the applicability of food service protection requirements thereto; conforming provisions; amending s. 509.013, F.S.; revising the definition of the term "public food service establishment" to include a culinary education program; amending s. 561.20, F.S.; permitting a culinary education program with a public food service establishment license to obtain an alcoholic beverage license under certain conditions; authorizing the Division of Alcoholic Beverages and Tobacco to adopt rules to administer such licenses; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.0072, Florida Statutes, is amended to read:

381.0072 Food service protection.—

(1) DEPARTMENT OF HEALTH; SANITATION RULES.—

(a) It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section ~~and which are not permitted or licensed under chapter 500 or chapter 509~~.

(b) A food service establishment is subject to the sanitation rules adopted and enforced by the department. This section does not apply to a food service establishment permitted or licensed under chapter 500 or a public food service establishment licensed under chapter 509 unless the public food service establishment is a culinary education program licensed under chapter 509.

(2)~~(1)~~ DEFINITIONS.—As used in this section, the term:

(a) "Culinary education program" means a program that:

1. Educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses;

2. Is provided by:

a. A state university as defined in s. 1000.21;

b. A Florida College System institution as defined in s. 1000.21;

c. A nonprofit independent college or university that is located and chartered in this state and accredited by the

Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or

d. A nonpublic postsecondary educational institution licensed pursuant to part III of chapter 1005; and

3. Is inspected by any state agency or agencies for compliance with sanitation standards.

(b) ~~(a)~~ "Department" means the Department of Health or its representative county health department.

(c) ~~(b)~~ "Food service establishment" means detention facilities, public or private schools, migrant labor camps, assisted living facilities, facilities participating in the United States Department of Agriculture Afterschool Meal Program that are located at a facility or site that is not inspected by another state agency for compliance with sanitation standards, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, homes for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food

events or mobile food units at any facility expressly named in this paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes a culinary education program where food is prepared and intended for individual portion service, regardless of whether there is a charge for the food or whether the program is inspected by another state agency for compliance with sanitation standards. The term does not include any entity not expressly named in this paragraph; nor does the term include a domestic violence center certified by the Department of Children and Families and monitored by the Florida Coalition Against Domestic Violence under part XII of chapter 39 if the center does not prepare and serve food to its residents and does not advertise food or drink for public consumption.

(d) ~~(c)~~ "Operator" means the owner, operator, keeper, proprietor, lessee, manager, assistant manager, agent, or employee of a food service establishment.

(3) ~~(2)~~ DUTIES.—

(a) The department may advise and consult with the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, and the Department of Children and Families concerning procedures related to the storage, preparation,

serving, or display of food at any building, structure, or facility not expressly included in this section that is inspected, licensed, or regulated by those agencies.

(b) The department shall adopt rules, including definitions of terms which are consistent with law prescribing minimum sanitation standards and manager certification requirements as prescribed in s. 509.039, and which shall be enforced in food service establishments as defined in this section. The sanitation standards must address the construction, operation, and maintenance of the establishment; lighting, ventilation, laundry rooms, lockers, use and storage of toxic materials and cleaning compounds, and first-aid supplies; plan review; design, construction, installation, location, maintenance, sanitation, and storage of food equipment and utensils; employee training, health, hygiene, and work practices; food supplies, preparation, storage, transportation, and service, including access to the areas where food is stored or prepared; and sanitary facilities and controls, including water supply and sewage disposal; plumbing and toilet facilities; garbage and refuse collection, storage, and disposal; and vermin control. Public and private schools, if the food service is operated by school employees, bars and lounges, civic organizations, and any other facility that is not regulated under this section are exempt from the rules developed for manager certification. The department shall administer a comprehensive inspection, monitoring, and sampling program to

ensure such standards are maintained. With respect to food service establishments permitted or licensed under chapter 500 or chapter 509, the department shall assist the Division of Hotels and Restaurants of the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services with rulemaking by providing technical information.

(c) The department shall carry out all provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of food service establishments as defined in this section, for the purpose of safeguarding the public's health, safety, and welfare.

(d) The department shall inspect each food service establishment as often as necessary to ensure compliance with applicable laws and rules. The department shall have the right of entry and access to these food service establishments at any reasonable time. In inspecting food service establishments under this section, the department shall provide each inspected establishment with the food recovery brochure developed under s. 595.420.

(e) The department or other appropriate regulatory entity may inspect theaters ~~exempted in subsection (1)~~ to ensure compliance with applicable laws and rules pertaining to minimum sanitation standards. A fee for inspection shall be prescribed by rule, but the aggregate amount charged per year per theater establishment shall not exceed $300, regardless of the entity

providing the inspection.

(4)~~(3)~~ LICENSES REQUIRED.—

(a) Licenses; annual renewals.—Each food service establishment regulated under this section shall obtain a license from the department annually. Food service establishment licenses shall expire annually and are not transferable from one place or individual to another. However, those facilities licensed by the department's Office of Licensure and Certification, the Child Care Services Program Office, or the Agency for Persons with Disabilities are exempt from this subsection. It shall be a misdemeanor of the second degree, punishable as provided in s. 381.0061, s. 775.082, or s. 775.083, for such an establishment to operate without this license. The department may refuse a license, or a renewal thereof, to any establishment that is not constructed or maintained in accordance with law and with the rules of the department. Annual application for renewal is not required.

(b) Application for license.—Each person who plans to open a food service establishment regulated under this section and not regulated under chapter 500 or chapter 509 shall apply for and receive a license prior to the commencement of operation.

(5)~~(4)~~ LICENSE; INSPECTION; FEES.—

(a) The department is authorized to collect fees from establishments licensed under this section and from those facilities exempted from licensure under paragraph (4)(a) ~~(3)(a)~~. It is the intent of the Legislature that the total fees

assessed under this section be in an amount sufficient to meet the cost of carrying out the provisions of this section.

(b) The fee schedule for food service establishments licensed under this section shall be prescribed by rule, but the aggregate license fee per establishment shall not exceed $300.

(c) The license fees shall be prorated on a quarterly basis. Annual licenses shall be renewed as prescribed by rule.

(6) ~~(5)~~ FINES; SUSPENSION OR REVOCATION OF LICENSES; PROCEDURE.—

(a) The department may impose fines against the establishment or operator regulated under this section for violations of sanitary standards, in accordance with s. 381.0061. All amounts collected shall be deposited to the credit of the County Health Department Trust Fund administered by the department.

(b) The department may suspend or revoke the license of any food service establishment licensed under this section that has operated or is operating in violation of any of the provisions of this section or the rules adopted under this section. Such food service establishment shall remain closed when its license is suspended or revoked.

(c) The department may suspend or revoke the license of any food service establishment licensed under this section when such establishment has been deemed by the department to be an imminent danger to the public's health for failure to meet sanitation standards or other applicable regulatory standards.

(d) No license shall be suspended under this section for a period of more than 12 months. At the end of such period of suspension, the establishment may apply for reinstatement or renewal of the license. A food service establishment which has had its license revoked may not apply for another license for that location prior to the date on which the revoked license would have expired.

(7) ~~(6)~~ IMMINENT DANGERS; STOP-SALE ORDERS.—

(a) In the course of epidemiological investigations or for those establishments regulated by the department under this chapter, the department, to protect the public from food that is unwholesome or otherwise unfit for human consumption, may examine, sample, seize, and stop the sale or use of food to determine its condition. The department may stop the sale and supervise the proper destruction of food when the State Health Officer or his or her designee determines that such food represents a threat to the public health.

(b) The department may determine that a food service establishment regulated under this section is an imminent danger to the public health and require its immediate closure when such establishment fails to comply with applicable sanitary and safety standards and, because of such failure, presents an imminent threat to the public's health, safety, and welfare. The department may accept inspection results from state and local building and firesafety officials and other regulatory agencies as justification for such actions. Any facility so deemed and

closed shall remain closed until allowed by the department or by judicial order to reopen.

(8)~~(7)~~ MISREPRESENTING FOOD OR FOOD PRODUCTS.—No operator of any food service establishment regulated under this section shall knowingly and willfully misrepresent the identity of any food or food product to any of the patrons of such establishment. Food used by food establishments shall be identified, labeled, and advertised in accordance with the provisions of chapter 500.

Section 2. Paragraph (a) of subsection (5) of section 509.013, Florida Statutes, is amended to read:

509.013 Definitions.—As used in this chapter, the term:

(5)(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

Section 3. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that the provisions of this subparagraph

shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under the provisions of chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

4. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or

5. Any caterer, deriving at least 51 percent of its gross

revenue from the sale of food and nonalcoholic beverages, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any other provision of law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A

licensee under this subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this subparagraph, including licensed vendor receipts for the purchase of alcoholic beverages and records identifying each customer and the location and date of each catered event. Notwithstanding any provision of law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance

Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072.

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any other provision of law to the contrary, a licensee that provides catering services under this sub-

subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package

for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing

herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 4. This act shall take effect July 1, 2016.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health & Human Services Committee

Representative Moskowitz offered the following:

Amendment

Remove lines 51-59 and insert:

c. A career center as defined in s. 1001.44;

d. A charter technical career center as defined in 1002.34;

e. A nonprofit independent college or university that is located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or

f. A nonpublic postsecondary educational institution licensed pursuant to Part III of chapter 1005; and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 315 Medical Examiners
SPONSOR(S): Health Quality Subcommittee; Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	9 Y, 3 N, As CS	McElroy	O'Callaghan
2) Local & Federal Affairs Committee	12 Y, 6 N	Darden	Kiner
3) Health & Human Services Committee		McElroy	Calamas

SUMMARY ANALYSIS

Section 406.06, F.S., entitles a medical examiner to compensation, and a reasonable salary and fees as established by a board of county commissioners. A number of counties have interpreted this provision as authority for their board of county commissioners to authorize their district medical examiner to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public a fee for an examination, investigation, or autopsy performed by a medical examiner pursuant to s. 406.11, F.S.

Section 382.011, F.S., requires any case in which a death or fetal death resulted from the causes or conditions listed in s. 406.011, F.S., to be referred to the district medical examiner for the determination of the cause of death. The bill corrects a citation in s. 382.011, F.S., to clarify that only deaths and fetal deaths involving circumstances set forth in subsection (1) of s. 406.11, F.S., are required to be referred to the district medical examiner for the determination of the cause of death. The remaining provisions in s. 406.11, F.S., are not related to causes or conditions of death upon which a medical examiner can make a determination.

The bill has no fiscal impact on state government and may have a negative fiscal impact on those local governments that currently assess a user fee for medical examiner services provided pursuant to s. 406.11, F.S.

The bill provides an effective date of October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Medical Examiners Act

The Medical Examiners Act (Act), ch. 406, F.S., establishes minimum and uniform requirements for statewide medical examiner services. The Act created the Medical Examiners Commission (Commission) which is composed of seven persons appointed by the Governor, the Attorney General and the State Surgeon General. The Commission is responsible for establishing, by rule, minimum and uniform standards of excellence, performance of duties, and maintenance of records requirements for medical examiners.[1] The Commission is additionally responsible for the creation of medical examiner districts throughout the state.[2] There are currently 24 medical examiner districts.[3]

Determination of Cause of Death

Each district medical examiner is responsible for conducting investigations, examinations and autopsies and reporting vital statistics to the Department of Health for their district. Section 382.011, F.S., currently requires that any case of death or fetal death due to causes or conditions listed in s. 406.11, F.S., be referred to the district medical examiner for investigation and determination of the cause of death.

The causes and conditions of death listed in s. 406.11(1), F.S., can be separated into two categories. Section 406.11(1)(a), F.S., sets forth causes and conditions related to the circumstances surrounding the death and requires a determination of the cause when any person dies in the state:

- Of criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease constituting a threat to public health; or
- By disease, injury, or toxic agent resulting from employment.

Sections 406.11(1)(b) and (c), F.S., relate to transport and disposal of the decedent's remains and require a determination of the cause of death when a dead body is:

- Brought into the state without proper medical certification; or
- To be cremated, dissected, or buried at sea.

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[1] Section 406.04, F.S.
[2] Section 406.05, F.S.
[3] A map of the medical examiner districts in Florida is available at http://myfloridamedicalexaminer.com/ (last viewed on November 20, 2015).

Under s. 406.11(1) F.S., the district medical examiner is authorized to perform any such examinations, investigations, and autopsies as he or she deems necessary to determine the cause of death. The complexity of the determination of the cause of death, however, can differ greatly depending on whether the investigation is required pursuant to s. 406.11(1)(a), F.S., or s. 406.11(1)(c), F.S.

A determination pursuant to s. 406.11(1)(a), F.S., requires a comprehensive review to determine the cause of a death that occurred under unusual circumstances.[4] Physical inspection of the decedent's remains is typically required.[5] As such, a district medical examiner usually performs autopsies or other necessary physical examinations.[6] A district medical examiner also typically requests and reviews any pertinent documentation related to the person's death.[7]

When a death occurs under ordinary circumstances, the district medical examiner does not perform an autopsy or investigation.[8] The disposition of the remains occurs and no further issues arise. On occasion, issues arise after disposition which raise the question of whether a death actually occurred under ordinary circumstances. In these situations the body is exhumed and the district medical examiner performs a determination of cause of death. This examination cannot occur if the body has been cremated, dissected or buried at sea. Thus, s. 406.11(1)(c), F.S., requires the medical examiner to make a determination of cause of death in situations where there is an irretrievable disposal of the remains.

Determinations of the cause of death performed pursuant to s. 406.11(1)(c), F.S., are generally administrative in nature.[9] The process begins with the funeral director completing the death certificate and forwarding it to the decedent's attending or primary physician for signature.[10] Once the funeral director receives the signed death certificate, he or she forwards it to the district medical examiner for review. Unless the medical examiner identifies an issue on the face of the death certificate, he or she grants approval and the funeral director may proceed with the disposal of the remains.[11] The medical examiner may conduct a more thorough investigation if he or she identifies an issue on the face of the death certificate.[12] For example, if a secondary cause of death is a fractured hip, the medical examiner may request additional information to ensure that it was not related to abuse or neglect. Even in that situation, the investigation is generally less comprehensive than the investigation performed under s. 406.11(1)(a), F.S.

Prior to 2012, the approval process for a death certificate was a slow and arduous paper process.[13] It required the manual entry and the transmittal of information through numerous offices within county and state departments.[14] However, in 2012, Florida's Department of Health automated the process through the Electronic Death Registration System. The electronic transmittal of the information has made the approval process more efficient by reducing reporting time and allows for more timely issuances of death certificates.[15]

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[4] In 2014, 187,944 death certificates were issued. Medical examiners investigation into these deaths consisted of 9,809 autopsies, 5,320 body inspections and 3,291 investigations (body was not viewed). *2014 Annual Report*, Florida Dept. of Law Enforcement (FDLE) Medical Examiners Commission, published August 2015, available at https://www.fdle.state.fl.us/Content/Medical-Examiners-Commission/MEC-Publications-and-Forms.aspx (last viewed December 10, 2015).
[5] *Practice Guidelines for Florida Medical Examiners*, Florida Association of Medical Examiners, 2010.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Section 382.008, F.S. In 2014, there were 187,944 death certificates issued of which 165,419 were issued by physicians. Correspondence from the Florida Department of Health to Florida House of Representatives Health Quality Subcommittee, dated October 21, 2015 (on file with the Health Quality Subcommittee).
[11] Florida Association of Medical Examiners, *supra* footnote 5.
[12] *Id.*
[13] *Electronic Death Registration*, Florida Department of Health. http://www.floridahealth.gov/%5C/certificates/certificates/EDRS/index.html (last viewed on November 20, 2015).
[14] *Id.*
[15] *Id.*

Medical Examiner User Fees

District medical examiners and associate medical examiners are entitled to reasonable salary and fees as established by the board of county commissioners.[16] Fees are approved on a county by county basis and may vary within a district.[17] Twenty-two of the twenty-four medical examiner districts operate their own facilities, of which 19 charge a user fee for cremation approval.[18] The user fees range from no charge in 25 counties[19] to more than $50 in two districts.[20] The estimated revenue from these fees in 2014 was approximately $3.98 million.[21]

Effect of Proposed Changes

Pursuant to s. 406.06(3), F.S., district medical examiners and associate medical examiners are entitled to compensation and such reasonable salary and fees as are established by the board of county commissioners. A number of counties have interpreted this provision as authority for their board of county commissioners to authorize their district medical examiner to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public a fee for an examination, investigation, or autopsy performed pursuant to s. 406.11, F.S.

Section 382.011, F.S., requires any case in which a death or fetal death resulted from the causes or conditions listed in s. 406.11, F.S., to be referred to the district medical examiner for the determination of the cause of death. The bill corrects a citation in s. 382.011, F.S., to clarify that only deaths and fetal deaths involving circumstances set forth in subsection (1) of s. 406.11, F.S., are required to be referred to the district medical examiner for the determination of the cause of death. The remaining provisions in s. 406.11, F.S., are not related to causes or conditions of death upon which a medical examiner can make a determination. Instead, the remaining provisions:

- Grant medical examiners discretion to perform autopsies and other laboratory examinations necessary to determine the cause of death;
- Require the Medical Examiners Commission to adopt rules to require a medical examiner to notify the decedent's next of kin of a medical examiner investigation;
- Prohibit a medical examiner from retaining or furnishing a body part of the deceased for research or other purposes without approval by the next of kin; and
- Provide rulemaking authority for the Medical Examiners Commission.

The bill provides an effective date of October 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 382.011, F.S., correcting and clarifying a cross-reference to s. 406.11(1), F.S.
Section 2: Amends s. 406.06, F.S., prohibiting a medical examiner or county from charging a fee to a member of the public for an examination, investigation, or autopsy performed pursuant to s. 406.11, F.S.
Section 3: Provides an effective date of October 1, 2016.

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[16] Section 406.06(3), F.S.
[17] 2016 FDLE Legislative Bill Analysis for HB 315 dated October 7, 2015 (on file with the Florida House of Representatives Health Quality Subcommittee).
[18] *Id.*
[19] As of 2013, District 2 (Franklin, Gadsden, Leon, Liberty, Jefferson, Taylor, and Wakulla), District 8 (Alachua, Baker, Bradford, Gilchrist, Levy, Union, and Dixie), District 14 (Bay, Calhoun, Gulf, Jackson, Washington and Holmes), District 20 (Collier), and District 22 (Charlotte) did not charge medical examiner approval user fees. Additionally, Okaloosa (District 1), Hardee (District 10), and Highland (District 10) did not charge a medical examiner approval user fee.
[20] District 11 (Miami-Dade) and District 17 (Broward). Miami-Dade County charges a fee of $63; Broward County charges a fee of $54.
[21] FDLE, *supra* footnote 18.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Currently 19 of the 24 medical examiner districts, comprising 42 counties, charge user fees for any determination of the cause of death performed pursuant to s. 406.11(1)(c), F.S. The user fees vary from district to district. Assuming medical examiners charged a user fee for every death that occurred within their medical examiner districts in 2014, the medical examiners' charges would have totaled approximately $3.98 million.[22] The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public such fees. Consequently, local governments that currently assess a user fee for medical examiner services provided pursuant to s. 406.11 may be negatively impacted.

2. Expenditures:

Indeterminate. The actual cost to the counties is unclear as there is a broad discrepancy in the user fees currently charged (fees range from no charge to $63 per approval), and there does not seem to be a correlation between the fees charged to services being provided by the medical examiner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the bill prohibits medical examiners and counties from charging fees to a member of the public, the private sector may achieve some cost-savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is unclear whether counties have statutory authority to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. For example, despite an Attorney General Opinion from 2003[23] stating that a cremation approval fee did not appear to be authorized by statute and that cremation approval should be provided without charge to the public as a service of the medical examiner's office, 43 counties still charge such a fee.

Article VII, s. 18 of the Florida Constitution, prohibits the Legislature from enacting a general law that reduces the authority of municipalities or counties to raise revenues in the aggregate, unless each

[22] FDLE, *supra* footnote 18.
[23] 2003-57 Fla. Op. Att'y Gen. 5 (December 15, 2003).

chamber of the Legislature enacts such law by two-thirds vote or unless an exemption applies. Due to the uncertainty as to whether counties currently have the authority to charge fees pursuant to s. 406.11(1)(c), F.S., the bill, if enacted, may be challenged as being in violation of Article VII, s. 18 of the Florida Constitution, but would withstand such a challenge if enacted by a two-thirds vote of each chamber or if the law is determined to have an insignificant fiscal impact on the counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Health Quality Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment prohibits a medical examiner or a county from charging a member of the public a fee for certain services performed by medical examiners.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to medical examiners; amending s. 382.011, F.S.; specifying the circumstances under which a case must be referred to the district medical examiner for determination of the cause of death; amending s. 406.06, F.S.; prohibiting a medical examiner or a county from charging a fee for specified services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 382.011, Florida Statutes, is amended to read:

382.011 Medical examiner determination of cause of death.—

(1) In the case of any death or fetal death involving the circumstances ~~due to causes or conditions~~ listed in s. 406.11(1) ~~406.11~~, any death that occurred more than 12 months after the decedent was last treated by a primary or attending physician as defined in s. 382.008(3), or any death for which there is reason to believe that the death may have been due to an unlawful act or neglect, the funeral director or other person to whose attention the death may come shall refer the case to the district medical examiner of the county in which the death occurred or the body was found for investigation and determination of the cause of death.

Section 2. Subsection (3) of section 406.06, Florida

Statutes, is amended to read:

406.06 District medical examiners; associates; suspension of medical examiners.—

(3) District medical examiners and associate medical examiners shall be entitled to compensation and such reasonable salary and fees as are established by the board of county commissioners in the respective districts. However, a medical examiner or a county may not charge a member of the public a fee for an examination, investigation, or autopsy performed pursuant to s. 406.11.

Section 3. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Vision Care Plans
SPONSOR(S): Peters and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N	Langston	Poche
2) Insurance & Banking Subcommittee	11 Y, 0 N	Peterson	Luczynski
3) Health & Human Services Committee		Langston	Calamas

SUMMARY ANALYSIS

Ophthalmologists, optometrists, and opticians are health care practitioners, as defined in s. 456.001(4), F.S. They are regulated by their respective boards within the Division of Medical Quality Assurance and are overseen by the Department of Health (DOH).

An optician designs, verifies, fits, and dispenses eyeglasses, contact lenses, and other optical devices upon the written prescription of a licensed ophthalmologist or optometrist; an optician does not diagnose or treat eye diseases. In addition to being able to dispense eyeglasses and contact lenses, an optometrist performs eye exams and vision tests to detect certain eye abnormalities, prescribes eyeglasses and contact lenses, and prescribes medications for eye diseases. An optometrist is not a medical doctor and is not authorized within the scope of practice to perform surgery or other invasive procedures. An ophthalmologist is an allopathic or osteopathic physician; therefore, in addition to being able to perform the duties of an optometrist, the ophthalmologist is licensed to perform eye surgeries.

Ophthalmologists, optometrists, and opticians routinely contract with health insurers, prepaid limited health services organizations (PLHSOs), and health maintenance organizations (HMOs) for the provision of vision care services. HMOs are required to have a system for verification and examination of the credentials of each of its providers. Credentialing is also a required element for health plan accreditation by the National Commission for Quality Assurance. Some plans contract for credentialing services through a third-party vendor. However, credentialing is not required for health insurers and PLHSOs.

HB 337 prohibits health insurers, PLHSOs, and HMOs from requiring an ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's, PLHSO's, or HMO's vision network. The bill also prohibits health insurers, PLHSOs, and HMOs from restricting an ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories. Additionally, the bill requires health insurers, PLHSOs, and HMOs to update their online vision care network provider directories on a monthly basis to reflect current participating providers.

The bill makes a violation of these prohibitions an unfair insurance trade practice.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Ophthalmologists, Optometrists, and Opticians

Ophthalmologists, optometrists, and opticians are health care practitioners, as defined in s. 456.001(4), F.S., and are regulated by their respective boards within the Division of Medical Quality Assurance[1] within the Department of Health (DOH).[2] Ophthalmologists are governed by the practice act in Chapter 458 or 459, F.S.; optometrists are governed by the practice act in Chapter 463, F.S.; opticians are governed by the practice act in Chapter 484, Part I, F.S.

Ophthalmologists

Ophthalmology is a branch of medicine specializing in the anatomy, function, and diseases of the eye. Ophthalmologists provide a full spectrum of eye care. They perform functions of optometrists, such as annual eye exams and prescribing glasses and contact lenses. In addition, they are authorized within their scope of practice to perform delicate eye surgery. Ophthalmologists are either Medical Doctors (MDs) or Doctors of Osteopathic Medicine (DOs). They are regulated by the Board of Medicine and the Board of Osteopathic Medicine, respectively.

Optometrists

Optometrists, licensed by the Board of Optometry, are the primary health providers for normal vision care, including yearly checkups. They are licensed to practice optometry, which involves performing eye exams and vision tests, prescribing and dispensing glasses and contact lenses, detecting certain eye abnormalities, and prescribing medications for certain eye diseases.[3] Optometrists, or Doctors of Optometry, are not medical doctors and are not authorized within their scope of practice to perform surgery or other invasive techniques.[4]

Opticians

Opticians, licensed by Board of Opticianry, are technicians trained to design, verify and fit eyeglass lenses and frames, contact lenses, and other devices to correct eyesight.[5] Opticians are not permitted to test vision, diagnose or treat eye diseases, or write prescriptions for visual correction. Opticians rely on prescriptions supplied by ophthalmologists or optometrists to provide services.

Third-Party Reimbursement for Vision Care Services

According to a 2012 survey, approximately 48 percent of insured U.S. adults are enrolled in vision plans.[6] Nationwide, vision care is approximately a $36 billion industry comprised of services and sale

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[1] s. 456.001, F.S.
[2] s. 456.004, F.S.
[3] AMERICAN ASSOCIATION FOR PEDIATRIC OPHTHALMOLOGY AND STRABISMUS, *Differences between Ophthalmologist, Optometrist and Optician*, http://www.aapos.org/terms/conditions/132 (last visited Jan. 24, 2016).
[4] s. 463.0055(1)(a), F.S.
[5] *Supra* note 3.
[6] AMERICAN OPTOMETRIC ASSOCIATION, *An Action-Oriented Analysis of the State of the Optometric Profession: 2013,* at 14, *available at* https://www.aoa.org/Documents/news/state_of_optometry.pdf (last visited Jan. 24, 2016).

of corrective eye glasses and lenses with expected growth of approximately one to two percent annually.[7]

Health Insurer Contracts

The Office of Insurance Regulation (OIR) regulates health insurer provider contracts under part VI of ch. 627, F.S.

Florida law imposes limitations on health insurer contracts. For example, 627.6474(1), F.S., prohibits a health insurer from requiring a health care practitioner to accept the terms of other health care practitioner contracts with any other insurer or health maintenance organization (HMO) that is under common management and control of the insurer. This includes contracts for Medicare and Medicaid services, and services provided by a preferred provider organization, an exclusive provider organization, or a prepaid limited health service organization (PLHSO). This type of provision is typically referred to as an "all products clause." A contract provision that violates this prohibition is void. The only exception is for a practitioner in a group practice who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Another example is s. 627.6474(2), F.S., which prohibits a contract between a health insurer and a dentist for the provision of dental services from requiring the dentist to provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract.

Current Florida law does not prohibit health insurer provider contracts from requiring a licensed ophthalmologist or optometrist to join a network or restricting an ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories. No statute requires health insurers to update network provider directories monthly or to make such directories available in an online version.

Prepaid Limited Health Service Organization (PLHSO) Arrangements

PLHSOs provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in part I of ch. 636, F.S. Limited health services are ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.[8] Provider agreements for PLHSOs are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Florida law imposes limitations on PLHSO provider agreements. Like insurance contracts, PLHSO provider agreements may not, as a condition of continuation or renewal of a contract, require compliance with an "all products clause." A PLHSO contract provision that violates this prohibition is void.[9] Like insurance contracts, there is an exception to this limitation for a practitioner in a group practice who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Another example of a limitation on provider agreements is that, like insurance contracts, a contract between a PLHSO and a dentist for dental services may not contain a provision that requires the dentist to provide services to the subscriber of the PLHSO at a fee set by the PLHSO unless such services are covered services under the applicable contract.[10]

Current Florida law does not prohibit PLHSO provider agreements from requiring a licensed ophthalmologist or optometrist to join a network or restricting an ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories. No statute requires that require

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[7] HARRIS WILLIAMS & CO., *Vision Industry Overview,* Feb. 2015, at 1, *available at* http://www.harriswilliams.com/sites/default/files/content/hwco_hcls_vision_industry_updatev2.pdf (last visited Jan. 24, 2016).
[8] s. 636.035(5), F.S.
[9] s. 636.035(12), F.S.
[10] s. 636.035(13), F.S.,

PLHSOs to update network provider directories monthly or to make such directories available in an online version.

Health Maintenance Organization (HMO) Contracts

The OIR regulates HMO contracts and rates under part I of ch. 641, F.S. The Agency for Health Care Administration regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Section 641.315, F.S., authorizes provider contracts with HMOs, and specifies the requirements for HMO provider contracts with "health care practitioners" as defined in s. 465.001(4), F.S.

Part I of ch. 641, F.S., prohibits certain provider contract provisions. For example, s. 641.315(9), F.S., provides that a contract between an HMO and a contracted primary care or admitting physician may not contain any provision that prohibits the physician from providing inpatient services in a contracted hospital to a subscriber if such services are determined by the HMO to be medically necessary and covered services under the HMO's contract with the contracted physician. As with insurance contracts and PLHSO agreements, an HMO provider contract may not contain an "all products clause" that requires a contracted health care practitioner to accept the terms of another practitioner contract. A contract provision that violates the statute is void, except in cases where the practitioner is in a group practice and must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Another example of a prohibited contract provision is that a contract for dental services may not contain a provision that requires the dentist to provide services to the subscriber of the HMO at a fee set by the HMO unless such services are covered services under the applicable contract.[11]

Section 641.315, F.S., does not prohibit HMO provider contracts from requiring a licensed ophthalmologist or optometrist to join a network or restricting an ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories. No statute requires HMOs to update network provider directories monthly or to make such directories available in an online version.

Unfair Insurance Trade Practices

Part IX of ch. 626, F.S., regulates insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and prohibits those activities. [12] Potential penalties under the Unfair Insurance Trade Practices Act (the Act) include an amount not greater than:

- $5,000 for each nonwillful violation.
- $40,000 for each willful violation.
- An aggregate amount of $20,000 for all nonwillful violations arising out of the same action.
- An aggregate amount of $200,000 for all willful violations arising out of the same action.[13]

Fines may be imposed in addition to any other applicable penalty.[14] Additionally, the OIR is authorized to conduct hearings,[15] issue cease and desist orders,[16] and assess a penalty of up to $50,000 and suspend or revoke an entity's certificate of authority for engaging in an unfair insurance trade practice.[17]

[11] s. 641.315(11), F.S.
[12] s. 626.9541(1)(d), F.S., provides that entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance are an unfair insurance trade practices.
[13] s. 626.9521(2), F.S.
[14] *See* s. 626.9631, F.S., the penalties under the insurance code are in addition to any other civil or administrative penalties.
[15] s. 626.9571, F.S.
[16] s. 626.9581, F.S.
[17] s. 626.6901, F.S.

The Act applies to health insurance policies;[18] however, PLHSOs and HMOs are not subject to the Act.[19] Section 641.3903, F.S., sets forth unfair methods of competition and unfair or deceptive acts or practices applicable to HMOs that are similar, but not identical to, the content of the Act. Section 636.059, F.S., applies the provisions of s. 641.3903, F.S., to PLHSOs by cross-reference.

Credentialing

Credentialing is a process for the collection and verification of a provider's professional qualifications, including academic background, relevant training and experience, licensure, and certification or registration to practice in a particular health care field.[20] Credentialing is a required element for health plan accreditation by the National Commission for Quality Assurance.[21]

Florida law only addresses credentialing for HMOs. Section 641.495(6), F.S., requires each HMO to have a system to verify and examine the credentials of each of its providers. If an HMO delegates the credentialing process to a contracted provider or entity, the HMO must verify that the policies and procedures of the delegated provider or entity are consistent with the policies and procedures of the HMO and that the required standards are maintained.[22] Florida law does not require credentialing for health insurers or PLHSOs.

Effect of the Proposed Changes

HB 337 amends ss. 627.6474, 636.035, and 641.315, F.S., to prohibit health insurers, PLHSOs, and HMOs, respectively, from requiring a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's or organization's network. However, the bill provides that this provision does not prevent a health insurer, PLHSO, or HMO from entering into a contract with another insurer's or organization's vision care plan to use their network.

The bill amends ss. 627.6474, 636.035, and 641.315, F.S., to prohibit health insurers, PLHSOs, and HMOs, respectively, from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical laboratories. However, the bill provides that this provision does not restrict a health insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

The bill specifies that any health insurer, PLHSO, or HMO who commits a knowing violation of either provision has committed an unfair insurance trade practice pursuant to s. 626.9541(1)(d), F.S.[23] The violator is then subject to civil and administrative penalties under the Act.

The bill also requires health insurers, PLHSOs, and HMOs to update their online vision care network provider directories on a monthly basis to accurately reflect the providers currently participating in their networks.

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[18] s. 626.9511(2), F.S.

[19] Current law expressly exempts PLHSOs and HMOs from the Insurance Code. *See* ss. 636.004, 636.029, 641.18(4)(b), 641.201, and 641.30(2), F.S.

[20] *See, e.g.,* AETNA, *Health care professionals: Joining the Network FAQs*, https://www.aetna.com/faqs-health-insurance/health-care-professionals-join-network.html (last visited Jan. 24, 2016); FLORIDA BLUE, *Manual for Physicians and Providers*, (2015), at 14, *available at* https://www.floridablue.com/providers/tools-resources/provider-manual (last visited Jan. 5, 2016); UNITEDHEALTHCARE, *Physician Credentialing and Recredentialing Frequently Asked Questions*, *available at* https://www.uhccommunityplan.com/content/dam/communityplan/healthcareprofessionals/providerinformation/KS-Provider-Information/KS_Credentialing_FAQ.pdf (last visited Jan. 24, 2016).

[21] NCQA, *CR Standards & Guidelines,* http://www.ncqa.org/tabid/404/Default.aspx (last visited Jan. 5, 2016).

[22] BUREAU OF MANAGED HEALTH CARE, AGENCY FOR HEALTH CARE ADMINISTRATION, *Interpretive Guidelines for Initial Health Care Provider Certificates: Health Maintenance Organizations and Prepaid Health Clinics*, (2010), at 48, *available at* https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Commercial_Managed_Care/docs/CHMO/Initial-IGs-withProbesJune2010.pdf (last visited Jan. 24, 2016).

[23] s. 626.9541(1)(d), F.S., provides that entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance are an unfair insurance trade practices.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.6474, F.S., relating to provider contracts.
Section 2: Amends s. 636.035, F.S., relating to provider arrangements.
Section 3: Amends s. 641.315, F.S., relating to provider contracts.
Section 4: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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:

Currently, the approved lab lists of some vision plans can be limited and may require a provider to send all orders to a plan-owned lab in another city or state, which may result in delays for the consumer in receiving their eyeglasses. The bill could offer providers the ability to be competitive and responsive to local market conditions regarding the cost and quality of such materials and services provided to consumers. However, by preventing health insurers, PLHSOs, and HMOs from designating a specific suppliers of material or optical laboratories, they may no longer be able to benefit from volume based pricing and other bulk discounts they could negotiate with a single supplier or laboratory.

Consumers will have online access to more timely and accurate network directories for vision care providers, which will assist them in evaluating plans or selecting network providers.

A health insurer, PLHSO, or HMO found to have violated the provisions of the bill is subject to civil and administrative fines under the Unfair Insurance Trade Practices Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to vision care plans; amending ss. 627.6474, 636.035, and 641.315, F.S.; providing that a health insurer, a prepaid limited health service organization, and a health maintenance organization, respectively, may not require a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another vision network; providing that such insurers and organizations are not prevented by the act from entering into a contract with another vision care plan; providing that such insurers and organizations may not restrict a licensed ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories; providing that such insurers and organizations are not restricted by the act in determining certain amounts of coverage or reimbursement; requiring such insurers' and organizations' online vision care network provider directories to be updated monthly; providing that a violation of certain prohibitions in the act constitutes a specified unfair insurance trade practice; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) is added to section 627.6474, Florida Statutes, to read:

627.6474 Provider contracts.—

(3)(a) A health insurer may not require an ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 to join a network solely for the purpose of credentialing the licensee for another insurer's vision network. This paragraph does not prevent a health insurer from entering into a contract with another insurer's vision care plan to use the vision network.

(b) A health insurer may not restrict an ophthalmologist licensed pursuant to chapter 458 or chapter 459, an optometrist licensed pursuant to chapter 463, or an optician licensed pursuant to part I of chapter 484 to specific suppliers of materials or optical laboratories. This paragraph does not restrict a health insurer in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

(c) A health insurer's online vision care network provider directory must be updated monthly to reflect the vision care providers currently participating in the health insurer's network.

(d) A knowing violation of paragraph (a) or paragraph (b) constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 2. Subsection (14) is added to section 636.035,

Florida Statutes, to read:

636.035 Provider arrangements.—

(14)(a) A prepaid limited health service organization may not require an ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 to join a network solely for the purpose of credentialing the licensee for another organization's vision network. This paragraph does not prevent such organization from entering into a contract with another organization's vision care plan to use the vision network.

(b) A prepaid limited health service organization may not restrict an ophthalmologist licensed pursuant to chapter 458 or chapter 459, an optometrist licensed pursuant to chapter 463, or an optician licensed pursuant to part I of chapter 484 to specific suppliers of materials or optical laboratories. This paragraph does not restrict such organization in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

(c) A prepaid limited health service organization's online vision care network provider directory must be updated monthly to reflect the vision care providers currently participating in the organization's network.

(d) A knowing violation of paragraph (a) or paragraph (b) constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 3. Subsection (12) is added to section 641.315,

Florida Statutes, to read:

641.315 Provider contracts.—

(12)(a) A health maintenance organization may not require an ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 to join a network solely for the purpose of credentialing the licensee for another organization's vision network. This paragraph does not prevent such organization from entering into a contract with another organization's vision care plan to use the vision network.

(b) A health maintenance organization may not restrict an ophthalmologist licensed pursuant to chapter 458 or chapter 459, an optometrist licensed pursuant to chapter 463, or an optician licensed pursuant to part I of chapter 484 to specific suppliers of materials or optical laboratories. This paragraph does not restrict such organization in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

(c) A health maintenance organization's online vision care network provider directory must be updated monthly to reflect the vision care providers currently participating in the organization's network.

(d) A knowing violation of paragraph (a) or paragraph (b) constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061 Nurse Licensure Compact
SPONSOR(S): Pigman
TIED BILLS: HB 1063 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	12 Y, 0 N	Siples	Calamas
2) Health Care Appropriations Subcommittee	12 Y, 0 N	Garner	Pridgeon
3) Health & Human Services Committee		Siples	Calamas

SUMMARY ANALYSIS

The Nurse Licensure Compact (NLC or compact) is a multi-state agreement that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. In 2015, the National Council of State Boards of Nursing adopted revised model legislation for the NLC and required any state entering the NLC to adopt the revised model legislation. The bill authorizes Florida to enter into the revised NLC.

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

Pursuant to the bill, a nurse who applies for or renews a multistate license in Florida must meet the minimum requirements of the NLC and any other requirements set by the Florida Board of Nursing (board) within the Department of Health (DOH). The NLC does not change the current licensure requirements under ch. 464, F.S., the Nurse Practice Act.

Under the NLC, a state may take adverse action against the multistate licensure privilege of any nurse practicing in that state. The home state has the exclusive authority to take adverse action against the home state license, including revocation and suspension. The NLC requires all states to report to a coordinated licensure information system (CLIS), all adverse actions taken against a nurse's license or multistate licensure practice privilege, any current significant investigative information, and denials of applications. All party states may access the CLIS to see licensure and disciplinary information for all nurses licensed in the party states. A state may designate the information it contributes to the CLIS as confidential, prohibiting disclosure to nonparty states.

The NLC establishes the Interstate Commission of Nurse Licensure Compact Administrators (commission) to oversee the operation of the NLC. Each party state's compact administrator (the head of the state's licensing board or designee) must participate as a member of the commission. The NLC grants the commission authority to promulgate uniform rules to, among other things, facilitate and coordinate the implementation and administration of the NLC. The commission may also take any necessary action to secure the compliance of a party state that fails to meet the obligations of the NLC, including termination of membership after exhausting all means of securing compliance.

The NLC provides for the qualified immunity, defense, and indemnification of the administrators, officers, executive director, representatives, and employees of the commission in civil actions that arise under certain circumstances. The NLC does not abrogate or waive the sovereign immunity of its party states.

The bill also requires the DOH to conspicuously designate each nurse license as a multistate license or a single-state license. The bill requires the Florida Center for Nursing to analyze the impact of the state's participation in the NLC and authorizes the center to request certain information held by the board to determine such impact.

The bill has an indeterminate fiscal impact on the DOH and no fiscal impact on local government. The agency's current resources can adequately absorb any additional workload that may occur.

The bill takes effect on December 31, 2018, or upon enactment of the revised NLC into law by 26 other states, whichever occurs first.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Health Care Professional Shortage

There is currently a health care provider shortage in the U.S.[1] This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population[2] and the passage of the Patient Protection and Affordable Care Act.[3] Aging populations create a disproportionately higher health care demand.[4] 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.

According to a 2010 report prepared by the Florida Center for Nursing, Florida was projected to experience a shortage of more than 62,800 nurses by 2025.[5] In an effort to increase the number of students enrolled in nursing programs and address the projected shortage, the Legislature streamlined the process used by the board to approve and monitor nursing education programs.[6] As a result, the number of nursing education programs in this state has increase by 114%.[7] Due to the new capacity, overall student enrollment grew and the number of students graduating increased from 2012-2013-2013-2014.[8]

With an increasing number of new graduates who will enter the workforce, the long term shortage of nurses appears to be decreasing. It is projected that Florida will have a small surplus of RNs and LPNs in 2025.[9] The South, in general, is projected to continue to have a shortage of nurses. However, this

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[1] For example, as of November 14, 2013, the U.S. Department of Health and Human Services has designated 6,100 Primary Care Health Professional Shortage Area (HPSA) (requiring 8,200 additional primary care physicians to eliminate the shortage), 4,900 Dental HPSAs (requiring 7,300 additional dentists to eliminate the shortage), and 4,000 Mental Health HPSAs (requiring 2,800 additional psychiatrists to eliminate the shortage). U.S. Department of Health and Human Services, Health Resources and Services Administration, *available at* http://www.hrsa.gov/shortage/ (last visited January 4, 2016).

[2] According to the U.S. Census Bureau, the U.S population is expected to increase by almost 100 million between 2014 and 2060, and by 2030, one in five Americans is projected to be 65 and over. Sandra L. Colby & Jennifer M. Ortman, U.S. Census Bureau, *Projections of the Size and Composition of the U.S.Population: 2014 to 2060* (March 2015), *available at* http://webcache.googleusercontent.com/search?q=cache:N9N3mfOmlzYJ:https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf+&cd=1&hl=en&ct=clnk&gl=us (last visited January 4, 2016).

[3] *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen Health Care*, U.S. Department of Health and Human Services, *available at* http://www.hhs.gov/secretary/about/goal5.html (last visited on January 4, 2016).

[4] One analysis measured current primary care utilization (office visits) and projected the impact of population increases, aging, and insured status changes. The study found that the total number of office visits to primary care physicians will increase from 462 million in 2008 to 565 million in 2025, and (because of aging) the average number of visits will increase from 1.60 to 1.66. The study concluded that the U.S. will require 51,880 additional primary care physicians by 2025. Petterson, Stephen M., et al., "Projecting U.S. Primary Care Physician Workforce Needs: 2010-2025", Annals of Family Medicine, vol. 10, No. 6 (November/December2012), *available at* http://www.annfammed.org/content/10/6/503.full.pdf+html (last visited on January 4, 2016).

[5] Florida Center for Nursing, *RN and LPN Supply and Demand Forecasts, 2010-2025: Florida's Projected Nursing Shortage in View of the Recession and Healthcare Reform* (Oct. 2010), *available at* https://www.flcenterfornursing.org/ForecastsStrategies/FCNForecasts.aspx (last visited January 4, 2016).

[6] Chapter 2009-168, Laws of Fla. Additional statutory amendments were made pursuant to chs. 2010-37 and 2014-92, Laws of Fla.

[7] OPPAGA, *Florida's Nursing Education Programs Continue to Expand in 2014*, Report No. 15-04 (Jan. 2015, rev. Aug. 2015), *available at* http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-04 (last visited January 4, 2016).

[8] *Id.*

[9] U.S. Dep't of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, National Center for Health Workforce Analysis, *The Future of the Nursing Workforce: National- and State-Level Projections, 2012-2025*, (December 2014), *available at* http://bhpr.hrsa.gov/healthworkforce/supplydemand/nursing/workforceprojections/ (last visited January 4, 2016).

may not be an accurate reflection of the need for nurses because the rapidly changing healthcare delivery system is redefining the role of the nursing workforce.[10]

Currently, Florida healthcare providers rely on temporary nurses when sufficient nursing staff is not available to meet the demand or there is a temporary need for specialty nursing.[11] Due to its popularity as a tourist destination, Florida experiences a cyclical need for additional nursing resources in winter months. For example, a temporary nursing agency has indicated that in November the request for temporary nurses increases by more than 200 percent for nurses to work the winter months.[12]

Nurse Licensure in Florida

The Nurse Practice Act, chapter 464, F.S., governs the licensure and regulation of nurses in Florida. The Department of Health (DOH) is the licensing agency and the Board of Nursing (BON or board) is the regulatory authority. The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate.[13]

Applicants may apply to the DOH to be licensed as a registered nurse (RN) or a licensed practical nurse (LPN). An RN is licensed to practice "professional nursing," and an LPN is licensed to practice "practical nursing."[14] Florida provides two paths to licensure – licensure by examination and licensure by endorsement. There are currently 253,338 RNs and 73,942 LPNs actively licensed to practice in the state.[15]

To be licensed by examination, an individual must:

- Submit an application with the appropriate fee;
- Satisfactorily complete a criminal background screening;
- Demonstrate English competency;
- Successfully complete an approved nursing educational program; and
- Pass a licensure exam.[16]

Licensure by endorsement is the process by which a nurse validly licensed in another state may be licensed in Florida without having to sit for an examination. To be licensed by endorsement, a nurse must:

- Submit an application with the appropriate application fee;

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[10] *Id.*

[11] Presentation by Lori Scheidt, Vice-Chair, Nurse Licensure Compact Administrators, before the House of Representative Select Committee on Affordable Healthcare Access in Tallahassee, Florida (Dec. 1, 2015), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2883&Session=2016&DocumentType=Meeting%20Packets&FileName=scaha%2012-1-15.pdf (last visited January 4, 2016).

[12] Telephone call with Dwight Cooper, Co-Founder and Chief Executive Officer of PPR Healthcare Staffing on December 21, 2015. Mr. Cooper indicated that in November 2015, his company received approximately 1700 requests for immediate placement of temporary nurses to work the winter months; however, during non-winter months, placement requests average between 300 and 400. Mr. Cooper cautions that healthcare facilities generally requests temporary nurses once they have reached critical status and have redeployed local nursing staff as efficiently as possible, due to the expense associated with the use of temporary nurses.

[13] Section 464.004(1), F.S.

[14] Section 464.003(20), F.S., defines the "practice of professional nursing" as the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principals of psychological, biological, physical, and social sciences. Section 464.003(19), F.S., defines the "practice of practical nursing" as the performance of selected acts, including the administration of treatments and medications, under the direction of a registered nurse, licensed physician, or a licensed dentist, and is responsible and accountable for making decision that are based upon the individual's educational preparation and experience in nursing.

[15] E-mail with staff of the DOH (on file with the Health Quality Subcommittee).

[16] Section 464.008, F.S. For its licensure examination, the DOH uses the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

- Hold a valid license in another state or territory of the U.S., provided that the licensure of such state or territory has licensure requirements that are substantially equivalent to or more stringent than those in Florida;
- Meet the qualifications for licensure by examination;
- Successfully pass a licensure exam that is substantially equivalent to or more stringent than the exam required by Florida;
- Have practiced in another state or territory of the U.S., for two of the proceeding three years without having any action taken against his or her license; and
- Satisfactorily complete a criminal background screening.[17]

Licenses are renewed biennially.[18] Each renewal period, an RN or LPN must document completion of one contact hour of continuing education for each calendar month of the licensure cycle.[19] As a part of the total continuing education hours required, all licensees must complete a two-hour course on the prevention of medical errors and a two-hour course in Florida laws and rules.[20] Effective August 1, 2017, all licensees must also complete a two-hour course in recognizing impairment in the workplace.[21]

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.[22] 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.[23] Florida is a party to 25 interstate compacts, including the Driver's License Compact, Compact on Adoption and Medical Assistance, and the Interstate Compact on Educational Opportunity for Military Children.[24]

Nurse Licensure Compact

In 2000, the National Council of State Boards of Nursing (NCSBN) established model legislation for the Nurse Licensure Compact (NLC), which allows a nurse to have one license, issued by the primary state of licensure, with the privilege to practice in other compact states. The NLC applies to registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN).[25] In 2015, the NCSBN revised the model legislation for the NLC to address concerns related to uniform licensure requirements, governance, and rule-making.[26]

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[17] Section 446.009, F.S. For spouses of active duty military personnel who relocate to Florida pursuant to official military orders, the spouse is deemed to meet the requirements of licensure by endorsement if he or she is licensed by a state that is a member of the Nurse Licensure Compact, and will be issued a license upon submission of an application for licensure with the appropriate fee and satisfactory completion of the required criminal background screening.

[18] Section 464.013, F.S.

[19] Rule 64B9-5.002, F.A.C. A course in HIV/AIDS is required in the first biennium only and a domestic violence course is required every third biennium.

[20] Rule 64B9-5.011, F.A.C.

[21] *Supra* note 18 and Rule 64B9-5.014, F.A.C.

[22] Council of State Governments, Capitol Research, *Special Edition – Interstate Compacts*, available at http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history (last visited January 4, 2016).

[23] *For example, see Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976)

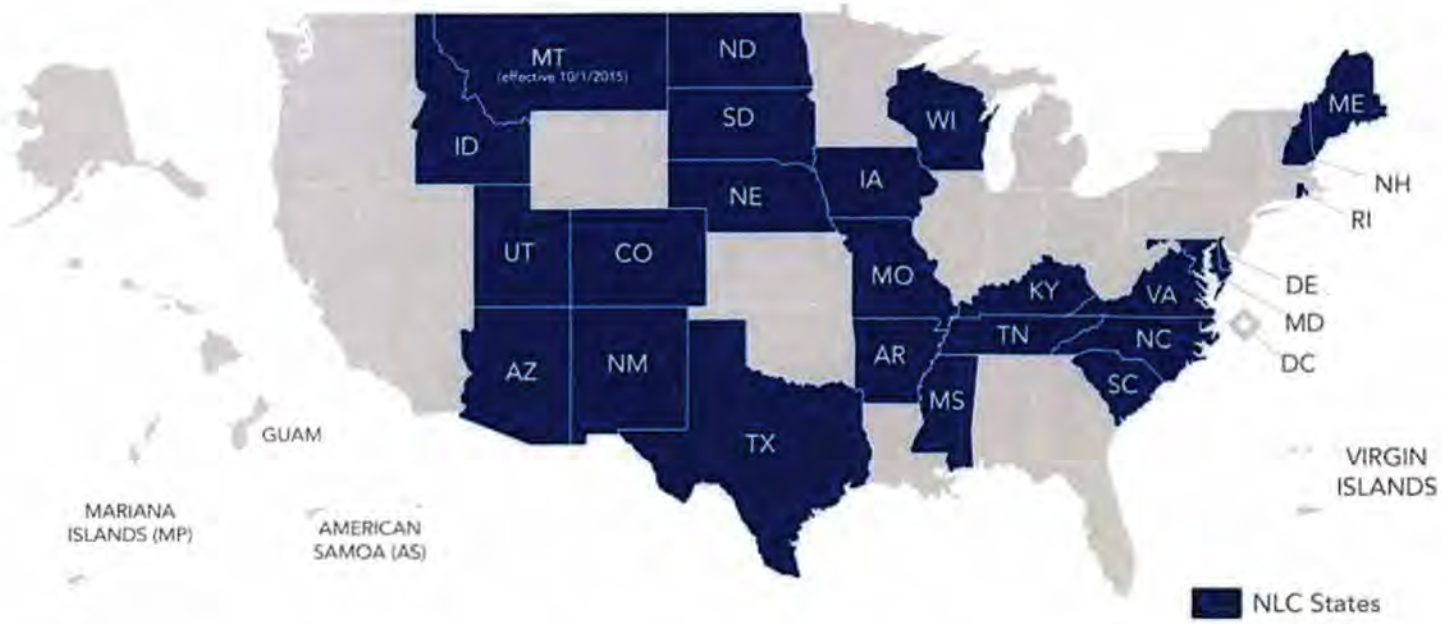
[24] OPPAGA, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report, available at* floridasnursing.gov/forms/2015-oppaga-research-memo.pdf (last visited January 4, 2016).

[25] Another NCSBN licensure compact, the Advanced Practice Registered Nurse Compact, is a multi-state agreement that establishes a mutual recognition system for the licensure of advanced practice registered nurses (APRNs). Florida is not eligible to enter the Advanced Practice Nurse Compact because that compact requires APRNs to be able to provide patient care independent of a supervisory or collaborative relationship with a physician and Florida law requires such nurses to be supervised under a physician protocol. The APRN Compact is available at https://www.ncsbn.org/aprn-compact.htm (last visited January 4, 2016), and Florida's current supervision requirement for APRNs is in s. 464.012(3), F.S.

[26] The revised model legislation may be found at https://www.ncsbn.org/95.htm (last visited January 4, 2016).

The NLC was modeled after the Driver's License Compact, which permits a person holding a license in one state to drive in other states without applying a for a driver's license in each state through which he or she may drive.[27] The NLC uses the same system of mutual recognition, which allows a nurse holding a multistate license to practice in any other party state.

Since its initial inception, the original NLC has been adopted by 25 states. According the NCSBN, an additional five states has NLC legislation pending.[28] States that adopted the prior NLC must adopt the revised NLC to become members of the new compact. Those states that are members of the original compact are indicated in the map below.[29]



To join the NLC, a state must pass the NLC model legislation, the state board of nursing must implement the compact, and the state licensing agency must pay an annual fee of $6,000.[30]

The model language of the NLC provides the framework under which party states must operate. The model language must be adopted in its entirety and any modifications must be approved by the NCSBN.[31] The compact is arranged in 11 articles and addresses the following issues:

Findings and Purpose (Article I)

The primary purpose of the NLC is to facilitate the cross-state practice of nursing by promoting compliance with the practice laws of each party state, facilitating the exchange of information between party states, and ensuring and encouraging the cooperation of party states[32] in the licensure and regulation of nurses.

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[27] NCSBN, *Nurse Licensure Compact: What Policymakers Need to Know*, *available at* https://www.ncsbn.org/6183.htm (last visited January 4, 2016).
[28] NCSBN, *Pending Legislation, available at* https://www.ncsbn.org/96.htm (last visited January 4, 2016).The states with pending NLC Legislation in 2015 included Illinois, Massachusetts, Minnesota, New York, and Oklahoma.
[29] NCSBN, *NLC Member States (Download Map)*, available at https://www.ncsbn.org/nurse-licensure-compact.htm (last visited January 4, 2016).
[30] NCSBN, *Pending Legislation, available at* https://www.ncsbn.org/96.htm (last visited January 4, 2016).
[31] *See generally* NCSBN, *Charter Documents*, *available at* https://www.ncsbn.org/95.htm (last visited January 4, 2016).
[32] A party state is a state that has adopted the NLC.

Definitions (Article II)

The NLC provides definitions for terms used in the model legislation.

General Provisions and Jurisdiction (Article III)

Under the NLC, an applicant for a license to practice as an RN or LPN/LVN has to apply in his or her home state for a multistate license.[33] The home state is the applicant's primary state of residence.[34]

The NLC's uniform licensing standards require an applicant for a multistate license to:

- Undergo a criminal history records investigation which includes the submission of fingerprints or other biometric-based information for the purpose of obtaining criminal history records from the Federal Bureau of Investigations and the state agency responsible for retaining criminal records;
- Graduate or be eligible to graduate from a board approved RN or LPN/LVN educational program or an educational program approved by an authorized accrediting body in the applicable country and verified by a board approved independent credentials review agency as a comparable educational program;
- For a graduate of a foreign educational program, successfully pass an English proficiency examination that includes reading, speaking, listening, and writing;
- Successfully complete the NCLEX-RN® or NCLEX-PN® Exam or recognized predecessor;
- Possess or be eligible for an active, unencumbered license;
- Not have been convicted or found guilty, or entered into an agreed disposition of a felony offense;
- Not have been convicted or found guilty, or entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
- Not be currently enrolled in an alternative program or nondisciplinary monitoring program approved by the state board of nursing;
- Be subject to self-disclosure requirements regarding the current participation in an alternative program; and
- Have a valid social security number.

A nurse practicing in a party state under the multistate licensure privilege subjects himself or herself to the practice laws of that state, as well as the jurisdiction of that state's licensing board, courts, and other laws. The NLC vests with each party state the authority to take adverse action[35] against a multistate licensure privilege[36] in accordance with the state's due process laws. Adverse actions may include cease and desist orders or any other action that affects the nurse's ability to practice under a multistate licensure privilege. Upon taking adverse action against a multistate licensure privilege, the party state taking the adverse action must promptly notify the administrator of the coordinated licensure information system.[37] The administrator of the system will notify the home state of any adverse actions taken by a remote state.[38]

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[33] A multistate license is a license to practice as an RN or LPN/LVN issued by a home state licensing board that authorizes the license holder to practice in all party states under a multistate licensure privilege.

[34] Pursuant to the model rules developed under the prior NLC, a nurse's home state may be evidenced by a drivers' license with a home address, voter registration card with a home address, federal income tax return, military documentation of state of legal residence, or a W2 from the U.S. government or any bureau, division, or agency thereof. *See* Nurse Licensure Compact Administrators, *Nurse Licensure Compact Model Rules and Regulations*, (Rev. Nov. 13, 2012, Aug. 4, 2008, Sept. 16, 2004), *available at* https://www.ncsbn.org/NLC_Model_Rules.pdf (last visited January 4, 2016).

[35] Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse.

[36] Multistate licensing privilege refers to the legal authorization associated with a multistate license permitting the practice of nursing as either an RN or LPN/LVN in a remote state or party state other than the nurse's home state.

[37] The coordinated licensure information system is an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that are administered by a nonprofit organization composed of and controlled by licensing boards. Currently, the NCSBN operates the Nursys® system, which is a national database for verification of

A party state may also issue single-state licenses for those individuals that meet the party state's requirements for a single-state license. The NLC does not govern the requirements for a single-state license issued by a party state or a single-state license issued by a nonparty state. A single-state license does not authorize the holder to practice nursing in any other state but the state of issuance.

The revised NLC grandfathers those licenses issued under the prior NLC. However, if a nurse changes home states after the effective date of the revised NLC, the nurse must meet all the uniform licensure requirements of the revised NLC. If a nurse fails to satisfy the uniform licensure requirements due to a disqualifying event occurring after the effective date of the NLC, the nurse will be ineligible to retain or renew his or her multistate license.

Applications for Licensure in a Party State (Article IV)

In reviewing an application for licensure, the licensing board of each party state must:

- Determine if the applicant currently holds or has ever held a license issued by any other state;
- Determine if there is any encumbrance on any single-state or multistate license;[39]
- Determine if any adverse action has been taken against any license;
- Determine whether the applicant is currently participating in an alternative program;[40] and
- Verify licensure information through the coordinated licensure information system.

A nurse may hold only one multistate license, which is issued by his or her home state. If a nurse changes his or her primary state of residence, the nurse must apply for licensure in the new home state and meet that state's licensure requirements.[41] Prior to issuing a multistate license under the NLC, the applicant must submit a Declaration of Primary State of Residence Form and any other documentation required by the licensing board to satisfactorily establish the change in the primary state of residence.[42] The multistate license issued by the prior home state must be deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators. If a nurse moves his or her primary state of residence from a party state to a non-party state, the multistate license issued in the previous home state will convert to a single-state license, valid only in that state.

Additional Authority of the Party State Licensing Boards (Article V)

A state licensing board or state agency has the authority to:

- Take adverse action against a nurse's multistate licensure privilege to practice within that party state, but only a nurse's home state has the power to take action against the nurse's license issued in the home state.[43]
- Issue cease and desist orders or impose an encumbrance to practice within that party state.

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nurse licensure, discipline and practice privileges for RNs and LPN/LVNs licensed in participating boards of nursing, including all the states in the NLC. *See* https://www.nursys.com/About.aspx (last visited January 4, 2016).

[38] A remote state is a party state, other than the home state.

[39] An encumbrance is any revocation, suspension, or limitation on the full and unrestricted practice of nursing imposed by a licensing board.

[40] An alternative program is a non-disciplinary monitoring program approved by a licensing board.

[41] The nurse may apply for licensure in advance of the change of his or her primary state of residence.

[42] *See* NCSBN, *Nurse Licensure Compact Frequently Asked Questions*, *available at* https://www.ncsbn.org/94.htm (last visited January 4, 2016). Currently, each party state has its own Declaration of Primary State of Residence Form. For examples, see Texas' form, *available at* https://www.bon.texas.gov/forms_primary_state_of_residence_sworn_declaration.asp; New Mexico's form, *available at* http://nmbon.sks.com/primary-state-of-residence-declaration.aspx; Maryland's form, *available at* http://mbon.maryland.gov/Pages/msl-index.aspx; et al. (last visited each website on January 4, 2016).

[43] The home state must give the same priority and effect to conduct reported from a remote state as it would to conduct that occurred within the home state. The home state applies its own state laws to determine appropriate conduct. For example, if the nurse committed an offense in a remote state that would result in an emergency suspension of his or her license had it been committed in the home state, the home state should treat the offense as if it occurred in its state and suspend the license.

- Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. The licensing board is authorized to taken any appropriate action and must promptly report the findings of such investigations to the administrator of the coordinated licensure information system. The administrator will promptly report such actions to the new home state.
- Issue subpoenas for hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Party states will enforce, by a court of competent jurisdiction, such subpoenas issued by other party states. The party state issuing the subpoena must pay any fees or costs required by the service statutes of the state in which the witness or evidence is located.
- Obtain and submit fingerprints or other biometric information for federal and state criminal background checks and use the results to make licensure decisions.
- If permitted by state law, the licensing board may recover the costs of investigations and disposition of cases resulting from any adverse action taken against a license.
- Take adverse action based on the factual findings of a remote state.

If adverse action is taken by a home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice is deactivated until all encumbrances of his or her multistate license has been removed. In any disciplinary order issued by a home state that imposes adverse actions, a statement that the nurse's multistate licensure privilege has been deactivated must be included. If, in lieu of adverse action, a home state allows the nurse to participate in an alternative program, the multistate licensure privilege must be deactivated for the duration of such program.

Coordinated Licensure Information System and Exchange Information (Article VI)

All party states must participate in the coordinated licensure information system, which includes information on the licensure and disciplinary history of each nurse. Any adverse action, current significant investigative information, licensure denials and reason for denial, and nurse participation in alternative programs known to the licensure board, whether such participation is deemed nonpublic or confidential under state law, must be reported to the coordinated licensure information system. Although nonparty states may have access to licensure and disciplinary information in the coordinated licensure information system, information regarding current significant investigations and participation in nonpublic or confidential alternative programs is only available to the licensure boards of party states.

A party state may indicate that information it has submitted may not be shared with non-party states or other entities without express permission of that state. A party state may not share information obtained from the system that includes personally identifiable information except to the extent allowed by the laws of the party state contributing the information. Information on the system must be expunged in accordance with the laws of the contributing state.

The compact administrator of each state must submit a uniform data set to each party state, which includes:

- Identifying information;
- Licensure data;
- Information related to alternative program participation; and
- Other information that may facilitate the administration of the Compact, as determined by commission rules.

Upon request from another party state, a party state must provide all investigative documents and information.

Interstate Commission of Nurse Licensure Compact Administrators (Article VII)

The NLC creates the Interstate Commission of Nurse Licensure Compact Administrators (commission). The NLC contains a choice of forum provision that requires legal action to be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located, unless waived by the commission.[44]

The head of the licensing board or his or her designee is designated as the compact administrator for each party state and is required to be a member of the commission. If a state removes or suspends a compact administrator from his or her office, such administrator's vacancy on the commission will be filled in accordance with the laws of the party state.

Each compact administrator is entitled to an equal vote on the promulgation of rules and the creation of bylaws, and is afforded the opportunity to participate in the business and affairs of the commission.

The commission is required to meet once a year; however, it may have additional meetings in accordance with the commission bylaws. All meetings are open to the public and publicly noticed. The notice must be posted on the commission's website and include the time, date, and location of the meeting and each party state must provide notice of the meeting on the licensing board's website or in accordance with its respective public notice requirements.

The NLC allows the commission to participate in closed, nonpublic meetings to discuss certain topics. Prior to a meeting being closed, legal counsel for the commission has to certify that the meeting may be closed for discussion involving the following topics:

- A party state's noncompliance with its obligations under the compact;
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC; or
- Matters specifically exempted from disclosure by federal or state law.

The commission must keep comprehensive minutes of matters discussed in its meetings and provide a full and accurate summary of actions taken, and the reasons therefor. Minutes of a closed meeting will be sealed; however, such minutes may be released pursuant to a majority vote of the commission or an order of a court of competent jurisdiction.

The NLC directs the commission to adopt and publish bylaws or rules to govern its conduct in carrying out the purposes and the exercise of its power under the compact, including bylaws or rules related to standards and procedures for recordkeeping, holding meetings, selecting officers, establishing personnel policies, and winding up the commission's operations.

The NLC vests the commission with the powers to:

- Promulgate rules to facilitate and coordinate implementation and administration of the compact;

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

- Bring and prosecute legal proceedings or actions in the name of the commission; as long as a party state's standing to sue or be sued under applicable law is not affected;
- Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services or personnel;
- Cooperate with other organizations that administer state compacts related to the regulation of nursing;
- Hire employees, elect or appoint officers, fix compensation, define duties, and grant such individuals appropriate authority to carry out the purposes of the compact;
- Establish personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided the commission avoids any appearance of impropriety or conflict of interest;
- Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use any real, personal, or mixed property;
- Sell, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- Establish a budget and make expenditures;
- Pay its reasonable expenses;
- Levy, and collect an annual assessment from each state to cover the costs of operation, activities, and staff;
- Borrow money;
- Appoint committees;
- Provide and receive information from, and to cooperate with, law enforcement agencies;
- Adopt and use an official seal; and
- Perform any other lawful duties necessary or appropriate to achieve the purposes of the compact.

Pursuant to the NLC, the commission may not incur any financial obligation until it has secured adequate funds to meet such obligation. The commission may not pledge the credit of any party state, without the party state's explicit authority. The NLC requires the commission to maintain accurate fiscal records, which must be audited annually by a certified public accountant. The results of the audit must be included in the commission's annual report.

The NLC provides immunity to the administrators, executive director, employees, and representatives from suit and liability, either personally or in their official capacity, for claims arising out of their official duties and responsibilities, as long as the damage is not caused by intention, willful, or wanton misconduct. The NLC also provides that it will provide defense and indemnification in any such actions.

Nothing in the compact is to be construed as a waiver of sovereign immunity.

Rule-making (Article VIII)

The NLC provides rule-making authority to the commission. Rules and amendments to the rules passed by the commission are binding on the party states as of the effective date specified in each rule or amendment.

Prior to the promulgation and adoption of a rule, the commission must provide notice of the meeting at which the rule is to be considered and voted upon, at least 60 days in advance. The notice must be posted on the commission's website and the website of the licensing board of each member state and include:

- The time, date, and location of the meeting;
- The text of the proposed rule or amendment,

- The reason for the proposed rule or amendment;
- A request for comment from interested persons; and
- The manner in which interested persons may submit comments.

The commission must provide an opportunity for a public hearing before the adoption of a rule or an amendment, and provide sufficient notice of the time, place, and date of the hearing. Final action on proposed rules is taken by a majority vote of all administrators. The commission may make technical revisions, such as typographical or grammatical errors, without engaging in the rule-making process, by posting such revisions to the commission's website. Members of the public may challenge a revision on grounds that the revision results in a material change to a rule. The challenge must be in writing and delivered to the commission within 30 days of the notice of the technical revision being posted. If the revision is challenged, the revision may not take effect without approval of the commission.

The commission has the authority to consider and adopt emergency rules, without prior notice, if there is an imminent threat to public health, safety, or welfare; to prevent a loss of funds of the commission or a party state; or to meet a deadline for the promulgation of an administrative rule that is required by federal law. The standard rule-making procedure is to be applied retroactively as soon as possible but no later than 90 days after the effective date of the emergency rule.

Oversight, Dispute Resolution, and Enforcement (Article IX)

The commission is charged with enforcing the provisions and rules of the NLC. However, all party states are obligated to enforce the NLC and to take any necessary action to effectuate its purpose and intent. The commission is entitled to receive service of process relating to its powers, responsibilities, or actions, and may intervene in any proceeding affecting such.

If a party state defaults in the performance of its duties or responsibilities under the NLC, the commission will notify the defaulting state, as well as other party states, in writing of the nature of the default and proposed cure(s) of the default. The commission will also provide remedial training and technical assistance related to the default. If the defaulting state fails to cure the default, the commission may terminate its membership in the NLC, upon majority affirmative vote of the majority of the administrators. The commission must notify the governor and the head of the licensing board of the defaulting state, as well as all party states, of its intent to suspend or terminate the state's membership in the NLC. However, termination of membership is to only be imposed after all other means of compliance have been exhausted.

A termination of membership in the NLC may be appealed by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission's principal office is located. The commission's principal office is located in Chicago, Illinois. The commission may also bring an action in federal court against a defaulting state to enforce compliance with the provisions of the NLC. The commission may seek injunctive relief, damages, or any other remedies available under state or federal law. A prevailing party in either action is entitled to court costs and reasonable attorneys' fees.

In the event that a dispute arises between party states, the commission will attempt to resolve such disputes. The NLC directs the commission to promulgate a rule that provides for mediation and binding dispute resolution. If a dispute cannot be resolved by the commission, the NLC provides that the issue may be submitted to an arbitration panel, whose decision is final and binding.

Effective Date, Withdrawal and Amendment (Article X)

The NLC becomes effective and binding on the earlier of the date of legislative enactment by at least 26 states or December 31, 2018. The NLC provides a procedure for adopting the revised compact for states that were a party to the prior contract.

To withdraw from the NLC, a state must enact a statute repealing the NLC. Such withdrawal does not take effect until six months after the enactment of the repealing legislation. Any adverse actions or significant investigations that occur prior to the effective date of a withdrawal or termination must be reported as required under the NLC.

The NLC may be amended by the party states; however, an amendment will not be effective until it is enacted into the laws of all the party states. The NLC authorizes non-party states to be invited to participate in the activities of the commission, on a nonvoting basis.

Construction and Severability

The NLC is to be liberally construed to effectuate its purposes. The NLC contains a severability clause that provides that any provision that is found to be unconstitutional pursuant to a state constitution or the U.S. Constitution is severed and the other provisions of the compact remain valid. If the entire compact is found to be unconstitutional in a party state, the NLC remains in full force and effect for all other party states.

OPPAGA Review of the NLC

2006 OPPAGA Report

In 2006, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the possibility of Florida adopting the original NLC.[45] OPPAGA concluded that adopting the NLC would allow the state to alleviate short-term nursing shortages but would not resolve the state's long-term nursing shortage. The report identified several benefits that would be realized by adopting the NLC. Those benefits included:

- Access to NURSYS®, the coordinated licensure information system, would provide improved access to information regarding disciplinary action taken against a nurse's license and notification of a nurse under investigation for patient safety issues, including information that is only available to party states.
- As a party state, Florida would be able to influence interstate nursing policies as a member of the Nurse Licensure Compact Administrators.

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

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

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

- The provisions of the original NLC language may conflict with Florida's public records and open meetings laws. The original NLC required states receiving information to honor the confidentiality restrictions of the state providing the information, and did not address notice requirements for open meetings.

[45] OPPAGA, *Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nursing Shortage*, Report No. 06-02 (Jan. 2006), *available at* http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-02 (last visited January 4, 2016).

- The original NLC provided general and broad authorization for the compact administrators to develop rules that were required to be adopted by party states, which raised concern about an unlawful delegation of legislative authority.
- The DOH and the BON would need to educate nurses and employers on the NLC and its requirements for the NLC to operate as intended.
- A compact nurse is not required to notify the BON when he or she enters the state to practice nursing, making it difficult for the workforce data to be captured. Additionally, the BON would not be on notice that a nurse under investigation in another state has entered Florida to work.

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

2015 OPPAGA Memorandum

In 2015, the revised NLC was reviewed by OPPAGA to determine if it adequately addresses concerns identified in the 2006 report.[46] OPPAGA found that the revised NLC resolved some of the barriers and disadvantages listed above, and specifically it found:

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

[46] *Supra* fn. 24. *See also* OPPAGA, Presentation to the House Select Committee on Affordable Healthcare Access (December 1, 2015), *available at* http://www.oppaga.state.fl.us/Presentations.aspx (last visited January 4, 2016).

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

Effect of Proposed Changes

Nurse Licensure Compact

The bill enacts the Nurse Licensure Compact in full (see description of compact provisions in the Current Situation section) and authorizes Florida to enter into the NLC with all other jurisdictions that have legally joined the NLC. The bill makes minor changes to the language of the NLC, including stylistic and grammatical changes and adding definitions for "commission" and "compact." Some of the primary purposes of the NLC include addressing the expanded mobility of nurses and use of advanced communication technologies, such as telehealth. Furthermore, in Florida, the bill would expedite or eliminate the time it requires a military spouse who is a nurse to be able to practice here and address the demand for temporary nurses during seasonal increases in population caused by tourism.

The bill amends current law to allow NLC implementation. It authorizes the DOH to charge a fee to convert a single-state license to a multistate license. The bill exempts an individual who holds a multistate license from having to comply with the licensure by examination or licensure by endorsement requirements. The DOH must designate each nurse license it issues as either a single-state or multistate license.

The bill makes conforming changes to statute to reference the multistate license and the requirements under the NLC. The bill does not require changes to Florida's licensure and license renewal requirements. However, an applicant that wishes to apply for a multistate license must meet the requirements of the NLC, in addition to the Florida licensure requirements.

Single-State Licenses

A party state may also issue single-state licenses for those individuals that meet the party state's requirements for a single-state license. The NLC does not govern the requirements for a single-state license. A single-state-license does not authorize the holder to practice nursing in any other state but the state of issuance. Nonparty states will continue to issue single-state licenses.

Florida may issue a single-state license upon the request of an applicant or for individuals who do not qualify for a multistate license but otherwise qualify to be licensed in Florida. For example, the NLC does not allow an individual who has been convicted of a felony to be issued a multistate license. However, under Florida law, the Board will review the application of individuals with felony convictions on a case-by-case basis to determine eligibility for licensure. If the board deems that the applicant does not pose a threat to public safety, the board may issue only a single-state license.

The bill requires that all licenses must be conspicuously designated as either a single-state license or a multistate license.

The Florida Center for Nursing

The Florida Center for Nursing was established by the Legislature in 2001, to address the issues of supply and demand for nursing, including the recruitment, retention, and utilization of nurse workforce resources.[47] The bill requires the Florida Center for Nursing to include the impact of the state's participation in the NLC in its supply and demand calculations and projections for the need for nurse

[47] Chapter 2001-277, L.O.F. and s. 464.0195, F.S.

workforce resources. The Florida Center for Nursing is authorized to request any information held by the board regarding nurses licensed in this state, holding a multistate license, or any information reported by employers of such nurses, other than personally identifiable information.

Enactment Date

The bill provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by twenty-six other states, whichever date occurs first in time.

B. SECTION DIRECTORY:

Section 1. Amends s. 456.073, F.S., relating to disciplinary proceedings.
Section 2. Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.
Section 3. Amends s. 464.003, F.S., relating to definitions.
Section 4. Amends s. 464.004, F.S., relating to the Board of Nursing.
Section 5. Amends s. 464.008, F.S., relating to licensure by examination.
Section 6. Amends s. 464.009, F.S., relating to licensure by endorsement.
Section 7. Creates s. 464.0095, F.S., relating to the Nurse Licensure Compact.
Section 8. Amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners.
Section 9. Amends s. 464.019, F.S., relating to titles and abbreviations.
Section 10. Amends s. 464.018, F.S., relating to disciplinary actions.
Section 11. Amends s. 464.0195, F.S., relating to the Florida Center for Nursing.
Section 12. Provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by twenty-six other states, whichever date occurs first in time.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Due to the authorized fee for conversion of a single-state license to a multistate license, the DOH may realize an indeterminate, positive fiscal impact. The DOH has not yet determined the fee it will charge for conversion. The fee for initial licensure will not change.

The DOH may incur an indeterminate, negative fiscal impact due the loss of fees associated with licensure by endorsement and licensure renewal fees for those who are licensed in Florida but hold a multistate license from their home state. There are currently 16,351 nurses licensed in Florida who are also licensed in compact states.[48]

2. Expenditures:

The DOH indicates that it may experience a recurring increase in workload due to the following requirements created under the provisions of the bill:
- Additional licensure applications for multistate licenses;
- Reporting requirements and a one-time modification of computer software for the coordinated licensure information system;
- Activities of the commission, such as travel for the compact administrator;
- Education of the public; and
- Investigations due to complaints filed against nurses practicing in the state under the NLC.

The DOH will incur a negative fiscal impact of $6,000 annually to pay the compact membership fee. Although indeterminate at this time, additional revenue for the multistate application fees and

[48] E-mail from the staff of the DOH (December 10, 2015), on file with the Health Quality Subcommittee.

current resources are adequate to absorb any fiscal impact.[49] The bill requires the DOH to comply with the rules adopted by the commission. Until the content of the rules is known, the fiscal impact for compliance is indeterminate.

A reduction in expenditures will shift from licensure by endorsement to multistate licenses since nurses from member states will no longer apply for and will not need to obtain a Florida license to practice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A nurse currently licensed in Florida would be subject to a fee for the conversion of his or her single-state license to a multistate license.

Fees associated with applying for a license in a party state would be eliminated for a nurse whose home state is Florida and wants to practice in a party state, as well as a nurse whose home state is in a party state and wishes to practice in Florida. In addition, employers of nurses will likely experience improved ease of recruitment, as nurses can more easily move between states, both permanently and temporarily.

D. FISCAL COMMENTS:

None.

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 Nurse Licensure 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.[5051] Under this holding, the constitutionality of the bill's

[49] *Supra* note 48.
[50] *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).

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.

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).[52] The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."[53] The court states that "the precise legal effect of the ICPC compact administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.[54] However, in a footnote, the court provided:

> Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even 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.[55]

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.[56]

The bill requires the Florida Center for Nursing to assess the impact on the state's participation in the Nurse Licensure Agreement, and include such impact in its strategy for meeting the state's needs for nursing resources. Based on the assessment provided by the Florida Center for Nursing, the Legislature may make decisions on Florida's continued participation in the NLC. The Legislature may

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[51] 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).

[52] 801 So.2d 1047 (Fla. 1st DCA 2001).

[53] *Id* at 1052.

[54] *Id.*

[55] *Id.*

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

also review and reenact the NLC post-adoption of the commission's rules, which may counter a claim that the authority given to the NLC commission to adopt rules is an unlawful delegation.[57]

B. RULE-MAKING AUTHORITY:

The bill authorizes the Interstate Commission of Nurse Licensure Compact Administrators to adopt rules to facilitate and coordinate the implementation and administration of the compact. The NLC specifies that the rules have the force and effect of law and are binding in all party states. If a party state fails to meet its obligations under the NLC 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

[57] *Supra* fn. 24.

A bill to be entitled

An act relating to the Nurse Licensure Compact; amending s. 456.073, F.S.; requiring the Department of Health to report certain investigative information to the coordinated licensure information system; amending s. 456.076, F.S.; requiring an impaired practitioner consultant to disclose certain information to the department; requiring a nurse holding a multistate license to report participation in a treatment program to the department; amending s. 464.003, F.S.; revising definitions, to conform; amending s. 464.004, F.S.; requiring the executive director of the Board of Nursing or his or her designee to serve as state administrator of the Nurse Licensure Compact; amending s. 464.008, F.S.; providing eligibility criteria for a multistate license; requiring that multistate licenses be distinguished from single-state licenses; exempting certain persons from licensed practical nurse and registered nurse licensure requirements; amending s. 464.009, F.S.; exempting certain persons from requirements for licensure by endorsement; creating s. 464.0095, F.S.; creating the Nurse Licensure Compact; providing findings and purpose; providing definitions; providing for the recognition of nursing licenses in party states; requiring party states to perform criminal history checks of licensure applicants;

providing requirements for obtaining and retaining a multistate license; authorizing party states to take adverse action against a nurse's multistate licensure privilege; requiring notification to the home licensing state of an adverse action against a licensee; requiring nurses practicing in party states to comply with state practice laws; providing limitations for licensees not residing in a party state; providing the effect of the act on a current licensee; providing application requirements for a multistate license; providing licensure requirements when a licensee moves between party states or to a nonparty state; providing certain authority to state licensing boards of party states; requiring deactivation of a nurse's multistate licensure privilege under certain circumstances; authorizing participation in an alternative program in lieu of adverse action against a license; requiring all party states to participate in a coordinated licensure information; providing for the development of the system, reporting procedures, and the exchange of certain information between party states; establishing the Interstate Commission of Nurse Licensure Compact Administrators; providing for the jurisdiction and venue for court proceedings; providing membership and duties; authorizing the commission to adopt rules;

providing rulemaking procedures; providing for state enforcement of the compact; providing for the termination of compact membership; providing procedures for the resolution of certain disputes; providing an effective date of the compact; providing a procedure for membership termination; providing compact amendment procedures; authorizing nonparty states to participate in commission activities before adoption of the compact; providing construction and severability; amending s. 464.012, F.S.; authorizing a multistate licensee under the compact to be certified as an advanced registered nurse practitioner if certain eligibility criteria are met; amending s. 464.015, F.S.; authorizing registered nurses and licensed practical nurses holding a multistate license under the compact to use certain titles and abbreviations; amending s. 464.018, F.S.; revising the grounds for denial of a nursing license or disciplinary action against a nursing licensee; authorizing certain disciplinary action under the compact for certain prohibited acts; amending s. 464.0195, F.S.; revising the information required to be included in the database on nursing supply and demand; requiring the Florida Center for Nursing to analyze and make future projections of the supply and demand for nurses; authorizing the center to request,

and requiring the Board of Nursing to provide, certain information about licensed nurses; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) of section 456.073, Florida Statutes, is amended to read:

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. The department shall report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure information system pursuant to s. 464.0095. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the

investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

Section 2. Subsection (9) of section 456.076, Florida Statutes, is amended to read:

456.076 Treatment programs for impaired practitioners.—

(9) An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The consultant may disclose to the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section. The department, and any other entity that

enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law. The consultant must disclose to the department, upon the department's request, whether an applicant for a multistate license under s. 464.0095 is participating in a treatment program and must report to the department when a nurse holding a multistate license under s. 464.0095 enters a treatment program. A nurse holding a multistate license pursuant to s. 464.0095 must report to the department within 2 business days after entering a treatment program pursuant to this section. If a disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.

Section 3. Subsections (16) and (22) of section 464.003, Florida Statutes, are amended to read:

464.003 Definitions.—As used in this part, the term:

(16) "Licensed practical nurse" means any person licensed in this state or holding an active multistate license under s. 464.0095 to practice practical nursing.

(22) "Registered nurse" means any person licensed in this state or holding an active multistate license under s. 464.0095 to practice professional nursing.

Section 4. Subsection (5) is added to section 464.004, Florida Statutes, to read:

464.004 Board of Nursing; membership; appointment; terms.—

(5) The executive director of the board appointed pursuant to s. 456.004(2) or his or her designee shall serve as the state administrator of the Nurse Licensure Compact as required under s. 464.0095.

Section 5. Subsection (2) of section 464.008, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

464.008 Licensure by examination.—

(2)(a) Each applicant who passes the examination and provides proof of meeting the educational requirements specified in subsection (1) shall, unless denied pursuant to s. 464.018, be entitled to licensure as a registered professional nurse or a licensed practical nurse, whichever is applicable.

(b) An applicant who resides in this state, meets the licensure requirements of this section, and meets the criteria for multistate licensure under s. 464.0095 may request the issuance of a multistate license from the department.

(c) A nurse who holds a single-state license in this state and applies to the department for a multistate license must meet the eligibility criteria for a multistate license under s. 464.0095 and must pay an application and licensure fee to change the licensure status.

(d) The department shall conspicuously distinguish a multistate license from a single-state license.

(5) A person holding an active multistate license in another state pursuant to s. 464.0095 is exempt from the

licensure requirements of this section.

Section 6. Subsection (7) is added to section 464.009, Florida Statutes, to read:

464.009 Licensure by endorsement.—

(7) A person holding an active multistate license in another state pursuant to s. 464.0095 is exempt from the requirements for licensure by endorsement in this section.

Section 7. Section 464.0095, Florida Statutes, is created to read:

464.0095 Nurse Licensure Compact.—The Nurse Licensure Compact is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

FINDINGS AND DECLARATION OF PURPOSE

(1) The party states find that:

(a) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.

(b) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

(c) The expanded mobility of nurses and the use of advanced communication technologies as part of the nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and

regulation.

(d) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.

(e) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states.

(f) Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(2) The general purposes of this compact are to:

(a) Facilitate the states' responsibility to protect the public's health and safety.

(b) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

(c) Facilitate the exchange of information among party states in the areas of nurse regulation, investigation, and adverse actions.

(d) Promote compliance with the laws governing the practice of nursing in each jurisdiction.

(e) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

(f) Decrease redundancies in the consideration and issuance of nurse licenses.

(g) Provide opportunities for interstate practice by

nurses who meet uniform licensure requirements.

ARTICLE II

DEFINITIONS

As used in this compact, the term:

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

(2) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

(3) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators established by this compact.

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

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

(6) "Current significant investigative information" means:

(a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

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

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

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

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

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

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

(13) "Party state" means any state that has adopted this compact.

(14) "Remote state" means a party state other than the home state.

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

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

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

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

(1) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state shall be recognized by each party state as authorizing a nurse to practice as an RN or as an LPN/VN under a multistate licensure privilege in each party state.

(2) Each party state must implement procedures for considering the criminal history records of applicants for initial multistate licensure or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(3) In order for an applicant to obtain or retain a multistate license in the home state, each party state shall require that the applicant fulfills the following criteria:

(a) Meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(b)1. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

2. Has graduated from a foreign RN or LPN/VN prelicensure education program that has been approved by the authorized accrediting body in the applicable country and has been verified by a licensing board-approved independent credentials review agency to be comparable to a licensing board-approved prelicensure education program.

(c) If the applicant is a graduate of a foreign prelicensure education program not taught in English, or if English is not the applicant's native language, has successfully

passed a licensing board-approved English proficiency examination that includes the components of reading, speaking, writing, and listening.

(d) Has successfully passed an NCLEX-RN or NCLEX-PN Examination or recognized predecessor, as applicable.

(e) Is eligible for or holds an active, unencumbered license.

(f) Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(g) Has not been convicted or found guilty, or has entered into an agreed disposition other than a disposition that results in nolle prosequi, of a felony offense under applicable state or federal criminal law.

(h) Has not been convicted or found guilty, or has entered into an agreed disposition other than a disposition that results in nolle prosequi, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.

(i) Is not currently enrolled in an alternative program.

(j) Is subject to self-disclosure requirements regarding current participation in an alternative program.

(k) Has a valid United States social security number.

(4) All party states may, in accordance with existing

state due process law, take adverse action against a nurse's multistate licensure privilege, such as revocation, suspension, probation, or any other action that affects the nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(5) A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time service is provided. The practice of nursing is not limited to patient care but shall include all nursing practice as defined by the state practice laws of the party state in which the patient is located. The practice of nursing in a party state under a multistate licensure privilege subjects a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the patient is located at the time service is provided.

(6) A person not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. The single-state license granted to such a person does not grant the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.

(7) A nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

(a) A nurse who changes his or her primary state of residence after the effective date must meet all applicable requirements under subsection (3) to obtain a multistate license from a new home state.

(b) A nurse who fails to satisfy the multistate licensure requirements under subsection (3) due to a disqualifying event occurring after the effective date is ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the commission.

ARTICLE IV

APPLICATIONS FOR LICENSURE IN A PARTY STATE

(1) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

(2) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(3) If a nurse changes his or her primary state of residence by moving from one party state to another party state, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the commission.

(a) The nurse may apply for licensure in advance of a change in his or her primary state of residence.

(b) A multistate license may not be issued by the new home state until the nurse provides satisfactory evidence of a change in his or her primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(4) If a nurse changes his or her primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state shall convert to a single-state license valid only in the former home state.

ARTICLE V

ADDITIONAL AUTHORITY VESTED IN PARTY STATE LICENSING BOARDS

(1) In addition to the other powers conferred by state law, a licensing board or state agency may:

(a) Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

1. Only the home state has the power to take adverse

action against a nurse's license issued by the home state.

2. For purposes of taking adverse action, the home state licensing board or state agency shall give the same priority and effect to conduct reported by a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(b) Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

(c) Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. The licensing board or state agency may also take appropriate action and shall promptly report the conclusions of such investigation to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such action.

(d) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Subpoenas issued by a licensing board or state agency in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness

fees, travel expenses, and mileage and other fees required by the service statutes of the state in which the witnesses or evidence is located.

(e) Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

(f) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(g) Take adverse action based on the factual findings of the remote state, provided that the licensing board or state agency follows its own procedures for taking such adverse action.

(2) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances are removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(3) This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI

COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE INFORMATION

(1) All party states shall participate in a coordinated licensure information system relating to all licensed RNs and LPNs/VNs. This system shall include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

(3) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications, the reasons for application denials, and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(4) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(5) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(6) Any personal identifying information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(7) Any information contributed to the coordinated licensure information system which is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(8) The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

(a) Identifying information.

(b) Licensure data.

(c) Information related to alternative program participation.

(d) Other information that may facilitate the administration of this compact, as determined by commission rules.

(9) The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE LICENSURE COMPACT ADMINISTRATORS

(1) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(a) The commission is an instrumentality of the party states.

(b) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the commission's principal office is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(c) This compact does not waive sovereign immunity.

(2)(a) Each party state shall have and be limited to one administrator. The executive director of the state licensing board or his or her designee shall be the administrator of this

compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring on the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(b) Each administrator is entitled to one vote with regard to the adoption of rules and the creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the commission's bylaws or rules.

(d) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under Article VIII of this compact.

(e) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

1. Failure of a party state to comply with its obligations under this compact;

2. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

3. Current, threatened, or reasonably anticipated litigation;

4. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

5. Accusing any person of a crime or formally censuring any person;

6. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

7. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

8. Disclosure of investigatory records compiled for law enforcement purposes;

9. Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

10. Matters specifically exempted from disclosure by federal or state statute.

(f) If a meeting, or portion of a meeting, is closed pursuant to this subsection, the commission's legal counsel or designee shall certify that the meeting, or portion of the meeting, is closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views

expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(3) The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to:

(a) Establishing the commission's fiscal year.

(b) Providing reasonable standards and procedures:

1. For the establishment and meetings of other committees.

2. Governing any general or specific delegation of any authority or function of the commission.

(c) Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy

votes allowed.

(d) Establishing the titles, duties and authority, and reasonable procedures for the election of the commission's officers.

(e) Providing reasonable standards and procedures for the establishment of the commission's personnel policies and programs. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the commission's personnel policies and programs.

(f) Providing a mechanism for winding up the commission's operations and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

(4) The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the commission's website.

(5) The commission shall maintain its financial records in accordance with the bylaws.

(6) The commission shall meet and take such actions as are consistent with this compact and the bylaws.

(7) The commission has the power to:

(a) Adopt uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and are binding in all party states.

(b) Bring and prosecute legal proceedings or actions in

the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law are not affected.

(c) Purchase and maintain insurance and bonds.

(d) Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations.

(e) Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources.

(f) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(g) Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services and receive, use, and dispose of the same, provided that, at all times, the commission shall avoid any appearance of impropriety or conflict of interest.

(h) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed, provided that, at all times, the commission shall avoid any appearance of impropriety.

(i) Sell, convey, mortgage, pledge, lease, exchange,

abandon, or otherwise dispose of any property, whether real, personal, or mixed.

(j) Establish a budget and make expenditures.

(k) Borrow money.

(l) Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other interested persons.

(m) Provide information to, receive information from, and cooperate with law enforcement agencies.

(n) Adopt and use an official seal.

(o) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

(8) Relating to the financing of the commission, the commission:

(a) Shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) May also levy and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all party states.

(c) May not incur obligations of any kind before securing

the funds adequate to meet the same; and the commission may not pledge the credit of any of the party states, except by and with the authority of such party state.

(d) Shall keep accurate accounts of all receipts and disbursements. The commission's receipts and disbursements are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in, and become part of, the commission's annual report.

(9) Relating to the sovereign immunity, defense, and indemnification of the commission:

(a) The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. This paragraph does not protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

(b) The commission shall defend any administrator,

officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct. This paragraph does not prohibit that person from retaining his or her own counsel.

(c) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII

RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules

adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.

(2) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(3) Before adoption of a final rule or final rules by the commission, and at least 60 days before the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) On the commission's website.

(b) On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(4) The notice of proposed rulemaking shall include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.

(b) The text of the proposed rule or amendment and the reason for the proposed rule.

(c) A request for comments on the proposed rule from any interested person.

(d) The manner in which an interested person may submit notice to the commission of his or her intention to attend the public hearing and any written comments.

(5) Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(6) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(7) The commission shall publish the place, time, and date of the scheduled public hearing.

(a) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(b) This article does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this article.

(8) If no interested person appears at the public hearing, the commission may proceed with adoption of the proposed rule.

(9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing is not held, the commission shall consider all written and oral comments received.

(10) The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(11) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this compact and in this article shall be applied retroactively to the rule as soon

as reasonably possible within 90 days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

(a) Meet an imminent threat to public health, safety, or welfare;

(b) Prevent a loss of commission or party state funds; or

(c) Meet a deadline for the adoption of an administrative rule that is required by federal law or rule.

(12) The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the commission's website. The revision is subject to challenge by any person for 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the commission before the end of the notice period. If no challenge is made, the revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the commission's approval.

ARTICLE IX

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(1) Oversight of this compact shall be accomplished by:

(a) Each party state, which shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(b) The commission, which is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission renders a judgment or order void as to the commission, this compact, or adopted rules.

(2) When the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the adopted rules, the commission shall:

(a) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission.

(b) Provide remedial training and specific technical assistance regarding the default.

(3) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(4) Termination of membership in this compact shall be

imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state, to the executive officer of the defaulting state's licensing board, and each of the party states.

(5) A state whose membership in this compact is terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(6) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact is terminated unless agreed upon in writing between the commission and the defaulting state.

(7) The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

(8) Dispute resolution may be used by the commission in the following manner:

(a) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

(b) The commission shall adopt a rule providing for both

mediation and binding dispute resolution for disputes, as appropriate.

(c) In the event the commission cannot resolve disputes among party states arising under this compact:

1. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators is final and binding.

(9)(a) The commission shall, in the reasonable exercise of its discretion, enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with this compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

(c) The remedies provided in this subsection are not the exclusive remedies of the commission. The commission may pursue

any other remedies available under federal or state law.

ARTICLE X

EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

(1) This compact becomes effective and binding on the date of legislative enactment of this compact into law by no fewer than 26 states or on December 31, 2018, whichever occurs first. All party states to this compact which were also parties to the prior Nurse Licensure Compact ("prior compact"), superseded by this compact, are deemed to have withdrawn from the prior compact within 6 months after the effective date of this compact.

(2) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state is withdrawn from the prior compact.

(3) Any party state may withdraw from this compact by enacting a statute repealing the compact. A party state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(4) A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination.

(5) This compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a

party state and a nonparty state that is made in accordance with the other provisions of this compact.

(6) This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(7) Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all party states.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is declared to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Section 8. Subsection (1) of section 464.012, Florida

Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.

(b) Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(c) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program

shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

Section 9. Subsections (1), (2), and (9) of section 464.015, Florida Statutes, are amended to read:

464.015 Titles and abbreviations; restrictions; penalty.—

(1) Only a person ~~persons~~ who holds a license in this state or a multistate license pursuant to s. 464.0095 ~~hold licenses~~ to practice professional nursing ~~in this state~~ or who performs ~~are performing~~ nursing services pursuant to the exception set forth in s. 464.022(8) may ~~shall have the right to~~ use the title "Registered Nurse" and the abbreviation "R.N."

(2) Only a person ~~persons~~ who holds a license in this state or a multistate license pursuant to s. 464.0095 ~~hold licenses~~ to practice as a licensed practical nurse ~~nurses in this state~~ or who performs ~~are performing~~ practical nursing services pursuant to the exception set forth in s. 464.022(8) may ~~shall have the right to~~ use the title "Licensed Practical Nurse" and the abbreviation "L.P.N."

(9) A person may not practice or advertise as, or assume the title of, registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, or advanced registered nurse practitioner or use the abbreviation "R.N.," "L.P.N.,"

"C.N.S.," "C.R.N.A.," "C.N.M.," or "A.R.N.P." or take any other action that would lead the public to believe that person was authorized by law to practice ~~certified~~ as such or is performing nursing services pursuant to the exception set forth in s. 464.022(8)~~.~~ unless that person is licensed, ~~or~~ certified, or authorized pursuant to s. 464.0095 to practice as such.

Section 10. Subsections (1) and (2) of section 464.018, Florida Statutes, are amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in ss. ~~s.~~ 456.072(2) and 464.0095:

(a) Procuring, attempting to procure, or renewing a license to practice nursing or the authority to practice practical or professional nursing pursuant to s. 464.0095 by bribery, by knowing misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

(d) Being convicted or found guilty of, or entering a plea

of guilty or nolo contendere to, regardless of adjudication, ~~of~~ any of the following offenses:

1. A forcible felony as defined in chapter 776.

2. A violation of chapter 812, relating to theft, robbery, and related crimes.

3. A violation of chapter 817, relating to fraudulent practices.

4. A violation of chapter 800, relating to lewdness and indecent exposure.

5. A violation of chapter 784, relating to assault, battery, and culpable negligence.

6. A violation of chapter 827, relating to child abuse.

7. A violation of chapter 415, relating to protection from abuse, neglect, and exploitation.

8. A violation of chapter 39, relating to child abuse, abandonment, and neglect.

9. For an applicant for a multistate license or for a multistate licenseholder under s. 464.0095, a felony offense under Florida law or federal criminal law.

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

(f) Making or filing a false report or record, which the nurse ~~licensee~~ knows to be false, intentionally or negligently

failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse's capacity as a licensed nurse.

(g) False, misleading, or deceptive advertising.

(h) Unprofessional conduct, as defined by board rule.

(i) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part.

(j) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee that probable cause exists to believe that the nurse ~~licensee~~ is unable to practice nursing because of the reasons stated in this paragraph, the authority to issue an order to compel a nurse ~~licensee~~ to submit to a mental or physical examination by physicians designated by the department. If the nurse ~~licensee~~ refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the nurse ~~licensee~~ resides or does business. The nurse ~~licensee~~ against whom the

petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A nurse affected by ~~the provisions of~~ this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of nursing with reasonable skill and safety to patients.

(k) Failing to report to the department any person who the nurse ~~licensee~~ knows is in violation of this part or of the rules of the department or the board; however, if the nurse ~~licensee~~ verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the nurse ~~licensee~~ is required to report such person only to an impaired professionals consultant.

(l) Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(m) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter

641, in which the nurse also provides services.

(n) Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the nurse ~~licensee~~ is not qualified by training or experience.

(o) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2)(a) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or nurse ~~licensee~~ who is found guilty of violating ~~any provision of~~ subsection (1) ~~of this section~~ or ~~who is found guilty of violating any provision of~~ s. 456.072(1).

(b) The board may take adverse action against a nurse's multistate licensure privilege and impose any of the penalties in s. 456.072(2) when the nurse is found guilty of violating subsection (1) or s. 456.072(1).

Section 11. Paragraph (a) of subsection (2) of section 464.0195, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

464.0195 Florida Center for Nursing; goals.—

(2) The primary goals for the center shall be to:

(a) Develop a strategic statewide plan for nursing manpower in this state by:

1. Establishing and maintaining a database on nursing supply and demand in the state, to include current supply and demand~~, and future projections~~; ~~and~~

2. Analyzing the current supply and demand in the state and making future projections of such, including assessing the impact of this state's participation in the Nurse Licensure Compact under s. 464.0095; and

3.~~2.~~ Selecting from the plan priorities to be addressed.

(4) The center may request from the board, and the board must provide to the center upon its request, any information held by the board regarding nurses licensed in this state or holding a multistate license pursuant to s. 464.0095 or information reported to the board by employers of such nurses, other than personal identifying information.

Section 12. This act shall take effect December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 Public Records and Meetings/Nurse Licensure Compact
SPONSOR(S): Pigman
TIED BILLS: HB 1061 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	11 Y, 0 N	Siples	Calamas
2) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee		Siples MS	Calamas CC

SUMMARY ANALYSIS

HB 1063 authorizes Florida to become a party state to the Nurse Licensure Compact (NLC or compact), which is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. The NLC requires states to submit nurse licensure and regulation records, including any actions taken against the ability to practice, to a coordinated licensure information system. The NLC also requires a commission to be formed to oversee the implementation and administration of the compact and the coordinated licensure information system.

The bill, which is linked to passage of HB 1061, creates public record and public meeting exemptions for certain records and meetings relating to the NLC.

The bill makes personal identifying information of nurses obtained pursuant to the compact and held by the Department of Health or Board of Nursing confidential and exempt from public record requirements, unless the laws of the state that originally reported the information authorizes its disclosure.

The bill also creates a public meeting exemption for commission meetings, at which any of the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature which the commission determines would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active investigatory records compiled for law enforcement purposes;
- Information related to reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information made confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

The bill provides that the exemptions will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill will have an indeterminate, negative fiscal impact on the Department of Health.

The bill will be effective on the same date that HB 1061 or similar legislation takes effect.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it appears to require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and open to public inspection.[4]

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

[1] Section 286.011(1), F.S.
[2] *Ibid.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Art. I, s. 24(c), Fla. Const.
[6] Section 119.15, F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.[7]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[8]

Nurse Licensure Compact

HB 1061 authorizes Florida to become a party to the Nurse Licensure Compact (NLC or compact) by enacting its provisions into Florida law. The NLC is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN). The primary purposes of the NLC is to address the expanded mobility of nurses and the use of advanced communication technologies, such as telemedicine.

The Department of Health (DOH) licenses nurses and the Board of Nursing regulates the practice of nursing in this state. The NLC establishes uniform requirements for the issuance of a multistate license. States retain the right to establish additional qualifications for licensure and to issue single-state licenses, which allows the holder to practice only in the state of issuance. The state in which a nurse is a permanent resident is considered the nurse's home state and the nurse is subject to the home state's licensure and regulation.

Under the compact, a nurse who holds a multistate license issued by one of the party states is permitted to practice in any other party state, without obtaining a license from that state. A nurse practicing under the multistate licensure practice privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located.

Under the NLC, the party states are required to report all adverse actions[9] taken against a nurse's license or a nurse's multistate licensure practice privilege; any current, significant investigative information that has not yet been acted upon; and denials of applications and reasons for such denials; and nurse participation in alternative programs[10] to a coordinated licensure information system. Only party states have access to information related to ongoing investigations and participation in alternative programs. A party state may designate information it reports as confidential and therefore, cannot be shared with nonparty states or other entities without the express permission of the reporting state.

The compact also creates the Interstate Commission of Nurse Licensure Compact Administrators (commission) to oversee and administer the provisions of the NLC. Each party state has one administrator, the head of the licensing board, who is a member of the commission. The compact details the authority and responsibilities of the commission, such as the promulgation of rules, the oversight of fiscal matters, the mediation of conflict between party states, and the management of noncompliant party states.

Effect of Proposed Changes

The bill creates public record and public meeting exemptions related to the Nurse Licensure Compact.

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[7] Section 119.15(6)(b), F.S.
[8] Section 119.15(3), F.S.
[9] Adverse action is any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the license, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.
[10] An alternative program is a non-disciplinary monitoring program approved by a licensing board.

Specifically, the bill provides that personal identifying information of nurses obtained from the coordinated licensure information system held by the DOH or Board of Nursing is confidential and exempt[11] from public record requirements, unless the laws of the state that originally reported the information authorizes its disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill also creates a public meeting exemption for those portions of commission meetings during which the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets[12] or commercial or financial information required by the commission's bylaws or rules to be kept privileged or confidential;
- Information of a personal nature that the commission determines by majority vote would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active[13] investigatory records compiled for law enforcement purposes;
- Information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information that is confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

This bill provides that any recordings, minutes, and records are confidential and exempt from public record requirements. HB 1061, which is linked to this bill, provides that the minutes and documents of the closed meeting may be disclosed pursuant to a majority vote of the commission or pursuant to a court order.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature.

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[11] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

[12] The bill provides that the term "trade secrets" has the same meaning as provided in the Uniform Trade Secrets Act (ch. 688, F.S.) Section 688.002, F.S., defines "trade secrets" as information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[13] The bill provides that "active" has the same meaning as provided in s. 119.011(3)(d), F.S., which provides that "active" has the following meaning:

- Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information is considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information is considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill provides a public necessity statement as required by the State Constitution, which states the exemptions are necessary for the state's effective and efficient implementation and administration of the provisions of the Nurse Licensure Compact, which requires such exemptions.

B. SECTION DIRECTORY:

Section 1: Creates s. 464.0096, F.S., relating to public records and meetings exemptions associated with the Nurse Licensure Compact.
Section 2: Provides a public necessity statement.
Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may create an insignificant, negative impact on the DOH because staff responsible for complying with public record requests may require training related to the public record exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new exemptions; thus, it includes a public necessity statement.

Breadth of Exemption Bills
Article I, s. 24(a) of the State Constitution guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Further, Art. I, s. 24(b) of the State Constitution provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public. However, Art. I, s. 24(c) of the State Constitution authorizes the legislature to provide by general law for the exemption of public records and public meetings from this constitutional requirement provided that certain requirements are met, including that the exemption be no broader than necessary to accomplish the stated purpose of the law. It is unclear whether the exemptions created by the bill meet this requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and meetings; creating s. 464.0096, F.S.; providing an exemption from public records requirements for certain information held by the Department of Health or the Board of Nursing pursuant to the Nurse Licensure Compact; authorizing disclosure of the information under certain circumstances; providing an exemption from public meeting requirements for certain meetings of the Interstate Commission of Nurse Licensure Compact Administrators; providing an exemption from public records requirements for recordings, minutes, and records generated during the closed portion of such a meeting; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 464.0096, Florida Statutes, is created to read:

464.0096 Nurse Licensure Compact; public records and meetings exemptions.—

(1) A nurse's personal identifying information obtained from the coordinated licensure information system, as defined in

s. 464.0095, and held by the department or the board is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated licensure information system authorizes the disclosure of such information by law. Under such circumstances, the information may only be disclosed to the extent permitted by the reporting state's law.

(2)(a) A meeting or portion of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators established under s. 464.0095 during which any of the following is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution:

1. Failure of a party state to comply with its obligations under the Nurse Licensure Compact.

2. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

3. Current, threatened, or reasonably anticipated litigation.

4. Negotiation of contracts for the purchase or sale of goods, services, or real estate.

5. Accusing any person of a crime or formally censuring any person.

6. Trade secrets as defined in s. 688.002 or commercial or financial information required by the commission's bylaws or

rules to be kept privileged or confidential.

7. Information of a personal nature which the commission determines by majority vote would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public.

8. Active investigatory records compiled for law enforcement purposes. For the purposes of this subparagraph, the term "active" has the same meaning as provided in s. 119.011(3)(d).

9. Information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the Nurse Licensure Compact.

10. Information made confidential or exempt pursuant to federal law or pursuant to the laws of any party state.

11. Information made exempt pursuant to rules or bylaws of the commission, which would protect the public's interest and the privacy of individuals, and proprietary information.

(b) Recordings, minutes, and records generated during an exempt meeting are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that a nurse's personal identifying information

obtained from the coordinated licensure information system, as defined in s. 464.0095, Florida Statutes, and held by the Department of Health or the Board of Nursing be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Protection of such information is required under the Nurse Licensure Compact, which the state must adopt in order to become a party state to the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact.

(2)(a) The Legislature finds that it is a public necessity that any meeting or portion of a meeting of the Interstate Commission of Nurse Licensure Compact Administrators established under s. 464.0095, Florida Statutes, at which any of the following is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution:

1. Failure of a party state to comply with its obligations under the Nurse Licensure Compact.

2. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

3. Current, threatened, or reasonably anticipated litigation.

4. Negotiation of contracts for the purchase or sale of goods, services, or real estate.

5. Accusing any person of a crime or formally censuring any person.

6. Trade secrets as defined in s. 688.002, Florida Statutes, or commercial or financial information required by the commission's bylaws or rules to be kept privileged or confidential.

7. Information of a personal nature which the commission determines by majority vote would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public.

8. Active investigatory records compiled for law enforcement purposes.

9. Information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the Nurse Licensure Compact.

10. Information made confidential or exempt pursuant to federal law or pursuant to the laws of any party state.

11. Information made exempt pursuant to rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

(b) The Nurse Licensure Compact requires any meeting or portion of a meeting in which the substance of paragraph (a) is discussed to be closed to the public. Without the public meeting exemption, this state will be prohibited from becoming a party state to the compact. Thus, this state will be unable to effectively and efficiently administer the compact.

(3) The Legislature also finds that it is a public necessity that the recordings, minutes, and records generated during a meeting that is exempt pursuant to s. 464.0096, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Release of such information would negate the public meeting exemption. As such, the Legislature finds that the public records exemption is a public necessity.

Section 3. This act shall take effect on the same date that HB 1061 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.