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S.B. 56
135th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Roegner

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SUMMARY

- Enters Ohio as a party to the Interstate Massage Compact (IMpact), the purpose of which is to facilitate the interstate practice and regulation of massage therapy and improve public access to and safety of massage therapy services.
- As a member of IMpact, requires Ohio to allow a massage therapist licensed in another member state to practice in Ohio, subject to Ohio's laws and rules governing the practice of massage therapy.
- Requires the State Medical Board to appoint a member to the Interstate Massage Compact Commission, a joint public agency created by IMpact to enforce the provisions and rules of the Compact.
- Requires Ohio to submit data regarding massage therapy licensees to the Commission's data system, including information related to licensure, adverse action, and the presence of investigative information.

DETAILED ANALYSIS

Interstate Massage Compact (IMpact)

The bill enacts the Interstate Massage Compact (IMpact) in Ohio. IMpact is an agreement between member states to improve public access to and safety of massage therapy services by permitting eligible massage therapists to work in multiple states.¹ IMpact goes into effect when it is enacted by the seventh member state.² Each state's enacting statute cannot be

¹ R.C. 4731.156; Article 1 ("Article" references in this analysis are to the Compact).

² Article 12.A.

materially different from the model Compact.³ Nothing in the Compact impacts Ohio's requirements for a license to practice as a massage therapist.⁴

State participation in IMpact

To participate in IMpact, a state – including Ohio – must:⁵

1. License and regulate the practice of massage therapy;
2. Have a mechanism for receiving and investigating complaints;
3. Accept passage of a national licensing examination as a criterion for massage therapy licensure;
4. Require that licensees satisfy educational requirements prior to being licensed to provide massage therapy services;
5. Fully implement a criminal background check requirement and use the results in making licensing decisions in accordance with IMpact;
6. Have continuing competence requirements as a condition of license renewal;
7. Participate in the Commission's data system (see "**Interstate Massage Compact Commission**" and "**Data system**" below);
8. Notify the Commission and other member states of any disciplinary action or the availability of investigative information about a licensee;
9. Comply with the rules of the Commission;
10. Accept licensees with valid multistate licenses from other member states.

Home state licensure

Under IMpact, a "home state" is the member state that is a licensee's primary state of residence where the licensee holds an active single-state license.⁶ Active military members, or their spouses, must designate a home state where they have an active single-state license. That home state designation can remain for as long as the member or spouse is on active duty assignment, regardless of the location of that assignment.⁷

Multistate license

A multistate license is a license issued by a home state that consists of authorizations to practice massage therapy in all member states that are not a licensee's home state (referred to

³ Article 12.1.

⁴ Article 1.K.

⁵ Article 3.A.

⁶ Article 2.N.

⁷ Article 7.

as remote states), subject to the enforcement jurisdiction of the licensing authority in the licensee's home state.⁸ A massage therapist practicing in a remote state is subject to the scope of practice laws of that state.⁹

If a home state takes adverse action against a licensee's single-state license or multistate license, the licensee's authorization to practice is deactivated in all member states until all encumbrances have been removed.¹⁰

Requirements to qualify for a multistate license

To qualify for a multistate license, a licensee must:¹¹

1. Be licensed to practice massage therapy in the applicant's home state;
2. Have completed at least 625 hours of massage therapy education or the substantial equivalent approved by Commission rule;
3. Have passed a national licensing examination or the substantial equivalent approved by Commission rule;
4. Submit to a background check;
5. Have not been convicted of a felony within five years of applying for the license;
6. Have not been convicted of a misdemeanor offense related to the practice of massage therapy within two years of applying for the license;
7. Have not been convicted at any time of kidnapping, human trafficking, human smuggling, a violent sexual offense, or any other category of offense designated by Commission rule;
8. Have not previously had a massage therapy license revoked or suspended in lieu of discipline;
9. Have no adverse action on any occupational or professional license within two years prior to applying for the license;
10. Pay all required fees.

Adverse actions

IMPact provides that a home state has the exclusive power to impose adverse action against a license it issues, including a single-state license or a multistate license. Adverse action is defined as any administrative, civil, equitable, or criminal action permitted by a member

⁸ Article 2.T.

⁹ Article 4.C.

¹⁰ Article 6.F.

¹¹ Article 4.A.

state's laws which is imposed by a licensing authority or other regulatory body against a licensee.¹²

A home state may take adverse action on a multistate license based on investigative information or adverse action from a remote state. Joint investigations between member states also are permissible. While states that are not the home state that issued the multistate license cannot impose adverse action against the license, a member state may take adverse action against a licensee's authorization to practice in that specific state.¹³

In addition to imposing adverse action against a licensee's authorization to practice, a remote state may issue cease and desist orders or limit a licensee's authorization to practice, issue subpoenas for hearings and investigations, and recover from the licensee the costs related to the adverse action against the licensee (if authorized by state law).¹⁴

IMpact preserves a state's ability to permit participation in an alternative program in lieu of adverse action, but a licensee's multistate license is suspended for the duration of the licensee's participation in the alternative program.¹⁵ "Alternative program" is defined as a nondisciplinary monitoring or prosecutorial diversion program approved by a state licensing authority.¹⁶

If a member state imposes adverse action against a licensee, it must submit information regarding that adverse action to the Commission's data system (see "**Data system**" below).¹⁷

Consequences of adverse action by a remote state

If a remote state takes adverse action against a massage therapist's authorization to practice in that state, the massage therapist's authorization to practice in any other remote state is removed until the time for which the authorization to practice was removed has passed and all encumbrance requirements are satisfied. The licensee is not eligible to apply for a multistate license in any other state until the adverse action has been resolved.¹⁸

Interstate Massage Compact Commission

The bill requires states participating in IMpact to establish a joint government agency known as the Interstate Massage Compact Commission.¹⁹ Each member state must appoint one delegate, who must be the state licensing authority's primary administrative officer or the

¹² Articles 5, 6.A, and 2.B.

¹³ Article 6.

¹⁴ Article 6.E.

¹⁵ Article 6.H.

¹⁶ Article 2.C.

¹⁷ Article 9.C.

¹⁸ Article 6.G.

¹⁹ Article 8.

officer's designee. The delegate is entitled to one vote regarding all matters that are voted on by the Commission. Meetings may take place by telecommunication, video conference, or other similar electronic means.²⁰

As a party to IMpact, the State Medical Board must select one delegate to the Commission within 60 days of Ohio entering the Compact and fill any subsequent vacancy within 60 days.²¹

Powers and duties

The Commission must enforce the provisions and rules of IMpact.²² It is required to meet at least annually. Generally, meetings must be open to the public. IMpact permits closed, nonpublic meetings of the Commission, the Executive Committee, or other committees in limited circumstances, such as to discuss noncompliance of member states, employment matters, licensee discipline, litigation, contract negotiation, criminal accusations, trade secrets, investigative records, and legal advice.²³

The Commission has numerous powers and duties specified in the bill, some of which include:²⁴

1. Establishing bylaws and a code of conduct for the Commission;
2. Electing a chair, vice chair, secretary, and treasurer, and any other officer provided by the Commission's bylaws;
3. Maintaining financial records, establishing a budget, making expenditures, and borrowing money;
4. Adopting rules to effectively and efficiently implement and administer IMpact, including emergency rules;
5. Hiring employees and performing matters related to personnel;
6. Accepting donations and gifts and taking actions regarding real and personal property;
7. Electing an Executive Committee and appointing committees;
8. Determining whether a state's adopted language is materially different from the model Compact language to an extent that it disqualifies that state from participation;
9. Performing other functions as necessary and appropriate to achieve the purposes of IMpact.

²⁰ Article 8.B.

²¹ Article 8.B and R.C. 4731.157.

²² Article 11.J.

²³ Article 8.

²⁴ Article 8.C.

Data system

The Commission must provide for the development, maintenance, operation, and use of a coordinated database and reporting system containing licensure, adverse action, and significant investigative information regarding licensed individuals in member states. All member states must submit a uniform data set to the data system regarding licensees that are subject to the Compact. The data set includes: (1) identifying information, (2) licensure data, (3) adverse actions against a licensee, (4) nonconfidential information related to alternative program participation, (5) any denial of an application for licensure and reasons for the denial, (6) the presence of significant investigative information, and (7) other information specified by Commission rules.²⁵

Member states contributing information to the data system may designate information that may not be shared with the public without express permission from that state. Investigative information received by a massage therapy licensing board pertaining to the investigation of a licensee in a member state will always only be available to other member states.²⁶

Commission finances

The Commission is required to pay the reasonable expenses of its establishment, organization, and ongoing activities. The Commission may accept monetary and nonmonetary donations and grants. It may impose annual assessments on member states and fees on the multistate license holders of member states to cover costs of the operations and activities of the Commission. The Commission must keep accurate records of receipts and disbursements, which must be reviewed annually.

The Commission is not permitted to incur obligations before securing funds to meet those obligations and it may not pledge the credit of member states without authority.²⁷

Executive Committee

IMPACT creates an Interstate Massage Compact Commission Executive Committee, and provides that the Executive Committee has the power to act on behalf of the Commission. Committee meetings with formal action on a matter must be public, with at least five days' notice. The Executive Committee, which must meet at least annually, is comprised of the following seven members:²⁸

- The chair, vice chair, secretary, and treasurer of the Commission;
- Three other voting members from the Commission, elected by the Commission.

²⁵ Article 9.

²⁶ Article 9.E. and F.

²⁷ Article 8.G.

²⁸ Article 8.D.

Duties and responsibilities of the Executive Committee include:

1. Overseeing the day-to-day activities of the administration of IMPact;
2. Recommending changes to rules, bylaws, Compact legislation, and fees charged to member states and licensees;
3. Ensuring IMPact administration services are appropriately provided;
4. Preparing and recommending the budget;
5. Maintaining financial records;
6. Monitoring Compact compliance of member states and providing compliance reports;
7. Establishing additional committees as necessary;
8. Exercising the powers and duties of the Commission during the interim period between Commission meetings;
9. Any other duties provided in the bylaws.

Rulemaking

The Commission has the power to adopt rules by majority vote pursuant to the criteria and processes set forth in the Compact. The Commission must hold a public hearing before adopting a rule, with advanced notice of the proposed rulemaking and other specified information. If a majority of state legislatures of member states reject a rule by enacting a statute or resolution within four years of the date the rule was adopted, the rule has no further force or effect.²⁹

Qualified immunity, defense, and indemnification

IMPact provides that the members, officers, the executive director, employees, and representatives of the Commission are immune from suit and liability for damages caused by or arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, so long as the loss is not caused by intentional or willful or wanton misconduct. The Commission must defend individuals entitled to immunity, but individuals also may retain their own counsel.

The Commission must indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of a settlement or judgment obtained against the individual arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, except in the case of intentional or willful or wanton misconduct.³⁰

²⁹ Article 10.

³⁰ Article 8.H.

Enforcement and dispute resolution

IMPact requires each member state's executive and judicial branches of government to enforce it.³¹

The Commission must attempt to resolve Compact disputes that arise among member states and between member states and nonmember states. The Commission is required to adopt a rule providing for both mediation and binding dispute resolution.³²

Conflict with state law

IMPact does not prevent or inhibit the enforcement of laws in a member state that do not conflict with it. Any laws, statutes, regulations, or other legal requirements in a member state that are in conflict with IMPact are superseded.³³

Compact amendment

Member states may amend IMPact by enacting legislation. An amendment is not effective until it has been enacted by all member states.³⁴

Withdrawal and termination

IMPact permits member states to withdraw by enacting a statute repealing it. Such a withdrawal is effective 180 days after the repeal.³⁵

IMPact provides a process for notifying a member state if the state has defaulted in performing its obligations or duties under IMPact. If the defaulting state fails to cure the default, it may be terminated upon an affirmative vote of a majority of all member states. Once a state is terminated, the remaining member states must recognize the multistate licenses issued by the defaulting state for at least 180 days after the date of termination. The defaulting state may appeal the action of the Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal office. The prevailing party is to be awarded costs of litigation, including attorney's fees.³⁶

Construction and severability

IMPact provides that it is to be liberally construed, and its provisions are severable.³⁷

³¹ Article 11.A.

³² Article 11.I.

³³ Article 14.

³⁴ Article 12.D.

³⁵ Article 12.B.

³⁶ Article 11.

³⁷ Article 13.

HISTORY

| Action | Date |
|----------------------|----------|
| Introduced | 02-14-23 |
| Reported, S. Health | 09-13-23 |
| Passed Senate (33-0) | 09-13-23 |
