

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2496

As Amended by Senate Committee on Public
Health and Welfare

Brief*

HB 2496, as amended, would enact the Nurse Licensure Compact (Compact) and amend the Kansas Nurse Practice Act (Act) to enable the Board of Nursing (Board) to carry out the provisions of the Compact and establish the duties of registered nurses (RNs) and licensed practical nurses (LPNs) under the Compact. The Compact would allow RNs and LPNs to have one multi-state license, with the privilege to practice in the home state of Kansas and in other Compact states physically, electronically, and/or telephonically.

The bill would take effect from and after July 1, 2019, and its publication in the statute book.

Additional bill details follow.

Nurse Licensure Compact [Section 1]

The Compact's uniform provisions that would be added are outlined below.

Article I: Findings and Declaration of Purpose

The findings outlined in Article I would include 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

cooperation among states in the areas of nurse licensure and regulation; the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and uniformity of nurse licensure requirements among the states promotes public safety and public health benefits.

The general purposes of the Compact would include: facilitating the states' responsibility to protect the public's health and safety, ensuring and encouraging the cooperation of party states in the areas of nurse licensure and regulation; facilitating the exchange of information among party states in the areas of nurse regulation, investigation, and adverse actions; promoting compliance with the laws governing the practice of nursing in each jurisdiction; investing 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; decreasing redundancies in the consideration and issuance of nurse licenses; and providing opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II: Definitions

A few of the key definitions applicable to the Compact would be:

- "Alternative program" – a nondisciplinary monitoring program approved by a licensing board;
- "Commission" – the Interstate Commission of Nurse Licensure Compact Administrators;
- "Coordinated licensure information system (system)" – an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws administered by a nonprofit

organization composed of and controlled by licensing boards;

- “Home state” – the party state that is the nurse’s primary state of residence;
- “Licensing board” – a party state’s regulatory body responsible for issuing nurse licenses;
- “Multi-state license” – a license to practice as an RN or LPN/Vocational Nurse (VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multi-state licensure privilege;
- “Party state” – any state that has adopted the Compact;
- “Remote state” – a party state, other than the home state; and
- “Single-state license” – a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multi-state licensure privilege to practice in any other party state.

Article III: General Provisions and Jurisdiction

Recognition of multi-state license. Each party state would be required to recognize a multi-state license to practice as an RN or LPN/VN issued by a home state to a resident in that state as authorizing a nurse to practice in the same capacity under a multi-state license privilege in each party state.

Criminal history background checks and fingerprinting. A state would be required to implement procedures for considering the criminal history records of applicants for an initial multi-state license or licensure by

endorsement. The procedures required would include the submission of fingerprints or other biometric-based information by applicants for use in obtaining an applicant's criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining that state's criminal records.

Uniform multi-state licensure requirements. For an applicant to obtain or retain a multi-state license in the home state, the following would be required of the applicant:

- Has met the home state's qualifications for licensure or renewal of licensure, and all other applicable state laws;
- Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program, or 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 an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
- Has, if a graduate of a foreign prelicensure education program, not taught in English or, if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;
- Has successfully passed an NCLEX-RN or NCLEX-PN examination or recognized predecessor, as applicable;
- Is eligible for and holds an active unencumbered license;

- 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 FBI and the Kansas Bureau of Investigation;
- Has not been convicted or found guilty nor has entered into an agreed disposition of a felony offense under applicable state or federal criminal law;
- Has not been convicted or found guilty nor has entered into an agreed disposition of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis;
- Is not currently enrolled in an alternative program;
- Is subject to self-disclosure requirements regarding current participation in an alternative program; and
- Has a valid U.S. Social Security number.

Action against a multi-state licensure privilege. In accordance with existing state due process laws, all party states would be authorized to take adverse action against a nurse's multi-state licensure privilege, such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multi-state licensure privilege, including cease and desist actions. The Compact would outline notification requirements for such actions.

Compliance with state practice laws. A nurse practicing in a party state would be required to comply with the state practice laws of the state in which the client is located at the time the service is provided. The practice of nursing in a party state under a multi-state license would subject the nurse to the jurisdiction of the licensing board, courts, and laws of the party state where the client is located at the time the service is provided.

Single-state license. The Compact would permit an individual not residing in a party state to apply for a party state's single-state license provided under the laws of each party state. However, a single-state license in a party state would not be recognized as granting the privilege to practice nursing in another party state. The Compact would not affect the requirements established by a party state for the issuance of a single-state license.

Retention and renewal of home state multi-state license. A nurse holding a home state multi-state license on the effective date of the Compact would be allowed to retain and renew the multi-state license issued by the nurse's then-current home state, but the Compact would provide for certain exceptions.

Article IV: Applications for Licensure in a Party State

The licensing board in the issuing party state would be required to ascertain, through the system, whether an applicant for a multi-state license has ever held or holds a license issued by another state, whether there are any encumbrances or adverse action taken on any license of multi-state licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

The Compact would specify a nurse could hold a multi-state license, issued by the home state, in only one party state at a time. Additionally, the Compact would describe the process for a nurse changing primary state of residence and the effects on the multi-state license. If a nurse changes primary state of residence by moving from a party to a non-party state, the multi-state license issued by the prior home state would convert to a single-state license, valid only in the former home state.

*Article V: Additional Authorities Invested in Party-State
Licensing Boards*

In addition to the other powers conferred by state law, the Compact would authorize a licensing body to:

- Take adverse action against a nurse's multi-state licensure privilege to practice within that party state, but only the home state would have the power to take adverse action against a nurse's license issued by the home state;
- Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state;
- Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations, take appropriate actions, and would be required to promptly report the conclusions of the investigations to the administrator of the system, who would be required to promptly notify the new home state of such actions;
- Issue subpoenas for both hearings and investigations, as outlined in the Compact;
- Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the FBI for criminal background checks, receive the results of the FBI record search, and use the results in making licensure decisions;
- If permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against the nurse; and

- Take adverse action based on the factual findings of the remote state, following its own procedures for taking such adverse action.

Adverse action taken by the home state against a nurse's multi-state license would result in the deactivation of the nurse's multi-state licensure privilege to practice in other party states until all encumbrances have been removed from the multi-state license.

A home-state licensing board would be required to deactivate the multi-state licensure privilege under the multi-state license of any nurse for the duration of the nurse's participation in an alternative program used *in lieu* of adverse action being taken against the nurse.

Article VI: Coordinated Licensure Information System and Exchange of Information

The Compact requires all party states to participate in a system of all licensed RNs and LPNs/VNs, which would include information on the licensure and disciplinary history of each nurse submitted by party states to assist in the coordination of nurse licensure and enforcement efforts. The Commission, in consultation with the administrator of the system, would be required to formulate necessary and proper procedures for the identification, collection, and exchange of information under the Compact.

The Compact would require all licensing boards to promptly report to the system any adverse action, any current significant investigative information, denials of applications citing reasons for such denials, and nurse participation in alternative programs known to the licensing board, regardless of the confidentiality of such participation under state law.

The Compact would specify the restrictions relating to the type of information available for release to party states and non-party states, including provisions allowing party-state

licensing boards to designate information that would not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state. Provisions for the treatment of personally identifiable information and information subject to expungement would also be specified.

The Compact administrator of each party state would be required to furnish a uniform data set containing, at a minimum, certain specified data to the Compact administrator of each other party state and would be required to provide all investigative documents and information requested by another party state.

Article VII: Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

Under the Compact, the party states would create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators, which would be an instrumentality of the party states. Provisions related to venue, alternative dispute resolution proceedings, and non-waiver of sovereign immunity would be specified in the Compact.

The Compact would require one administrator representing each party state to serve on the Commission, and would specify that the removal, suspension, or filling of any administrator vacancy in the Commission would be in accordance with the laws of the party state in which the vacancy exists. The Compact would specify the requirements related to voting, the frequency of Commission meetings, and the procedures for holding meetings, including both open and closed meetings.

The Compact would require the Commission to prescribe bylaws or rules to govern its conduct as may be necessary and appropriate to carry out the purposes and exercise the powers of the Compact and to publish its bylaws

and rules in a convenient form on the Commission's website. The Commission would be required to maintain its financial records in accordance with the bylaws and to meet and take such actions as are consistent with the provisions of the Compact and bylaws.

Additionally, the Compact would establish the Commission's powers and duties, establish financing authority and restrictions, and provide for immunity from suit and liability, as specified.

Article VIII: Rulemaking

The Compact would authorize the Commission to exercise rulemaking powers. The Compact would establish the requirements for the adoption of final rules; the notice of proposed rulemaking and the content of such notice; the submission of written data, facts, opinions, and arguments by persons prior to adoption of a rule; the opportunity for a public hearing, notice of said hearing, and provisions for the recording of the public hearing; the adoption of emergency rules; and the revision of previously adopted rules and challenges to the revision.

Article IX: Oversight, Dispute Resolution, and Enforcement

Oversight. The Compact would require each party state to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purpose and intent. The Commission would be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission, and would have standing to intervene in such proceeding for all purposes. Failure to provide service of process in such a proceeding to the Commission would render a judgment or order void as to the Commission, the Compact, or promulgated rules.

Default, technical assistance, and termination. If the Commission determines a party state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission would be required to provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission, and provide remedial training and specific technical assistance regarding the default.

If a state in default fails to cure the default, the defaulting state's membership in the Compact could be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by the Compact could be terminated on the effective date of the termination. Termination of membership in the Compact would only be imposed after all other means of securing compliance have been exhausted and would require notice of intent to suspend or terminate be given by the Commission to the governor of the defaulting state, the executive officer of the defaulting state's licensing board, and each of the party states.

The Compact would provide a state whose membership has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations extending beyond the effective date of termination. Unless agreed upon in writing between the Commission and the defaulting state, the Commission would not bear any costs related to a state found to be in default or whose membership in the Compact has been terminated.

A defaulting state would have the right to appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party in such litigation would be awarded all costs, including reasonable attorney fees.

Dispute resolution. The Compact would require the Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate. Upon request by a party state, the Commission would be required to attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

If the Commission is unable to resolve disputes among party states arising under the Compact, the party states may submit the issues in dispute to an arbitration panel 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. The decision of the majority of the arbitrators would be final and binding.

Enforcement. The Commission, in the reasonable exercise of its discretion, would be required to enforce the provisions and rules of the Compact. The Compact would specify the authority of the Commission to initiate and pursue certain legal remedies.

Article X: Effective Date, Withdrawal, and Amendment

The Compact would become effective and binding on the earlier of the date of legislative enactment of the Compact into law by no less than 26 states or December 31, 2018. [Note: The Compact has been implemented as of January 19, 2018.] Party states to this Compact that were also parties to the prior nurse licensure compact superseded by this Compact would be deemed to have withdrawn from the prior compact.

The Compact would provide that a party state may withdraw from the Compact by enacting a statute repealing the same. The party state's withdrawal or termination would not take effect until six months after enactment of the repealing statute, and the party state would continue to be

required to report adverse actions and significant investigations occurring prior to the effective date of withdrawal or termination.

Party states would be allowed to amend the Compact, but such amendment would not become effective and binding upon the party states unless and until such amendment is enacted into the laws of all party states.

Article XI: Construction and Severability

The Compact would be liberally construed to effectuate the purposes of the Compact. The provisions of the Compact would be severable and, if any provision was found unconstitutional or held invalid, the remainder of the Compact and its applicability would not be affected.

Amendments to the Act [Sections 2 - 8]

Definitions Under the Act [Section 2]

The bill would move the current definition of “continuing nursing education” under KSA 2017 Supp. 65-1117 to KSA 2017 Supp. 65-1113 without amending the definition.

Licensure and Notification Requirement [Section 3]

Multi-state licenses under the Compact would expire every two years in the same manner as other licenses under the Act. The bill would allow any licensed nurse to file a multi-state license application together with the prescribed multi-state license fee at any time the nurse holds an active license.

The bill would allow the Board to request persons who hold a multi-state license under the Compact and who engage in the practice of nursing in Kansas to voluntarily provide workforce-related information as reasonably

determined by the Board. Refusal to voluntarily provide this information would not be a basis for disciplinary action against or restriction of the multi-state license of any such person.

The bill would also delete the language of a subsection that expired on January 1, 2012.

License Fees [Section 4]

RN and LPN single-state license fee caps for applications for licenses, biennial license renewals, license reinstatements, and license reinstatements with a temporary permit would increase. The bill would add RN and LPN multi-state license fee caps for applications for licenses, biennial license renewals, license reinstatements, and license reinstatements with a temporary permit.

Disciplinary Action [Section 5]

The bill would allow the Board to require a licensee (includes RNs, LPNs, advanced practice registered nurses, and registered nurse anesthetists) to attend a specific number of hours of continuing education in addition to any hours the licensee may already be required to attend in lieu of denying, revoking, limiting, or suspending a license or authorization to practice nursing. The bill would add the new ground for which disciplinary action could be taken against a licensee of being convicted, found guilty, or having entered into an agreed disposition of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis.

*Reporting of Alleged Incidents of Malpractice or
Qualifications, Fitness, or Character of a Licensee
[Section 6]*

A licensee would be required to report to the Board any information the licensee may have relating to alleged

incidents of malpractice or the qualifications, fitness, or character of a person licensed to practice professional nursing or practical nursing, including persons holding a multi-state license under the Compact.

Information Technology and Operational Staff [Section 7]

The bill would provide that information technology and operational staff would remain employees of the Board.

Background

The House Committee on Health and Human Services introduced the bill at the request of Representative Frownfelter. In the House Committee hearing on January 31, 2018, Representatives Frownfelter and Phillips and representatives of the Board, Fresenius Medical Care, Kansas Center for Assisted Living (KCAL), Kansas Health Care Association (KHCA), and Rolling Hills Health and Rehab testified in support of the bill. The proponents generally stated allowing RNs and LPNs to obtain a multi-state license under the Compact would help border counties have better access to recruitment of nurses, create more opportunities and versatility for Kansas nurses, and reduce the regulatory barriers to interstate mobility and cross-state practice for military spouses moving to Kansas. Proponents also stated adoption of the Compact would allow for seamless staffing during times of natural disasters and allow for the use of specialized RNs to deliver supportive nursing services to patients through telephonic case management services. The Fresenius Medical Care representative stated the administrative burden of obtaining multiple nursing licenses in non-Compact states has restricted their telephonic case management services to Compact states, leaving Kansas dialysis patients without the ability to receive this service. The Board representative stated concerns with enactment of the Compact, including revenue loss, implementation costs, the sufficiency of current statutory caps on licensure fees, and an insufficient implementation time line. The Board

representative indicated the Board had planned to introduce legislation in January 2019 to enact the Compact after further review of the fiscal and operational impact, and a special Board meeting was to take place to discuss the Board concerns with the bill and to submit amendments to address those concerns.

Written-only proponent testimony was provided by representatives of AARP Kansas, ARJ Infusion Services, Kansas Advanced Practice Nurses Association, and the Kansas Hospital Association (KHA).

No neutral or opponent testimony was provided.

The House Committee hearing was held open to allow the Board representative to obtain input from the Board on the bill, provide additional information requested by the House Committee, and submit any proposed amendments. When the hearing was reopened on February 8, 2018, the Board member provided additional testimony in support of the bill and proposed amendments that included a proposed effective date of November 6, 2019.

The House Committee did not amend the Compact language, but amended the bill to insert and amend provisions of the Act to enable the Board to implement the Compact and establish the responsibilities of RNs and LPNs under the Compact. The amendments made by the House Committee incorporated most of the amendments proposed by the Board. Amendments were made to add multi-state licenses to provisions addressing application for licensure and expiration of licenses; require a person holding a multi-state license under the Compact and engaging in the practice of nursing in the state to notify the Board; provide for Board authority to establish rules and regulations regarding the notice requirements; increase current license fees caps and add fees for multi-state licenses; provide additional continuing education requirements; establish a new ground for disciplinary action by the Board; require a licensee to report certain information to the Board; clarify the information

technology and operational staff of the Board would remain employees of the Board; and move the definition of “continuing nursing education” to another statute. The House Committee changed the effective date of the bill to be from and after July 1, 2019, and its publication in the statute book, and made technical amendments.

The House Committee of the Whole amended the bill to change the effective date to be from and after January 1, 2019, and its publication in the statute book.

In the Senate Committee on Public Welfare hearing, proponent testimony was provided by Representative Frownfelter and a representative from ARJ Infusion Services and the Board. Written-only proponent testimony was provided by representatives of AARP Kansas, Fresenius Medical Care, KCAL, KHCA, and KHA. No other testimony was provided.

The Senate Committee amended the bill to change the effective date from January 1, 2019, to July 1, 2019, and to allow the Board to voluntarily request a person holding a multi-state license who engages in the practice of nursing in Kansas to provide workforce-related information as reasonably determined by the Board and delete the requirement to provide such information.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board estimates enactment of the bill would result in additional expenditures to the Board of \$256,500 from the Nursing Fee Fund (Fund) for FY 2019. The initial FY 2019 expenses incurred would include a Compact membership fee of \$6,000, licensing system programming costs of \$175,000, scanning costs of \$40,000, and communication costs of \$35,500. Beginning in FY 2020, ongoing additional costs would total \$31,000, including the annual Compact membership fee of \$6,000 and \$25,000 for annual licensing system maintenance.

The Board stated enactment of the bill would also result in a net reduction of revenue into the Fund. The Board estimates an annual revenue loss of \$534,120 from fewer RN and LPN license renewals and the loss of a grant from the National Council of State Boards of Nursing. This reduction in revenue in the first year would be partially offset by an estimated \$166,950 increase in fees from license endorsements. The Board estimates the net revenue loss at \$367,170 and, as a result, State General Fund (SGF) revenue would be reduced by \$36,717 for FY 2019. Because the Board cannot estimate the license endorsement revenue in the out years, the Board currently estimates a recurring total revenue loss of \$534,120. The Board states this would result in a reduction of SGF revenue of \$53,412.

Any fiscal effect associated with enactment of the bill, as introduced, is not reflected in *The FY 2019 Governor's Budget Report*.