

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Health Care Committee

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BILL: SB 2210

SPONSOR: Senator Saunders

SUBJECT: Nurse Licensure Compact

DATE: March 20, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	<b>Pre-meeting</b>
2.	_____	_____	GO	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill incorporates the Nurse Licensure Compact into ch. 464, F.S., the Nurse Practice Act. The bill enacts the Nurse Licensure Compact with an implementation date of entry into the compact of no later than October 1, 2006.

The bill requires the Florida Board of Nursing to establish, by rule, requirements for submission of employment data, education, and other workforce information that may be required at initial licensure and at renewal. The board may provide a form to employers to collect data on the employment of nurses practicing nursing in Florida on a compact state license. The board may provide such workforce information to the Florida Center for Nursing to assist the center.

The bill allows a registered nurse or licensed practical nurse who has retired from the practice of nursing to request, and be granted by the Board of Nursing, retired nurse status. The scope of practice for a retired nurse must be limited to primary and preventive health care, or as further defined by Florida Board of Nursing rule. The nurse may use the title "Retired Registered Nurse" or "Retired Licensed Practical Nurse" once issued retired status.

The bill creates exceptions to the Nurse Practice Act for a nurse who holds a multistate licensure privilege to practice nursing pursuant to the Nurse Licensure Compact and for an applicant for a Florida-license to practice nursing who has passed the national examination and who otherwise meets the licensure by examination requirements, but who does not have a social security number at the time of the application, so that such applicant may practice nursing under a one year temporary license.

The bill defines the “practice of a certified nursing assistant” to mean providing care and assisting persons with specified tasks relating to the activities of daily living, and other tasks that a certified nursing assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse. This provision may not restrict the ability of any person who is otherwise trained and educated from performing such tasks. The bill authorizes the Florida Board of Nursing to adopt rules regulating the practice of certified nursing assistants that specify the scope of practice authorized and level of supervision required for the practice of certified nursing assistants. The bill provides that the Florida Board of Nursing may impose disciplinary sanctions against a certified nursing assistant for the violation of any provisions of the Nurse Practice Act, ch. 456, F.S., relating to the general regulatory provisions for health care practitioners, or the rules adopted by the board without proving that the violation was done intentionally by the certified nursing assistant.

This bill creates ss. 464.100, 464.102, 464.103, 464.104, 464.107, 464.108, 464.109, 464.110, 464.112, 464.113, 464.114, 464.115, and 464.116, F.S. The bill amends ss. 464.003, 464.012, 464.0195, 464.014, 464.015, 464.022, 464.201, 464.202, and 464.204, F.S.

## II. Present Situation:

### Compacts Between States

An interstate compact is defined to mean a voluntary agreement between two or more states which is designed to meet common problems of the parties concerned.<sup>1</sup> Compacts are contracts between states. Pursuant to Article I, Section 10 of the United States Constitution “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” Only those compacts that affect a power delegated to the federal government or that alters the political balance within the federal system require the consent of Congress.<sup>2</sup> States are under no obligation to recognize licenses or professions issued by other states since the licenses issued by one state are not extraterritorial and no rule of comity requires a state to grant such a license because a person has been authorized to practice in another state. A compact may only be amended or terminated in accordance with the instrument or by mutual consent of the parties to the compact by the adoption of identical substantive provisions.<sup>3</sup> A violation of a compact is subject to federal judicial remedy similar to an action for a breach of contract. Compacts require member states to forfeit individual sovereignty. Compacts are binding state law and any state law in contradiction or conflict with the compact is unconstitutional unless the state that is a party to the compact reserves that power. The terms of the compact take precedence over state statutes and state law “even to the extent that a compact can take precedence over a state constitutional provision.”<sup>4</sup> The United States Supreme Court has held that a state court cannot declare an interstate compact to be invalid on state constitutional grounds without subjecting that normally unreviewable decision of state law to further Supreme Court review in order to protect the federal interest and the interests of other state signatories.<sup>5</sup>

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<sup>1</sup> *Black’s Law Dictionary Abridged Fifth Edition* (1983).

<sup>2</sup> See *Virginia v. Tennessee*, 148 U.S. 503 (1893).

<sup>3</sup> See “Interstate Compacts, 2004” at the Council of State Government’s website <<http://www.csg.org/>>.

<sup>4</sup> *Id.* See also *McComb v. Wambaugh*, 934 F.2d 474, 479 (3<sup>rd</sup> Cir. 1991) and *Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Maryland*, 706 F.2d 1312, 1319 (4<sup>th</sup> Cir. 1983).

<sup>5</sup> *West Virginia ex. rel. Dyer v. Sims*, 341 U.S. 22, 71 S.Ct. 557, 95 L.Ed. 713 (1951).

## **Nurse Licensure Compact**

The Nurse Licensure Compact was developed by the National Council of State Boards of Nursing. Several states have enacted the Nurse Licensure Compact, which allows interstate practice for registered nurses, licensed nurses, or vocational nurses. Under the compact, a nurse, whose primary state of residence is a compact state, will be issued a license by that state and will no longer need an additional license to practice in another compact state. Eighteen states have implemented the Nurse Licensure Compact as of December, 2004, and two other states have enacted the compact but have not yet implemented it.<sup>6</sup> The Florida Board of Nursing held a public workshop on the Nurse Licensure Compact in August, 2003. The board authorized a comprehensive financial and legislative study of the compact, as well as proposed implementation legislation for consideration during the Regular Legislative Session in 2005.

## **Nursing Licensure in Florida**

Part I, ch. 464, F.S., provides for the regulation of the practice of nursing in Florida. To become licensed as a practical or registered nurse in Florida, an applicant must pass a national licensing examination developed by the National Council of State Boards of Nursing (NCSBN) or a similar national organization. To sit for the examination in Florida, an applicant must complete an application and pay the Florida Department of Health (DOH) specified fees. The applicant must provide sufficient information for a statewide criminal records correspondence check through the Florida Department of Law Enforcement; be in good mental and physical health; have a high school diploma or the equivalent; have completed the requirements of a Florida Board of Nursing approved nursing program for licensed practical or registered nurses or the practical or professional nursing education equivalency; and have the ability to communicate in English.

Before applying for examination, any convicted felon must obtain a restoration of his or her civil rights in order to become eligible to sit for the examination. If an applicant has been convicted or found guilty of, or has entered a plea of nolo contendere to, regardless of adjudication, any offense other than a minor traffic violation, the applicant must submit arrest and certified court records stating the nature of the offense and final disposition of the case so that a determination can be made by the Florida Board of Nursing whether the offense relates to the practice of nursing.

Once the Florida Board of Nursing has certified an applicant to take the examination, the applicant must submit a letter of authorization from the board and pay the appropriate fees to the National Council of State Boards of Nursing examination vendor to sit for the computerized national nursing examination (NCLEX-PN®). An applicant is eligible to sit for the license examination up to three consecutive times. After the third failed examination, the applicant must complete a Florida Board of Nursing remedial course before he or she may be approved for

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<sup>6</sup> Nurse Licensure Compact States include: Arizona, Arkansas, Delaware, Idaho, Iowa, Maine, Maryland, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. New Jersey and Indiana have enacted legislation recognizing the compact but have not yet implemented the compact. Source: The Florida Department of Health, Board of Nursing. Additional information regarding the Nurse Licensure Compact is available from the National Council of State Boards of Nursing at <[www.ncsbn.org](http://www.ncsbn.org)>.

reexamination up to three additional times before the applicant is required to retake remediation. The applicant must apply for reexamination within 6 months after completion of remediation.

The part also provides licensure by endorsement requirements for nurses who are licensed in other jurisdictions to become licensed to practice nursing in Florida. DOH will issue a license to practice practical or professional nursing to an applicant who pays the appropriate application fees and costs for a criminal background check and who holds a valid license to practice professional or practical nursing in another state or territory of the United States, if when the applicant secured his or her original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time. The burden of proof is on the applicant to prove fitness. In addition, the applicant must have successfully completed a state, regional, or national examination which is substantially equivalent to or more stringent than the examination given by DOH. Examinations and requirements from other states and territories of the U.S. shall be presumed to be substantially equivalent to or more stringent than those in Florida until January 1, 1980.

A nurse who applies for licensure for endorsement in Florida and who is relocating to Florida due to his or her military-connected spouse's official military orders and who is licensed in another state that is a member of the Nurse Licensure Compact is deemed to have satisfied licensure requirements to practice nursing in Florida upon submission of the appropriate application and fees and completion of a criminal background check.

An alternative licensure path allows nurses to become licensed without having to show that they have completed an equivalent examination. Under the alternative licensure path, licensure by endorsement applicants may become licensed without completing an equivalent examination if the applicant has actively practiced nursing in another state, jurisdiction, or territory of the United States for 2 of the preceding 3 years without having his or her license acted against. Under this alternative licensure path, the applicant must complete, within 6 months after licensure, a Florida laws and rules course approved by the Florida Board of Nursing.

Section 464.022, F.S., provides an exception to the Nurse Practice Act to any nurse currently licensed in another state or territory of the United States to allow that nurse to perform nursing in Florida for a period of 60 days after the nurse has furnished to his or her employer satisfactory evidence of current licensure in another state or territory and has submitted proper application and fees to the Florida Board of Nursing for licensure before employment. If the nurse licensed in another state or territory is relocated to Florida pursuant to his or her military-connected spouse's official military orders, this period must be 120 days after the nurse has furnished to his or her employer satisfactory evidence of current licensure in another state or territory and has submitted the appropriate application and fees to the Florida Board of Nursing.

### **Requirements for Certification as a "Certified Nursing Assistant" in Florida**

Part II, ch. 464, F.S., provides for the regulation of certified nursing assistants by the Florida Board of Nursing. The Florida Department of Education was responsible for approving nursing assistant training programs until the Florida Board of Nursing assumed that responsibility on October 1, 2000. The Florida Board of Nursing must adopt rules regulating the practice of certified nursing assistants to enforce the part. Certified nursing assistants may be subject to

discipline for intentionally violating any provisions of the Nurse Practice Act, ch. 456, F.S., relating to the general regulatory provisions for health care practitioners, or the rules adopted by the Florida Board of Nursing.

### **Health Care Practitioner Disciplinary Procedures**

Section 456.073, F.S., sets forth procedures DOH and regulatory boards must follow in order to conduct disciplinary proceedings against practitioners under its jurisdiction. The department, for the boards under its jurisdiction, must investigate all written complaints filed with it that are legally sufficient. Complaints are legally sufficient if they contain facts, which, if true, show that a licensee has violated any applicable regulations governing the licensee's profession or occupation. Even if the original complainant withdraws or otherwise indicates a desire that the complaint not be investigated or prosecuted to its completion, the department at its discretion may continue its investigation of the complaint. The department may investigate anonymous, written complaints or complaints filed by confidential informants if the complaints are legally sufficient and the department has reason to believe after a preliminary inquiry that the alleged violations are true. If the department has reasonable cause to believe that a licensee has violated any applicable regulations governing the licensee's profession, it may initiate an investigation on its own.

When investigations of licensees within the department's jurisdiction are determined to be complete and legally sufficient, the department is required to prepare, and submit to a probable cause panel of the appropriate board, if there is a board, an investigative report along with a recommendation of the department regarding the existence of probable cause. A board has discretion over whether to delegate the responsibility of determining probable cause to the department or to retain the responsibility to do so by appointing a probable cause panel for the board. The determination as to whether probable cause exists must be made by majority vote of a probable cause panel of the appropriate board, or by the department if there is no board or if the board has delegated the probable cause determination to the department.

The subject of the complaint must be notified regarding the department's investigation of alleged violations that may subject the licensee to disciplinary action. When the department investigates a complaint, it must provide the subject of the complaint or her or his attorney a copy of the complaint or document that resulted in the initiation of the investigation. Except for cases involving physicians, within 20 days after the service of the complaint, the subject of the complaint may submit a written response to the information contained in the complaint. The department may conduct an investigation without notification to the subject if the act under investigation is a criminal offense. If the department's secretary or her or his designee and the chair of its probable cause panel agree, in writing, that notification to the subject of the investigation would be detrimental to the investigation, then the department may withhold notification of the subject.

If the subject of the complaint makes a written request and agrees to maintain the confidentiality of the information, the subject may review the department's complete investigative file. The licensee may respond within 20 days of the licensee's review of the investigative file to information in the file before it is considered by the probable cause panel. Complaints and information obtained by the department during its investigations are exempt from the Public

Records Law until 10 days after probable cause has been found to exist by the probable cause panel or the department, or until the subject of the investigation waives confidentiality. If no probable cause is found to exist, the complaints and information remain confidential in perpetuity.

When the department presents its recommendations regarding the existence of probable cause to the probable cause panel of the appropriate board, the panel may find that probable cause exists or does not exist, or it may find that additional investigative information is necessary in order to make its findings regarding probable cause. Probable cause proceedings are exempt from the noticing requirements of ch. 120, F.S. After the panel convenes and receives the department's final investigative report, the panel may make additional requests for investigative information. Section 456.073(4), F.S., specifies time limits within which the probable cause panel may request additional investigative information from the department and within which the probable cause panel must make a determination regarding the existence of probable cause. Within 30 days of receiving the final investigative report, the department or the appropriate probable cause panel must make a determination regarding the existence of probable cause. The secretary of the department may grant an extension of the 15-day and 30-day time limits outlined in s. 456.073(4), F.S. If the panel does not issue a letter of guidance or find probable cause within the 30-day time limit as extended, the department must make a determination regarding the existence of probable cause within 10 days after the time limit has elapsed.

Instead of making a finding of probable cause, the probable cause panel may issue a letter of guidance to the subject of a disciplinary complaint. Letters of guidance do not constitute discipline. If the panel finds that probable cause exists, it must direct the department to file a formal administrative complaint against the licensee under the provisions of ch. 120, F.S. The department has the option of not prosecuting the complaint if it finds that probable cause has been improvidently found by the probable cause panel. In the event the department does not prosecute the complaint on the grounds that probable cause was improvidently found, it must refer the complaint back to the board that then may independently prosecute the complaint. The department must report to the appropriate board any investigation or disciplinary proceeding not before the Division of Administrative Hearings under ch. 120, F.S., or otherwise not completed within 1 year of the filing of the complaint. The appropriate probable cause panel then has the option to retain independent legal counsel, employ investigators, and continue the investigation, as it deems necessary.

When an administrative complaint is filed against a subject based on an alleged disciplinary violation, the subject of the complaint is informed of her or his right to request an informal hearing if there are no disputed issues of material fact, or a formal hearing if there are disputed issues of material fact or the subject disputes the allegations of the complaint. The subject may waive her or his rights to object to the allegations of the complaint, which allows the department to proceed with the prosecution of the case without the licensee's involvement. Once the administrative complaint has been filed, the licensee has 21 days to respond to the department. If the subject of the complaint and the department do not agree in writing that there are no disputed issues of material fact, s. 456.073(5), F.S., requires a formal hearing before a hearing officer of the Division of Administrative Hearings under ch. 120, F.S. The hearing provides a forum for the licensee to dispute the allegations of the administrative complaint. At any point before an administrative hearing is held, the licensee and the department may reach a settlement. The

settlement is prepared by the prosecuting attorney and sent to the appropriate board. The board may accept, reject, or modify the settlement offer. If accepted, the board may issue a final order to dispose of the complaint. If rejected or modified by the board, the licensee and department may renegotiate a settlement or the licensee may request a formal hearing. If a hearing is held, the hearing officer makes findings of fact and conclusions of law that are placed in a recommended order. The licensee and the department's prosecuting attorney may file exceptions to the hearing officer's findings of facts. The boards resolve the exceptions to the hearing officer's findings of facts when they issue a final order for the disciplinary action.

The boards within DOH have the status of an agency for certain administrative actions, including licensee discipline. A board may issue an order imposing discipline on any licensee under its jurisdiction as authorized by the profession's practice act and the provisions of ch. 456, F.S. Typically, boards are authorized to impose the following disciplinary penalties against licensees: refusal to certify, or to certify with restrictions, an application for a license; suspension or permanent revocation of a license; restriction of practice or license; imposition of an administrative fine for each count or separate offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a specified period of time and subject to specified conditions; or corrective action.

### **Emergency Suspension of a License**

Section 120.60(6), F.S., authorizes an agency to take emergency action against a license if the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.<sup>7</sup> The agency may take such action by any procedure that is fair under the circumstances if: the procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; the agency takes only that action necessary to protect the public interest under the emergency procedure; and the agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable.<sup>8</sup> Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding under ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted upon.

### **III. Effect of Proposed Changes:**

**Section 1.** Incorporates the Nurse Licensure Compact into ss. 464.100, 464.102, 464.103, 464.104, 464.107, 464.108, 464.109, 464.110, 464.112, 464.113, 464.114, 464.115, and 464.116, F.S., of the Nurse Practice Act.

*Section 464.100, F.S.*, enacts the Nurse Licensure Compact, which must be entered into with all other jurisdictions that legally join in the compact. Upon the effective date of the compact, the licensing board must participate in a compact evaluation initiative, designed to evaluate the

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<sup>7</sup> Similar procedures are required for emergency rulemaking under the Administrative Procedure Act. See s. 120.54(4)(a), F.S.

<sup>8</sup> See also s. 120.68, F.S., which provides for immediate judicial review of final agency action.

effectiveness and operability of the compact. The compact evaluation initiative must be conducted by an outside researcher and must include a remote state identification system through which nurses must designate those remote states in which the nurse is practicing. A nurse's practice information must be updated in that identification system upon issuance and renewal of the nurse's license. The evaluation must continue until 2009, and a report must be produced for comment by the participating licensing boards and must be submitted to the Legislature. The Florida Board of Nursing must by rule establish requirements for submission of employment data, education, and other information that may be required to evaluate the effectiveness of the Nurse Licensure Compact. The compact is designed to facilitate the regulation of nurses and does not relieve employers or supersede existing state labor laws.

*Section 464.102, F.S.*, sets forth findings and a declaration of purposes for the compact.

*Section 464.103, F.S.*, provides definitions for the compact. The bill defines the following terms: adverse action, alternative program, coordinated licensure information system, current significant investigative information, home state, home state action, licensing board, multistate licensure privilege, nurse, party state, remote state, remote state action, state, and state practice laws.

“Home state” means the party state that is the nurse's primary state of residence. “Party state” means any state that has adopted the compact. “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. “State practice laws” mean those individual party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline, but does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

*Section 464.104, F.S.*, provides that a license to practice registered nursing or licensed practical/vocational nursing, as applicable, issued by a home state to a resident in that state must be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse or licensed practical/vocational nurse, as applicable in such party state. To obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

Any compact state may, in accordance with that state's due process laws, limit or revoke the multi-state licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. Actions taken by any state must be reported to the administrator of the coordinated licensure information system, which is a part of the Nurse Licensure Compact. The administrator of the coordinated licensure information system must promptly notify the home state of any actions by any other remote states in the compact.

A nurse practicing in a party state must comply with the state practice laws of the state where the care is rendered. The practice of nursing subjects the nurse to the jurisdiction of the nurse licensing board and the courts, and laws, in that party state. The compact does not affect additional requirements imposed for advanced practice registered nursing.



*Section 464.107, F.S.*, provides that a nurse in a compact state may have licensure in only one compact state at a time, issued by the home state. If a nurse changes his or her primary state of residence by moving from one compact state to another and if the nurse obtains a license from the new home state, the license from the former home state is no longer valid. If a nurse changes his or her primary state of residence by moving from a nonparty state to a compact state, and obtains a license from the new home state, the individual state license issued by the non-compact state is not affected and remains in force. If a nurse changes his or her primary state of residence by moving from a compact state to a nonparty state, the license issued by the home state converts to an individual state license valid only in the former home state without any companion licensure privilege to practice in other compact states.

*Section 464.108, F.S.*, provides requirements for adverse licensure actions by party states. A remote state may take adverse action affecting the multistate licensure privilege to practice within that state. The home state may take adverse action against the licensee based on factual findings of the remote state and follow its own procedures for imposing an adverse action. The compact does not override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws.

*Section 464.109, F.S.*, grants party states nursing licensing boards authority to: recover costs of investigation and disposition of cases resulting from any adverse actions taken; issue subpoenas and cease and desist orders to limit or revoke a nurse's authority to practice in their state; and adopt uniform rules that are adopted by party states to the compact.

*Section 464.110, F.S.*, provides for a coordinated licensure information system. The licensing board of the home state or remote state must promptly report to the coordinated licensure information system any adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications and the reasons for such denials. Notwithstanding any other provision of law, all party states' 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. Any personally identifying information obtained by a party states' licensing board from the coordinated licensure information system 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. Any information contributed to the coordinated licensure information system that must be expunged by the laws of the party state contributing that information must also be expunged from the coordinated licensure information system.

*Section 464.112, F.S.*, provides for compact administration and interchange of information. The "head of the nurse licensing board" as used to define the compact administrator means the executive director of the Florida Board of Nursing. The compact administrator of each party state must furnish to the compact administrator of each other party state any information and documents, including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of the Nurse Licensure Compact. Compact administrators must have

the authority to develop uniform rules to facilitate and coordinate implementation of the compact and such uniform rules must be adopted by the nursing licensing boards of party states.

*Section 464.113, F.S.*, grants immunity from liability for any acts or omissions taken in good faith by a party state or its officers or employees or agents when acting in accordance with the provisions of the Nurse Licensure Compact.

*Section 464.114, F.S.*, provides that any party state may withdraw from the compact by enacting a statute repealing the same, but the withdrawal will not take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. The compact may be amended by party states. No amendment to the compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

*Section 464.115, F.S.*, provides a severability clause for the provisions of the compact. The bill authorizes party states to submit issues in dispute to a three-member arbitration panel. The decision of a majority of the arbitrators is final and binding.

*Section 464.116, F.S.*, requires the Florida Board of Nursing to set an implementation date for the Nurse Licensure Compact that is not later than October 1, 2006.

**Section 2.** Amends s. 464.003, F.S., which provides definitions for the Nurse Practice Act, to define “Nurse Licensure Compact” or “compact” to mean the provisions in ss. 464.100 – 464.116, F.S.

**Section 3.** Amends s. 464.012, F.S., relating to requirements for the certification of advanced registered nurse practitioners, to provide that a nurse who holds a license to practice professional nursing in Florida or who has a multistate licensure privilege to practice professional nursing in a state that is a member of the Nurse Licensure Compact is eligible for that certification if he or she meets other specified certification requirements.

**Section 4.** Amends s. 464.0195, F.S., relating to the Florida Center for Nursing, to require the Florida Board of Nursing to establish, by rule, requirements for submission of employment data, education, and other workforce information that may be required at initial licensure and at renewal. The board may provide a form to employers to collect data on the employment of nurses practicing nursing in Florida on a compact state license. The board may provide such workforce information to the Florida Center for Nursing to assist the center.

**Section 5.** Amends s. 464.014, F.S., relating to inactive status of a nurse license, to allow a registered nurse or licensed practical nurse who has retired from the practice of nursing to request and be granted by the Board of Nursing, retired nurse status if the nurse holds an unencumbered license to practice nursing in Florida and is not currently the subject of an investigation by DOH for possible violation of the nurse practice act. The scope of practice for a retired nurse must be limited to primary and preventive health care, or as further defined by Florida Board of Nursing rule. The nurse may use the title “Retired Registered Nurse” or “Retired Licensed Practical Nurse” once issued retired status. If the retired status nurse desires to

resume the practice of nursing he or she must apply for reinstatement of a license to practice nursing and meet the same reinstatement requirements for a nurse on inactive status.

**Section 6.** Amends s. 464.015, F.S., relating to titles restricted to licensed nurses, to revise statutory references to conform to changes in the bill for exceptions to the Nurse Practice Act for a nurse who holds a multistate licensure privilege to practice nursing pursuant to the Nurse Licensure Compact and for an applicant for a Florida-license to practice nursing who has passed the national examination and who otherwise meets the licensure by examination requirements, but who does not have a social security number at the time of the application.

**Section 7.** Amends s. 464.022, F.S., relating to exceptions to the Nurse Practice Act, to extend the exception to a nurse who holds a multistate licensure privilege to practice nursing pursuant to the Nurse Licensure Compact and to an applicant for a Florida-license to practice nursing who has passed the national examination and who otherwise meets the licensure by examination requirements, but who does not have a social security number at the time of the application, so that such applicant may practice nursing with a one year temporary license. The temporary license may be extended by the Florida Board of Nursing for administrative purposes when necessary.

Section 456.013(1)(b), F.S., currently authorizes any board in DOH to issue an applicant without a social security number a temporary license which expires 30 days after issuance unless a social security number is obtained and submitted in writing to DOH.

**Section 8.** Amends s. 464.201, F.S., relating to definitions for certified nursing assistants, to define the “practice of a certified nursing assistant” to mean providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, CPR and emergency care, residents’ or patients’ rights, documentation of nursing assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse. This provision may not restrict the ability of any person who is otherwise trained and educated from performing such tasks.

**Section 9.** Amends s. 464.202, F.S., relating to duties and powers of the Florida Board of Nursing, to authorize the board to adopt rules regulating the practice of certified nursing assistants that specify the scope of practice authorized and level of supervision required for the practice of certified nursing assistants.

**Section 10.** Amends s. 464.204, F.S., relating to certified nursing assistants, to provide that the Florida Board of Nursing may impose disciplinary sanctions for the violation of any provisions of the nursing practice act, ch. 456, F.S., relating to the general regulatory provisions for health care practitioners, or the rules adopted by the board without proving that the violation was done intentionally by the certified nursing assistant.

**Section 11.** Provides an effective date of July 1, 2005.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The bill provides that notwithstanding any other provision of law, all party states' 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. Any personally identifying information obtained by a party state's licensing board from the coordinated licensure information system 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. Any information contributed to the coordinated licensure information system that must be expunged by the laws of the party state contributing that information must also be expunged from the coordinated licensure information system.<sup>9</sup> This provision creates exemptions to the public records and meetings laws in violation of Article I, section 24 of the Florida Constitution. Article I, section 24 of the Florida Constitution provides that Legislature may create exemptions for records or meetings but must do so in a bill whose subject only relates to public records and meetings and that bill would require a two-thirds vote of each house for passage.

The bill provides for the compact administrator, who represents Florida when acting jointly with the compact administrators of the Nursing Licensure Compact, to be the executive director of the Florida Board of Nursing. For purposes of reserving a power for the State when enacting the Nurse Licensure Compact, the bill does not specify that the executive director and the Florida Board of Nursing when performing any act in accordance with the compact must be subject to the requirements of ch. 119, F.S., relating to public records and s. 286.011, F.S., relating to public meetings, and Art. I, s. 24 of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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<sup>9</sup> Section 456.014, F.S., provides that all information required by DOH of any applicant must be a public record and must be open to public inspection under the Public Records Law, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from the Public Records Law and may not be discussed with or made accessible to anyone except members of the board, DOH, and staff thereof, who have a bona fide need to know such information. Any information supplied to DOH by any other agency which is exempt from the Public Records Law or is confidential must remain exempt or confidential pursuant to applicable law while in the custody of DOH or the agency.

**D. Other Constitutional Issues:**

On page 13, lines 23-27, the bill grants compact administrators the authority *to develop uniform rules to facilitate and coordinate implementation of the compact*. These uniform rules *must be adopted by party states*. If this bill is enacted into law, the State of Florida, in effect, will have bound itself to rules adopted by the compact administrators and this may be an invalid delegation of rulemaking authority, in violation of Section 3, Art. II of the Florida Constitution. It raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation of rulemaking to the compact administrators is not a violation of Section 3, Article II of the Florida Constitution.

Section 3, Article II of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged that "[w]here the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine." *Askew v. Cross Key Waterways*, 372 So.2d 913 at 921. (Fla.1978).

As an alternative, the Legislature may adopt the existing uniform rules that have been developed to facilitate and coordinate implementation of the compact. The Legislature may incorporate by reference a provision of state or federal law or any other matter that can be specifically identified and is generally available to the public may be incorporated in a bill by reference.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

DOH notes that there may be a reduction in healthcare recruiting costs and an increase in retention of nurses in healthcare facilities. Traveling nurses may enjoy more mobility in choosing assignments in Florida. Facilities may be able to adjust their staffing needs and resources seasonally. In addition, the movement of nurses from another compact state during an emergency or disaster will be expedited if Florida joins the Nurse Licensure Compact.

**C. Government Sector Impact:**

DOH will incur costs to implement the bill's provisions regarding the Nurse Licensure Compact and the department estimates that it will incur costs equal to \$435,000 for fiscal year 2005-2006 and \$132,153 for fiscal year 2006-2007. DOH notes that 3 new full-time positions would be required to implement this bill. The department would be required to pay an administrative fee of \$3,000 annually to join the Nurse Licensure Compact

Administrators. The Florida Board of Nursing would also incur start-up costs of \$315,000 in the first year for temporary personnel and mailing costs. While the impact on revenues is indeterminate, it is expected to be minimal. It is estimated that there may be some net gains in the number of nurses declaring Florida as their home state and it is estimated that there may be some reductions in the number of initial applicants and licensure from nurses in Nurse Licensure Compact states who will no longer need to apply to Florida for licensure.

## **VI. Technical Deficiencies:**

On page 1, line 2, the bill is entitled “An act relating to the Nurse Licensure Compact.” The bill contains other provisions relating to nursing.

On page 2, line 30; the colon should be a period.

On page 4, line 11, the term “healthcare” should be corrected to “health care.”

On page 7, lines 4 through 11, the two definitions of “state practice laws” should be combined.

## **VII. Related Issues:**

On page 14, lines 4 through 24, the bill provides that “any party state may withdraw from the compact by enacting a statute repealing the same, but the withdrawal will not take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.” “The compact may be amended by party states. No amendment to the compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.” A Legislature, by law, may not bind a future Legislature. See *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985).

Officials at DOH report that if a home state must issue a license to a nurse who has a license issued by another state in the compact; this may conflict with s. 409.2598, F.S., which requires the suspension or denial of a license to a person not meeting child support obligations regardless of a multi-state contract. A nurse might move from state to state to avoid discovery of a child support obligation. The Nurse Licensure Compact may void this state law if Florida adopts the compact and relinquishes some of its sovereignty.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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