

**Senate Human Services Committee
North Dakota Board of Nursing Testimony
SB 2336 Relating to Powers of Occupational Boards Under Compacts**

Chairman Lee and members of the committee. I am Dr. Stacey Pfenning, Executive Director (ED) for the North Dakota Board of Nursing (NDBON). On behalf of the NDBON, I am here to share concerns regarding SB 2336 relating to Occupational Boards and Compacts, as this bill may jeopardize NDs compliance with the Nurse Licensure Compact (NLC) and Advanced Practice Registered Nurse (APRN) Licensure Compact.

North Dakota has been a member of the APRN Licensure Compact since 2017 (not yet implemented) and the NLC since 2004 (revised version enacted in 2017). There are currently 34 member states in the NLC (see appendix 1). The NLC provides licensure mobility and ensures a safe nursing workforce, which has been essential since the onset of the pandemic. Both compacts have rulemaking authority, which is a rigorous process as the commission designs the rules, approves draft rules for public comment and hearing, and finally approves rules through a motion voted on by all commissioners. The NDBON has not experienced any concerns or issues with the rulemaking process or rules enacted through the compact.

The NDBON concerns include:

- Page 2, lines 1-4 requiring NDBON to mirror the compact rules in state regulations:
 - This provision goes one step beyond the rulemaking process of each compact and requires that the state incorporate the compact rules into that states own administrative rules. However, it is not clear whether the legislation seeks to require this process to occur in order for the compact rules to become effective in North Dakota. If so, this will conflict with the rulemaking process in each compact. In addition, if the rules are not mirrored exactly at the state level, compliance will be a concern and the state may be required to withdraw from the compact.
 - Requiring this duplicative process at the state level is redundant, as the member already completed rulemaking at the compact level. Duplicating the process consumes state and licensee resources when time and financial constraints are a reality. In addition, during the state level promulgation with the timeline of 9-12 months, the state could fall

out of compliance with the compact, impacting nursing workforce in the state.

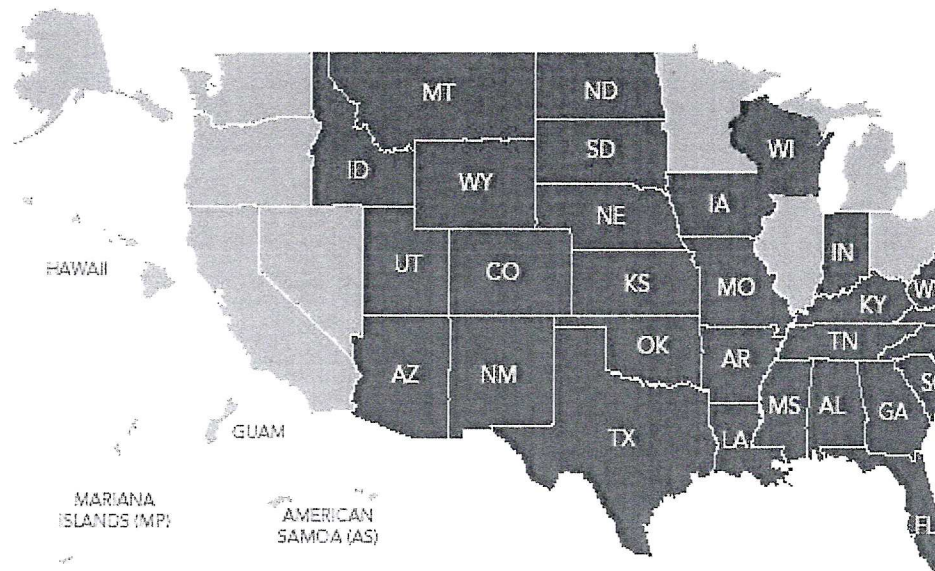
Request: Please consider exempting the NLC and APRN licensure compacts from 43-51-07 (2,b), as this requirement could open ND to noncompliance issues and jeopardizing compact membership. In addition, the NLC has served the state effectively, efficiently, and safely since 2004 and especially through the pandemic. Of the 34 states, only 1 state requires this mirroring/duplication of rules, which was a compromise to allow the state to enact the NLC for the first time in 2019. In ND, this would be a step backwards.

- Page 2, lines 9-22 Repeal of the nurse licensure compacts and contingent effective dates.
 - Both nurse licensure compacts provide that a member state is free to repeal the compacts for any reason which the state believes is justified. This additional language is duplicative.

Thank you for your consideration of these concerns. The NDBON appreciates any effort to ensure the nursing workforce continues in an uninterrupted manner to serve the public safely and effectively.

Dr. Stacey Pfenning DNP APRN FNP FAANP
Executive Director, North Dakota Board of Nursing
Cell: 701-527-6761
spfenning@ndbon.org

NLC States



NLC States
 Partial Implementation
 Currently No Action



34 states have enacted the NLC
 33 states have implemented the NLC
 1 state has partially implemented the NLC

*New Jersey is allowing nurses who hold active, unencumbered, multi-state licenses is Compact member states to practice in New Jersey under their multi-state licenses.

RE: HB 2336 and NDBON concerns

Rick Masters <rmasters@csg.org>

Sun 1/31/2021 3:06 PM

Hi Stacy,

It's a case involving the Interstate Insurance Product Regulation Compact cited as *Amica Life Insurance Co. v. Wertz*, 462 P.3rd 51 (2020) for the proposition that administrative rules promulgated by an interstate compact agency is misplaced as this case, unlike most interstate compacts, involved a provision of the Interstate Insurance Product Regulation Compact ("IIPRC") which is a compact with a provision which specifically preserves a member state's prerogative to "opt out" of certain standards promulgated by the governing board of the Compact. It is not like any other compact and the case only applies to one compact statute in one state, Colorado. In contrast to the holding of this case

in a much earlier decision which takes precedence over the *Amica* case, the U.S. Supreme Court in *State of West Virginia, ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951) the Court held, "That a **legislature may delegate to an administrative body the power to make rules and decide particular cases is one of the axioms of modern government.**" In *Dyer*, the Court recognized that a state legislature may also delegate such authority to an interstate compact agency composed of the compact member states where the compact statute "**involves a reasonable and carefully limited delegation of power to an interstate agency.**" *Id* at p. 31; see also *Burgam supra*. at pp 101-102.

So there is no need for this legislation and if not careful about how it is drafted, it will potentially invalidate other compacts to which North Dakota is a member if the State attempts use this statute as a means to require compact rules to be approved by the Legislature in advance, which no other state has done.

Best Regards,

Rick Masters

Special Counsel

Ntl. Ctr. for Interstate Compacts

The Council of State Governments

(502) 262-5881

