

LFC Requester:

Ginger Anderson

**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 01/20/2024

Bill No: SB 98

Sponsor: Representative Antonio Maestas
Short Counseling Licensure Compact
Title: _____

Agency Name and Code Regulation and Licensing Department - 420
Number: _____
Person Writing Carrie Cochran
Phone: 505-476-4612 **Email** Carrie.Cochran@rld.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	Unknown	Unknown	Recurring	Counseling And Therapy Practice Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Unknown	Unknown	Unknown	Recurring	Counseling and Therapy Practice Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 98 (SB 98)

Senate Bill 98 (SB 98) enters the state of New Mexico into the Counseling Licensure Compact (Compact). The purpose of the Compact as described in the bill is to “facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.” The Compact allows the member states to preserve regulatory authority and to protect public health and safety through implementation of its licensure procedures. The Compact establishes flexibility for counseling licensees in member states to obtain compact privileges for licensure in other member states.

The Compact includes a host of definitions including “home state” which is the licensee’s primary state of residence; “member state” which is a state that has enacted the Compact; “remote state” which is a member state, other than the home state, where the licensee is seeking to practice; and “counseling compact commission” which is the national administrative body whose membership consists of all state that have enacted the compact. Additionally, the Compact defines “alternative program” as a non-disciplinary monitoring or practice remediation process approved by a licensing board to address impaired practitioners.

The counseling compact commission is an instrumentality of the compact states, and each member state shall have and be limited to one delegate selected by the member state’s licensing board. The delegate must be a current member of the licensing board who is a licensed professional counselor or public member, or an administrator of the licensing board.

The powers and duties of the commission include the following: establish the fiscal year of the commission; establish bylaws; maintain the commissions financial records in accordance with its bylaws; meet and take actions consistent with provisions of the Compact and the bylaws; promulgate rules, which shall be binding to the extent and in the manner provided for in the Compact; bring and prosecute legal proceedings or actions in the name of the commission; purchase and maintain insurance bonds; borrow, accept, or contract for services of personnel; hire employees, elect or appoint officers, fix compensation, define duties, and grant such individuals appropriate authority to carry out the purposes of the compact and to establish the commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel and

other related personnel matters; accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, provided that there is no appearance of impropriety or conflict of interest; lease, purchase and accept appropriate gifts and donations of any property (real, personal or mixed); sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property (real, personal or mixed); establish a budget and make expenditures; borrow money; appoint committees; provide and receiving information in cooperation with law enforcement agencies; establish and elect an executive committee; and perform all other functions necessary to achieve the purposes of the Compact.

The executive committee, consisting of eleven members (11), is vested with the following duties and responsibilities: recommend changes to the commission regarding rules or bylaws, changes to the Compact legislation and changes to fees paid by member states, such as annual dues and any commission compact fees charged to licensees for the privilege to practice; ensure compact administration services are appropriately provided; prepare and recommend the budget; maintain financial records on behalf of the commission; monitor compact compliance of member states and provide reports to the commission; establish additional committees as necessary and perform additional duties as provided in the rules or bylaws.

The Compact is designed to achieve the following objectives: (1) increase public access to professional counseling services; (2) enhance the states' ability to protect public health and safety; (3) encourage cooperation of member states in regulating multistate practice for licensed professional counselors; (4) support spouses of relocating military members; (5) enhance the exchange of licensure, investigative and disciplinary information between member states; and (6) allow for the use of telehealth technology to facilitate increased access to professional counseling services; (7) support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits; (8) invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses; (9) eliminate the necessity for licenses in multiple states; and (10) provide opportunities for interstate practice by licensed professional who meet the uniform licensure requirements.

To participate in the Compact, each member state must: (1) currently license and regulate professional counselors; (2) require licensees to pass a national recognized examination by the Compact commission; (3) require licensees to have sixty semester-hour or ninety quarter-hour master's degree in counseling, or sixty semester-hours or ninety quarter-hours of graduate course work; (4) require licensees to complete a supervised postgraduate professional experience as defined by the commission; and (5) have a mechanism in place for receiving and investigating complaints about licensees.

A member state shall: (1) participate fully in the commission's data system; (2) notify the commission of any adverse action or availability of any investigative information regarding a licensee; (3) implement procedures that consider the criminal history records of applicants for an initial privilege to practice, including the submission of fingerprints or other biometric-based information for the purpose of obtaining an applicant's criminal history record information; (4) comply with the rules of the commission; (5) require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure, as well as all other applicable state laws; (6) 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; and (7) provide for the attendance of the state's commissions to the counseling compact commission meetings.

For a licensee to exercise the compact privilege, the licensee shall (1) hold a license in the home state; (2) have a valid United States social security number or national practitioner identifier; (3) be eligible for privilege to practice in any member state; (4) have not had any encumbrance or restriction against any license or privilege to practice within the last two years; (5) notify the commission that the licensee is seeking privilege to practice within a remote state; (6) pay any applicable fees, including any state fee, for the privilege to practice; (7) meet any continuing competence or education requirements established by the home state; (8) meet any jurisprudence requirements established by the remote state in which a licensee is seeking a privilege to practice; and (9) report to the commission any adverse action, encumbrance, or restriction on license taken by any nonmember state within thirty days from the date the action is taken. The privilege to practice is valid until the expiration date of the license in the licensee's home state license.

A remote state has exclusive power to take adverse action against a licensed professional counselor's privilege to practice within that member state. A remote state has the authority, in accordance with state due process law, to issue subpoenas for hearings and investigations that require witness testimony and the production of evidence. Additionally, the home state has the sole power to take adverse action against a licensed professional counselor's license issued by the home state. The home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred in the home state. However, nothing in the Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Because SB 98 does not specify an effective date, the Compact would take effect in New Mexico on the effective date of the bill, which would be May 15, 2024, if the bill were passed in the 2024 Regular Session.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

It is expected that joining the national compact will increase the number of professional counselors who are licensed to provide services in New Mexico and boost economic development across the state.

PERFORMANCE IMPLICATIONS

There may be an increased volume of activity for the Board and the Department staff to implement the requirements of the Compact and to respond to inquiries from the public prior to implementation.

ADMINISTRATIVE IMPLICATIONS

Enactment of SB 98 will require the Board of Counseling and Therapy to conduct a formal rulemaking to implement the requirements of the Compact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The Counseling and Therapy Practice Act (Act) Sections 61-9A-10 to 61-9A-14.4, NMSA 1978 must be amended to give authority to the Board of Counseling and Therapy to require an applicant to submit to a biometric background check and for the Board to receive FBI Criminal History Records Information. Once the amendment is passed, the Board would need to apply with the FBI for them to review and approve the amendment and be granted an independent ORI to receive the FBI Criminal History Records Information.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Licensure will continue to be a barrier for access to counseling and therapy services.

AMENDMENTS

See “Other Substantive Issues”, above.