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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 3  
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## Final Analysis

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**Primary Sponsor:** Sen. Roegner

**Effective date:** September 30, 2021; most Nurse Licensure Compact provisions effective January 1, 2023

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### SUMMARY

- Enters Ohio into the Nurse Licensure Compact, which allows a nurse to practice across participating states under a multistate license issued by the nurse's home state.
- Exempts certain certificates issued by the Department of Developmental Disabilities from the Fresh Start Act, the law prohibiting a state licensing authority from refusing to issue an initial license or other authorization based on an applicant's criminal background.

### DETAILED ANALYSIS

#### Nurse Licensure Compact

Beginning January 1, 2023, the act enters Ohio as a party to the Nurse Licensure Compact.<sup>1</sup> The Compact is an agreement that allows nurses to practice across states that have joined the Compact without having to obtain additional licenses. At least 34 states have joined the Compact.<sup>2</sup>

#### Multistate license to practice

Under the Compact, a multistate license to practice issued by a nurse's home state will be recognized by each state that is a party to the Compact (party state) as authorizing the nurse to practice as a registered nurse (RN) or licensed practical/vocational nurse (LPN/VN) under a

<sup>1</sup> R.C. 4723.11 and Section 3.

<sup>2</sup> NCSBN, *Nurse Licensure Compact (NLC)*, link to list of participating states available at: <https://www.ncsbn.org/nlcmemberstates.pdf>.

multistate licensure privilege in each party state.<sup>3</sup> The Compact defines “multistate license” as a license to practice as an RN or LPN/VN issued by a home state (a nurse’s primary state of residence that is a party to the Compact) licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.<sup>4</sup>

### **Compliance with state practice laws**

The Compact provides that a nurse practicing in a party state must comply with 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 multistate licensure privilege subjects a nurse to the jurisdiction of the licensing board, courts, and laws of the party state where the client is located when the service is performed.<sup>5</sup>

### **Requirements for issuance of multistate license**

An applicant to obtain or retain a multistate license in a home state must:<sup>6</sup>

1. Meet the home state’s qualifications for licensure or license renewal, as well as other state laws;
2. Graduate or be eligible to graduate from an approved prelicensure education program, including foreign programs if the program meets specified criteria;
3. Have passed an English proficiency examination if the applicant’s education program was not in English or if English is not the individual’s native language;
4. Have passed the NCLEX-RN or NCLEX-PN examination;
5. Hold an active, unencumbered license or be eligible to do so;
6. Have submitted, as part of a licensure application, fingerprints or other biometric data to obtain federal and state criminal histories;
7. Not have convictions or findings of guilt for felony offenses under applicable state or federal criminal law;
8. Not have convictions or findings of guilt for misdemeanor offenses related to the practice of nursing;
9. Not currently be enrolled in an alternative program, which is defined by the Compact as a nondisciplinary monitoring program approved by a licensing board;<sup>7</sup>
10. Be subject to self-disclosure of participation in an alternative program; and

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<sup>3</sup> Article III.a. (Citations in this analysis to “Article” refer to the Articles of the Compact.)

<sup>4</sup> Article II.h.

<sup>5</sup> Article III.e.; see also Article II.o.

<sup>6</sup> Article III.c.

<sup>7</sup> Article II.b.

11. Have a valid Social Security number.

### **Applications for multistate license**

When a nurse applies for a multistate license, the licensing board in the issuing party state must ascertain whether (1) the applicant has ever held, or is the holder of, a license issued by any other state, (2) there are any encumbrances (such as a revocation, suspension, or limitation on the full, unrestricted practice of nursing) on a license or multistate license held by the applicant, (3) any adverse action has been taken against any license or multistate license, and (4) the applicant is currently participating in an alternative program.<sup>8</sup>

The Compact provides that a nurse may hold a multistate license issued by a home state in only one party state at a time. The Compact contains provisions to address when a nurse changes the nurse's primary state of residence, including conversion to a single-state license if the nurse moves to a nonparty state.<sup>9</sup>

The act specifies that a multistate license issued pursuant to the Compact is an option for licensure in addition to a traditional license to practice under Ohio law.<sup>10</sup> The Board of Nursing may charge a fee in excess of the traditional license fee for a multistate license.

### **Adverse action**

The Compact authorizes party states, in accordance with their state due process laws, to take adverse action against a nurse's multistate licensure privilege, such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege. Adverse action may be administrative, civil, equitable, or criminal. A party state taking adverse action must notify the administrator of the coordinated licensure information system (discussed below), who must notify the home state of any such actions by remote states, which are party states other than the home state.<sup>11</sup>

If adverse action is taken by a home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states is deactivated until all encumbrances have been removed from the multistate license. Home state disciplinary orders that impose adverse action against a nurse's multistate license must include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.<sup>12</sup>

The Compact provides that it does not override a party state's decision that participation in a program of monitoring should be used in lieu of adverse action. A nurse's

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<sup>8</sup> Article IV.a.; see also Article II.e.

<sup>9</sup> Article IV.b. to d.; see also Article II.m.

<sup>10</sup> R.C. 4723.112; see also R.C. 4723.09, not in the act.

<sup>11</sup> Article III.d.; see also Article II.a. and II.l.

<sup>12</sup> Article V.b.

multistate licensure privilege is to be deactivated during the period of participation in such an alternative program.<sup>13</sup>

### **Party state licensing boards**

The Compact defines “licensing board” as a party state’s regulatory body responsible for issuing nursing licenses.<sup>14</sup> In addition to other powers conferred by state law, the Compact provides that licensing boards have various authorities, including taking action against a nurse’s multistate license to practice within that party state. Only the home state has the power to take adverse action against a nurse’s license issued by the home state. Home state licensing boards must give the same priority and effect to reported conduct from a remote state as it would if the conduct occurred in the home state. The home state laws are to be applied in determining appropriate action.<sup>15</sup> Other actions licensing boards may take include issuing cease and desist orders, imposing encumbrances on a nurse’s authority to practice within a party state, completing any pending investigations, issuing subpoenas for witnesses and evidence, receiving information for and conducting background checks, and recovering costs of investigations.<sup>16</sup>

### **Coordinated licensure information system**

The Compact requires all party states to participate in a coordinated licensure information system of all licensed RNs and LPNs/VNs. The system includes information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.<sup>17</sup> All licensing boards must promptly report to the system any adverse action, significant investigative information (as specified in the Compact), denials of applications, and nurse participation in alternative programs.<sup>18</sup> A party state licensing board may designate information provided that may not be shared with nonparty states or disclosed to other entities or individuals without express permission of the contributing state.<sup>19</sup>

The Compact administrator of each party state must provide a uniform data set to the Compact administrator of each other party state, including the following:<sup>20</sup>

1. Identifying information;
2. Licensure data;

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<sup>13</sup> Article V.c.

<sup>14</sup> Article II.g.

<sup>15</sup> Article V.a.1.

<sup>16</sup> Article V.a.2. to 7.

<sup>17</sup> Article VI.a.; see also Article II.c.

<sup>18</sup> Article VI.c.; see also Article II.d.

<sup>19</sup> Article VI.e.

<sup>20</sup> Article VI.h.

3. Information related to alternative program participation;
4. Other information that may facilitate administration of the Compact.

## **Interstate Commission of Nurse Licensure Compact Administrators**

The Compact establishes the Interstate Commission of Nurse Licensure Compact Administrators. The Commission is a joint public entity and an instrumentality of the party states.<sup>21</sup>

### **Membership, voting, and meetings**

Each party state is to have one administrator, who is generally the head of the state licensing board or a designee. The act requires the Board of Nursing to select an individual to serve as Ohio's administrator not later than 30 days after Ohio enters the Compact on January 1, 2023.<sup>22</sup>

Each administrator has one vote regarding rules and bylaws. Administrators may be removed or suspended, and vacancies are to be filled, as provided in state law. The act provides that a vacancy for the Ohio administrator must be filled not later than 30 days after the vacancy occurs.<sup>23</sup>

The Commission is required to meet at least once each calendar year. The meetings must be open to the public, with public notice of meetings provided. The Compact, however, specifies certain circumstances when closed, nonpublic meetings may occur, such as to discuss party state noncompliance, litigation, or trade secrets.<sup>24</sup>

### **Bylaws**

The Commission, by a majority vote of the administrators, is required to prescribe bylaws to govern its conduct. The bylaws must be published on the Commission's website.<sup>25</sup>

### **Powers**

The Compact provides the Commission various powers. Examples include promulgating rules, bringing and prosecuting legal proceedings, hiring employees, obtaining property, borrowing money, and appointing committees.<sup>26</sup>

### **Financing**

The Commission is required to pay for reasonable expenses associated with its establishment, organization, and ongoing activities. To do so, the Commission may levy and

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<sup>21</sup> Article VII.a.

<sup>22</sup> R.C. 4723.111, Article VII.b.1., and Section 3.

<sup>23</sup> R.C. 4723.111 and Article VII.b.1. and 2.

<sup>24</sup> Article VII.b.3. to 6.

<sup>25</sup> Article VII.c. and d.

<sup>26</sup> Article VII.g.

collect an annual assessment from each party state. The Compact has additional provisions regarding obligations and accounting for receipts and disbursements.<sup>27</sup>

### **Qualified immunity, defense, and indemnification**

The Compact provides immunity associated with acts occurring within the scope of Commission employment, duties, or responsibilities, as long as the loss was not caused by intentional, willful, or wanton misconduct. The Commission is required to defend and indemnify persons in actions seeking to impose liability arising out of acts associated with Commission employment, duties, or responsibilities, except in the case of intentional, willful, or wanton misconduct.<sup>28</sup>

### **Rulemaking**

The Commission is required to exercise rulemaking in accordance with the Compact. The Commission must provide 60-days' advance notice on its website prior to a final rule being adopted. The notice must also be filed on the website of each party state licensing board. The notice must include information about the meeting where the rule will be considered and voted on, the text of the rule and the reason for it, a request for comments, and information regarding how interested persons may attend and provide comments. For Ohio, the act requires the Commission to offer a teleconference option for oral comments.<sup>29</sup>

The Compact also provides a procedure for the adoption of emergency rules without prior notice.<sup>30</sup>

### **Oversight, enforcement, and dispute resolution**

Each party state is required to enforce the Compact and take all necessary actions to effectuate its purposes and intent.<sup>31</sup>

The Commission is responsible for taking action if it determines that a party state has defaulted in the performance of its obligations or responsibilities. In that case, the Commission must provide written notice of the default, the proposed means of curing it, and remedial training and technical assistance. If the state does not cure the default, its membership in the Compact may be terminated upon an affirmative vote of a majority of the administrators.<sup>32</sup>

In the event of a dispute related to the Compact, the Commission is required to attempt to find a resolution. Commission rules must provide for both mediation and binding dispute

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<sup>27</sup> Article VII.h.

<sup>28</sup> Article VII.i.

<sup>29</sup> Article VIII and R.C. 4723.113.

<sup>30</sup> Article VIII.k.

<sup>31</sup> Article IX.a. and d.

<sup>32</sup> Article IX.b.

resolution. If the Commission cannot resolve a dispute, the party states may submit the issues to an arbitration panel.<sup>33</sup>

### **Withdrawal and amendment**

Any party state may withdraw from the Compact by repealing the statute that enacted it. The withdrawal does not take effect until six months after the repeal.<sup>34</sup>

The Compact provides that it does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of the Compact.<sup>35</sup>

The Compact may be amended by the party states if the amendment is enacted into law by all party states.<sup>36</sup>

### **Ohio employer notices and reporting**

The act establishes specific duties for persons and government entities in Ohio that hire out-of-state nurses with multistate licenses issued under the Compact. Such an employer must report to the Board of Nursing the name of each nurse holding a multistate license, and any other information required in Board rules. The employer also must provide each nurse with a copy of the information that the act requires the Board to develop concerning laws and rules specific to the practice of nursing in Ohio. The act also authorizes the Board to adopt rules related to these employer requirements.<sup>37</sup>

The act requires an Ohio employer of a nurse holding a multistate license to report to the Board any conduct on the part of the nurse that the employer knows or has reason to believe would be grounds for disciplinary action by the Board. Employers also must engage in such reporting under continuing law for nurses holding traditional Ohio nursing licenses.<sup>38</sup>

### **Collective bargaining**

The act specifies that its provisions cannot be construed to limit, alter, or modify any of the terms, conditions, or provisions of a collective bargaining agreement entered into by a hospital.<sup>39</sup>

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<sup>33</sup> Article IX.c.

<sup>34</sup> Article X.c.

<sup>35</sup> Article X.e.

<sup>36</sup> Article X.f.

<sup>37</sup> R.C. 4723.114.

<sup>38</sup> R.C. 4723.34.

<sup>39</sup> R.C. 4723.115(A).

## **Authority over traditional Ohio licenses relative to the Compact**

In the case of an applicant for or holder of a traditional Ohio license to practice as a registered nurse or licensed practical nurse, the act specifies that it does not limit the authority of the Board of Nursing to determine any of the following:

- Whether the license holder has engaged in activities that exceed the practice of nursing;
- Whether the license holder has completed the continuing education required for renewal; and
- Whether the applicant satisfies the educational requirements for licensure.<sup>40</sup>

### **Compact costs excluded**

The act prohibits the Board from passing along to a traditional license applicant or holder any costs associated with entering into or administering the Compact.<sup>41</sup>

### **Grants**

The act authorizes the Board of Nursing to accept grant money from the National Council of State Boards of Nursing (NCSBN) to assist the Board in implementing the Compact.<sup>42</sup> The NCSBN is a not-for-profit organization whose members include the nursing regulatory bodies in the 50 states, the District of Columbia, and four U.S. territories. It describes its mission as empowering and supporting nursing regulators in their mandate to protect the public.<sup>43</sup>

## **Developmental Disabilities certificates and the Fresh Start Act**

The act exempts from Ohio's Fresh Start Act the following certificates issued by the Department of Developmental Disabilities: supported living certificates and certificates to administer medications and perform health-related activities.<sup>44</sup> Beginning October 9, 2021, the Fresh Start Act (H.B. 263 of the 133<sup>rd</sup> General Assembly) prohibits any state licensing authority from refusing to issue an initial license or other authorization to engage in an occupational activity based on certain criminal records or disqualifying characteristics. As a result of the specified certificates being excluded from the Fresh Start Act, however, an individual may be denied an initial certificate for having any of the types of criminal records or disqualifying characteristics that otherwise would have been disregarded.

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<sup>40</sup> R.C. 4723.115(B).

<sup>41</sup> R.C. 4723.112.

<sup>42</sup> R.C. 4723.116.

<sup>43</sup> NCSBN, *About NCSBN*, <https://www.ncsbn.org/about.htm>.

<sup>44</sup> R.C. 9.79, 109.572, 5123.169, 5123.1611, and 5123.452.



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## HISTORY

Action	Date
Introduced	01-19-21
Reported, S. Health	02-10-21
Passed Senate (23-8)	02-24-21
Reported, H. Health	06-09-21
Passed House (60-35)	06-23-21
Senate concurred in House amendments (32-0)	06-24-21

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