

**2021 SENATE HUMAN SERVICES**

**SB 2336**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2336  
2/1/2021

A BILL for an Act to amend and reenact section 43-51-07 of the North Dakota Century Code, relating to the powers of occupational boards under occupational compacts; to repeal chapters 43-12.4, 43-12.5, 43-17.4, and 43-26.2 of the North Dakota Century Code, relating to the nurse licensure compact, advanced practice registered nurse licensure compact, interstate medical licensure compact, and physical therapy licensure compact; and to provide a contingent effective date.

**Madam Chair Lee** opened the hearing on SB 2336 at 11:56 a.m. Senators present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Legislative authority and compacts
- North Dakota compliance with compacts
- Unions challenging compacts risk

**[11:56] Senator Judy Lee, District 13.** Introduced SB 2336.

**[11:58] Jennifer Clark, Attorney, Legislative Council.** Provided oral neutral testimony.

**[12:07] Allyson Hicks, Assistant Attorney General, on behalf of Attorney General Wayne Stenehjem.** Provided neutral testimony #4592.

**[12:13] Dr. Stacey Pfenning, Executive Director, North Dakota Board of Nursing.** Provided testimony #4598 in opposition.

**[12:23] Sandra DePountis, Executive Director, North Dakota Board of Medicine.** Provided testimony #4298 in opposition.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on SB 2336 at 12:25 a.m.

*Justin Velez, Committee Clerk*

SENATE HUMAN SERVICES COMMITTEE  
02/01/2021

TESTIMONY OF ALLYSON HICKS  
OFFICE OF ATTORNEY GENERAL  
SENATE BILL NO. 2336

Madam Chair, members of the Senate Human Services Committee.

I am Allyson Hicks, Assistant Attorney General in the Attorney General's State and Local Division. I appear on behalf of Attorney General Wayne Stenehjem to provide neutral testimony to Senate Bill 2336.

Sections 2 through 9 of the bill propose to allow the licensing boards to determine when compact commission rules are either inconsistent with the compact or negative affect the public's health safety and welfare and then effectively repeal the Century Code chapters which adopt the compact. The Legislature cannot delegate complete discretion to exercise legislative authority without any guidelines on the specific application of the authority. To do so may lead to a separation of powers issue as found in the recent case of N.D. Legislative Assembly v. Burgum, 916 N.W.2d 83. The Court in the Burgum case stated that the law must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts. The standards provided are relatively broad and discretionary, and therefore, may be an unconstitutional delegation.

Our office would recommend a simple fix to avoid possible legal challenges, whereas the board notifies the Legislature through Legislative Council that there are

issues with the compact commission's rules, and at that time the Legislature would be able to repeal the compact statute if it agrees with the analysis of the board.

Thank you for your time and consideration, and I would stand for any questions.

**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.

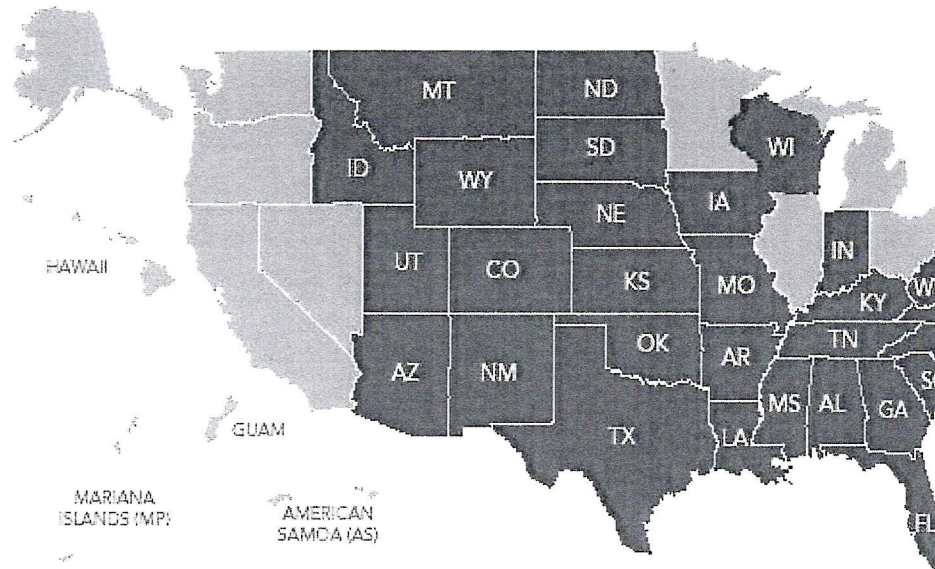
Thank you for your consideration of these concerns. The NDBON appreciates any effort to ensure the nursing workforce continues in an uninterrupted manner to serve the public safely and effectively.

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

## Appendix 1



## RE: HB 2336 and NDBON concerns

Rick Masters <[rmasters@csg.org](mailto: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.3<sup>rd</sup> 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**

SENATE HUMAN SERVICES COMMITTEE  
FEBRUARY 1, 2021

TESTIMONY OF  
NORTH DAKOTA BOARD OF MEDICINE  
SENATE BILL NO. 2336

Chair Lee, members of the Committee. I am Sandra DePountis, Executive Director of the North Dakota Board of Medicine, appearing on behalf of the Board in opposition of SB 2336.

The Interstate Medical Licensure Compact (IMLC) was adopted by the 66<sup>th</sup> Legislative Assembly in 2019, joining 29 states, the District of Columbia, and the Territory of Guam. Since its adoption, over 500 licenses have been issued in North Dakota, and it was and continues to be an integral part of being able to quickly license qualified physicians in our state during the pandemic.

The IMLC is codified in North Dakota Century Code chapter 43-17.4. Article XXI of the IMLC already outlines how North Dakota can withdraw from the Compact. This requires the North Dakota Legislature to repeal chapter 43-17.1, and requires a year for that repeal to take effect to give the Board time to provide notice to those physicians practicing under an IMLC license to pursue alternative means of licensure. This conflicts with the proposed terms of SB 2336, which gives the executive director, at the direction of the board, the ability to revoke the IMLC by “certifying” to Legislative Council that rules adopted by the Compact Commission are inconsistent with the compact or fail to protect the health and safety of the public.

These conflicts raise concerns under the express terms of the IMLC that is currently law in North Dakota. Article XVII of the IMLC outlines enforcement provisions,

which include the ability of the Compact Commission to sue a state for damages in order to enforce the full terms of the Compact. Article XVIII of the IMLC provides that if a member state is found in default of its obligations under the Compact, its membership with the Compact can be terminated.

The Board does not wish to jeopardize the licenses already issued, or its continued ability to provide an expedited licensure process for qualified physicians to practice in North Dakota. It is for these reasons the North Dakota Board of Medicine opposes SB 2336. Thank you for your time and I am happy to answer any questions you may have.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2336  
2/8/2021

A BILL for an Act to amend and reenact section 43-51-07 of the North Dakota Century Code, relating to the powers of occupational boards under occupational compacts; to repeal chapters 43-12.4, 43-12.5, 43-17.4, and 43-26.2 of the North Dakota Century Code, relating to the nurse licensure compact, advanced practice registered nurse licensure compact, interstate medical licensure compact, and physical therapy licensure compact; and to provide a contingent effective date.

**Madam Chair Lee** opened the discussion on SB 2133 at 9:39 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Amendment 21.1015.01001 proposal

**[9:39] Senator Judy Lee, District 13.** Provided the committee with proposed amendment 21.1015.01001 (testimony #6550).

**Senator Hogan** moves to **ADOPT AMENDMENT 21.1015.01001** and to include “Education Standards and Practices Board” and “The North Dakota Board of Social Work Examiners”.

**Senator K. Roers** seconded.

Voice Vote – motion passed.

**Senator K. Roers** moves **DO PASS, AS AMENDED.**

**Senator Hogan** seconded

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 6-0-0

**Senator Hogan** will carry SB 2336.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on SB 2336 at 9:48 a.m.

*Justin Velez, Committee Clerk*

CAB  
2/8

PROPOSED AMENDMENTS TO SENATE BILL NO. 2336

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of occupational boards that address mental health and behavioral health.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - OCCUPATIONAL BOARDS RELATING TO MENTAL HEALTH AND BEHAVIORAL HEALTH.** During the 2021-22 interim, the legislative management shall consider studying the occupational boards that address mental health and behavioral health issues which may include the state board of psychologist examiners, board of addiction counseling examiners, board of counselor examiners, education standards and practices board, North Dakota board of social work examiners and North Dakota marriage and family therapy licensure board. The study must include a review of the rules adopted by the boards and consideration of the frequency with which the rules are reviewed, whether there are barriers to practice and barriers to admission of foreign practitioners, and whether there is adequate training for board members and executive directors of these boards. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2336: Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2336 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of occupational boards that address mental health and behavioral health.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - OCCUPATIONAL BOARDS RELATING TO MENTAL HEALTH AND BEHAVIORAL HEALTH.** During the 2021-22 interim, the legislative management shall consider studying the occupational boards that address mental health and behavioral health issues which may include the state board of psychologist examiners, board of addiction counseling examiners, board of counselor examiners, education standards and practices board, North Dakota board of social work examiners and North Dakota marriage and family therapy licensure board. The study must include a review of the rules adopted by the boards and consideration of the frequency with which the rules are reviewed, whether there are barriers to practice and barriers to admission of foreign practitioners, and whether there is adequate training for board members and executive directors of these boards. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

21.1015.01001  
Title.

Prepared by the Legislative Council staff for  
the Senate Human Services Committee  
February 5, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2336

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of occupational boards that address mental health and behavioral health.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - OCCUPATIONAL BOARDS RELATING TO MENTAL HEALTH AND BEHAVIORAL HEALTH.** During the 2021-22 interim, the legislative management shall consider studying the occupational boards that address mental health and behavioral health issues which may include the state board of psychologist examiners, board of addiction counseling examiners, board of counselor examiners, and North Dakota marriage and family therapy licensure board. The study must include a review of the rules adopted by the boards and consideration of the frequency with which the rules are reviewed, whether there are barriers to practice and barriers to admission of foreign practitioners, and whether there is adequate training for board members and executive directors of these boards. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly



**2021 HOUSE HUMAN SERVICES**

**SB 2336**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2336  
3/10/2021

To provide for a legislative management study of occupational boards that address mental health and behavioral health

**Chairman Weisz** opened the committee hearing at 2:51 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Application time
- American University Systems

**Sen. Judy Lee, District 13 (2:59)** introduced the bill and testified in favor.

**Rep. Todd Porter (3:08)** moved **Do Pass**

**Rep. Karen Rohr (3:08)** second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	Y

Representative Mary Schneider	Y
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	N

**Motion Carried Do Pass 13-1-0**

**Bill Carrier:** Rep. Clayton Fegley

**Chairman Weisz** adjourned at 3:09 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2336**, as engrossed: **Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2336 was placed on the Fourteenth order on the calendar.