

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 736

(The Speaker)(By Request - Administration)

Health and Government Operations

Education, Health, and Environmental Affairs

Interstate Licensed Professional Counselors Compact

This emergency Administration bill enters Maryland into the Interstate Licensed Professional Counselors Compact. The bill establishes (1) specified procedures and requirements for professional counselors to obtain and maintain a privilege to practice in a member state; (2) the composition, powers, and responsibilities of the Counseling Compact Commission; and (3) requirements related to the oversight, dispute resolution, and enforcement of the compact. The bill is contingent on enactment of similar legislation in nine other states.

Fiscal Summary

State Effect: The State Board of Professional Counselors and Therapists can likely handle the bill's requirements with existing resources, as discussed below. Any impact on board special fund revenues is anticipated to be minimal, as discussed below.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Generally, the purpose of the compact is to increase public access to professional counseling services and provide opportunities for interstate practice by

licensed professional counselors who meet uniform licensure requirements. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

State Participation in the Compact

To participate in the compact, a state must:

- license and regulate professional counselors;
- require passage of a commission-approved, nationally recognized exam;
- require licensees to meet specified educational and post graduate professional experience standards;
- have a mechanism in place for receiving and investigating complaints;
- participate in the commission's data system;
- notify the commission of any adverse action or the availability of investigative information regarding a licensee;
- implement a process for considering the criminal history of applicants;
- comply with the rules of the commission; and
- provide for the State's representative to the commission to attend the commission meetings.

A member state must grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules. A member state *may* charge a fee for granting the privilege to practice. Nothing in the compact may affect the requirements established by a member state for the issuance of a single-state license, and individuals not residing in a member state may continue to apply for a single-state license.

Privilege to Practice

To exercise the privilege to practice under the compact, a licensee must, among other requirements (1) hold a license in the home state; (2) have a valid Social Security number or National Practitioner Identification number; (3) be eligible for a privilege to practice in any member state; (4) have not had any encumbrance on any state license within the previous two years; (5) notify the commission that the licensee is seeking the compact privilege within a remote state(s); (6) pay any applicable fees; (7) meet any continuing education requirements established by the home state; (8) meet any jurisprudence requirement established by the remote state(s) in which the licensee is seeking a privilege to practice; and (9) report to the commission any adverse action, encumbrance, or restriction taken by any nonmember state within 30 days from the date the action is taken.

The privilege to practice is valid until the expiration date of the home license. A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. If a home state license is encumbered, the licensee loses the privilege to practice in any remote state until (1) the home state license is no longer encumbered and (2) two years have elapsed from the date of any encumbrance or restriction. If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in any remote state until (1) the specific period of time for which the privilege to practice was removed has ended; (2) all fines have been paid; and (3) two years have elapsed from the date of any encumbrance or restriction.

Changing Home State License via a Privilege to Practice

A licensed professional counselor may hold a home state license from only one member state at a time. The bill establishes a process by which a licensee can change their home state when moving between two privileges to practice states.

Military Personnel

Active duty military personnel or their spouses must designate a home state where the individual has a current license in good standing. The individual may retain the home state designation while the service member is on active duty.

Telehealth

A member state must recognize the right of a licensed professional counselor with a privilege to practice professional counseling in any member state through telehealth.

Adverse Actions

The bill establishes processes for imposing adverse actions, maintains a home state's exclusive power to take adverse action against a license issued by that home state and allows remote states to investigate and take adverse action against a privilege to practice granted by that remote state. The bill creates a process by which member states must share information on adverse actions. Member states may coordinate investigations across states and take adverse action based on the factual findings of another member state. In the event of an adverse action by a licensee's home state, that licensee's privilege to practice in any member state must be deactivated until the licensee returns to good standing.

Counseling Compact Commission

The commission is an instrumentality of the member states. Each member state must have one delegate selected by that member state's licensing board. The delegate must be a current member of the licensing board (a licensed professional counselor, public member, or board administrator). The commission must meet at least once each calendar year, and must, among other duties (1) establish bylaws; (2) promulgate rules to effectively and efficiently achieve the purpose of the compact; and (3) establish an executive committee. The commission may collect an annual assessment from each member state or impose fees on other parties to cover the cost of operations and activities.

Data System

The commission must provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states. A member state must submit a specified uniform data set to the data system on all individuals to whom the compact is applicable as required by the rules of the commission.

The commission must promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

Oversight, Dispute Resolution, and Enforcement

The Executive, Legislative, and Judicial branches of state government in each member state must enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent.

If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, the commission must (1) provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and/or any other action to be taken by the commission and (2) provide remedial training and specific technical assistance regarding the default. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states.

Implementation, Construction, and Severability

The compact must be liberally construed so as to effectuate the purposes of the compact and the provisions of the compact must be severable.

Current Law/Background: Generally, an individual must be licensed by the State Board of Professional Counselors and Therapists to practice professional counseling in Maryland. An applicant for a professional counseling license must have (1) a master's or doctoral degree from an accredited educational program approved by the board; (2) completed instruction in specified study areas; (3) completed a specified amount of supervised clinical experience; (4) passed the National Counselors Examination of the National Board for Certified Counselors and the Maryland Law Assessment; and (5) submit to a criminal history records check. The board may not issue a license if the criminal history record information has not been received. In fiscal 2020, the board regulated approximately 5,701 licensed professional counselors.

Commission to Study Mental and Behavioral Health in Maryland

On January 10, 2019, the Governor issued Executive Order 01.01.2019.02 creating the Commission to Study Mental and Behavioral Health in Maryland. The commission's 2020 annual [report](#) provided recommendations including the enactment of permanent telehealth reform permitting mental healthcare practitioners licensed in other states and Washington, DC to provide telehealth services across state lines on condition that they follow state laws and regulations pertaining to mental health professionals.

Interstate Compacts

According to the National Conference of State Legislatures, states and professions have increasingly turned to occupational licensure interstate compacts to mitigate challenges faced by workers as they navigate various state licensing requirements, rules, regulations and fee structures. Since January 2017, 40 states have enacted 106 separate occupational licensure compact bills. Interstate licensure compacts are intended to facilitate the practice of specific professions with the goal of improving access to services and simplifying the process for obtaining licensure in multiple states.

Three Maryland health occupations boards currently participate in national interstate licensure compacts: the State Board of Physical Therapy Examiners; the State Board of Physicians; and the State Board of Nursing. Legislation for four additional interstate compacts (Audiology and Speech-Language Pathology, Licensed Professional Counselors, Psychology, and Occupational Therapy) is pending during the 2021 legislative session. Compact legislation is typically contingent upon the adoption of similar legislation in a certain number of other states.

State Revenues: The State Board of Professional Counselors and Therapists advises that, if Maryland enters the compact, board special fund revenues decrease to the extent that an estimated 656 professional counselors who are licensed in Maryland but reside out-of-state elect not to renew their Maryland license and instead become licensed in their home state

and practice in Maryland under the compact privilege. The board estimates a special fund revenue loss of approximately \$180,400 over a two-year biennial licensure cycle.

DLS notes that any loss in revenues from licensure fees is likely to be minimal as (1) no state has yet to join the compact; (2) the bill is contingent upon nine other states enacting legislation to enter the compact; and (3) the current out-of-state licensees live in a compact member state. Additionally, should the compact take effect, the bill allows compact member states to charge a fee for granting a compact privilege to practice, which could offset the lost revenues from licenses if imposed. Under the assumption that a compact privilege to practice fee is imposed, DLS advises that this bill is likely to have a minimal effect on board special fund revenues.

State Expenditures: The board advises that it needs to hire one administrative specialist to handle the processing and tracking of additional licensees under the compact. DLS disagrees and advises that (1) no state has yet to join the compact and (2) the bill is contingent upon nine other states enacting legislation to enter the compact. Moreover, should the compact become operational, it must provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states, reducing the burden on the board to track additional licensees. Thus, the board can likely handle the bill's requirements with existing budgeted resources.

Small Business Effect: Professional counselors who currently operate or are employed by a small business may seek to obtain a privilege to practice under the compact in order to practice in another compact state. However, this impact is only realized if the compact becomes operational through the enactment of similar legislation in nine other states.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 571 (The President)(By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2021
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Interstate Licensed Professional Counselors Compact**

BILL NUMBER: SB 571

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

OR

WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS