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S.B. 204
134th General Assembly

Bill Analysis

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Version: As Reported by House Behavioral Health and Recovery Supports

Primary Sponsor: Sen. Roegner

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SUMMARY

- Enters Ohio into the Counseling Compact to facilitate the interstate practice of licensed professional counselors by requiring Ohio to permit individuals to practice who hold valid, unencumbered professional counselor licenses in other member states.
- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board to select an individual to serve as Ohio's delegate to the Counseling Compact Commission.

DETAILED ANALYSIS

Counseling Compact

The bill enters Ohio into an interstate compact¹ known as the Counseling Compact. The purpose of the Compact is to facilitate the interstate practice of licensed professional counselors. Under the Compact, the practice of professional counseling occurs in the state where the client is located at the time the counseling occurs, and states' regulatory licensing authority is preserved.²

¹ Interstate compacts are formal, legislatively enacted agreements between two or more states that bind them to the compact's provisions. Compacts provide states the opportunity to cooperatively address policy issues. National Center for Interstate Compacts, The Council of State Governments, *What are interstate compacts?*, <https://compacts.csg.org/compacts/>. Compacts generally cannot be amended unless all states enact the amendment. See Compact Section 13.E.

² R.C. 4757.50, Section 1 (unless otherwise noted, subsequent "Section" references in this analysis are to specific sections of the Compact).

The Compact specifies that it goes into effect on the date it is enacted by the 10th member state.³ On April 19, 2022, Nebraska became the 10th state to enact the Compact, joining Alabama, Florida, Georgia, Kentucky, Maine, Maryland, Mississippi, Utah, and West Virginia. Legislation to enact the Compact is currently pending in 12 other states (including this bill).⁴

State participation in the Compact

To participate in the Compact, a state must:⁵

1. License and regulate licensed professional counselors, which are counselors licensed by member states to independently assess, diagnose, and treat behavioral health conditions;⁶
2. Require licensees to (a) pass a nationally recognized exam, (b) have a master's degree in counseling or specified graduate coursework in various topic areas, including meeting specified semester or quarter-hour requirements, and (c) complete a supervised postgraduate professional experience;
3. Have a mechanism in place for receiving and investigating complaints about licensees;
4. Participate fully in the Counseling Compact Commission's data system (see "**Counseling Compact Commission**," and "**Data system**," below);
5. Notify the Commission of adverse actions or the availability of investigative information regarding a licensee;
6. Implement or utilize procedures for considering criminal history records of applicants for an initial privilege to practice, including submission of fingerprints or biometric-based information to obtain federal and state criminal history records;
7. Comply with rules of the Commission;
8. Require an applicant to obtain or retain a home state license and meet home state qualifications for licensure and renewal;
9. 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;
10. Provide for attendance of the state's representative at Commission meetings.

³ Counseling Compact, *When will the Compact go into effect?*, <https://counselingcompact.org/>; Section 13.A.

⁴ Counseling Compact, *Map*, <https://counselingcompact.org/map/>.

⁵ Section 3.A. and B.

⁶ Section 2.O.

Counseling Compact Commission

The Compact provides for creation of a joint public agency known as the Counseling Compact Commission, which is to be an instrumentality of the Compact member states.⁷

Membership

Each member state is to have one delegate selected by the member state's licensing board responsible for licensing and regulating licensed professional counselors. The bill requires the Counselor, Social Worker, and Marriage and Family Therapist Board to select Ohio's delegate within 60 days of entering into the Compact. Subsequent vacancies must be filled within 60 days.⁸ The delegate must be a current licensed professional counselor-member or public-member of the licensing board, or an administrator of the licensing board. Each Commission member is entitled to one vote regarding Commission rules and bylaws.⁹

Powers and duties

Some powers and duties of the Commission include establishing bylaws, maintaining financial records, promulgating rules, purchasing and maintaining insurance, hiring employees and taking related actions, and borrowing money.¹⁰

Executive Committee

The Commission's Executive Committee is an 11-member committee that has the power to act on behalf of the Commission. It consists of seven voting members elected by the Commission from its current membership, and up to four nonvoting members from recognized national professional counselor organizations. The Executive Committee is required to meet annually. The Executive Committee's duties and responsibilities include recommending changes to rules and bylaws and fees, ensuring Compact administration services are appropriately provided, maintaining financial records, monitoring member-state compliance, and establishing additional committees.¹¹

Commission meetings

Commission meetings are required to be open to the public, and public notice of the meetings must be provided. Meeting minutes must be kept.

Closed, nonpublic Commission meetings may occur only to discuss limited topics such as member state noncompliance; employment, compensation, and discipline of specific employees or internal personnel practices; litigation; contract negotiation; criminal accusations;

⁷ Section 9.B.1.

⁸ R.C. 4757.511.

⁹ Section 9.B.

¹⁰ Section 9.C.

¹¹ Section 9.D.

and trade secrets and confidential information. Commission legal counsel must certify that a meeting may be closed and reference the relevant exempting provision.¹²

Commission finances

The Commission is required to pay for reasonable expenses of its establishment, organization, and ongoing activities. The Commission may collect an annual assessment from member states. The Commission cannot incur obligations without first securing funds to meet the obligation, and cannot pledge the credit of member states without their authority. The Commission must keep accurate accounts of receipts and disbursements, which are subject to audit.¹³

Rulemaking

The Commission is required to promulgate rules to achieve the purpose of the Compact. However, any rules that go beyond the scope of the purposes of the Compact are invalid. If a majority of the legislatures of member states reject a rule by enacting a statute or resolution within four years of a rule being adopted, then the rule will have no further force in any member state.¹⁴

The Commission is required to provide notice of proposed rulemaking at least 30 days prior to a meeting at which a final rule will be adopted. The notice must be posted on the Commission's website and on the website of each member state's licensing board or other place where a member state would publish proposed rules. The notice must include (1) details on the time, place, and location of the meeting, (2) the text of the proposed rule, (3) a request for comments, and (4) the manner in which interested persons can submit notice to attend the public hearing.¹⁵

The Commission must grant an opportunity for a public hearing if a hearing is requested by at least 25 persons, a state or federal governmental subdivision, or an association having at least 25 members. If a hearing is held, public notice must be provided. Persons wishing to be heard at the hearing must notify the Commission in writing at least five business days before the hearing. Hearings will be recorded. Written data may also be submitted and will be made available to the public.¹⁶

The Commission must, by a majority vote of all members, take final action on proposed rules and determine the effective date of rules. The Compact also provides a process for the adoption of emergency rules that may be adopted immediately without notice, opportunity for

¹² Section 9.E.

¹³ Section 9.F.

¹⁴ Section 11.A. and C.

¹⁵ Section 11.E. and F.

¹⁶ Section 11.G., H., and I.

comment, or hearing. Thereafter, the normal rulemaking procedures must be applied to an emergency rule within 90 days.¹⁷

Qualified immunity, defense, and indemnification

The Compact provides that the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability for claims related to Commission employment, duties, and responsibilities, unless caused by intentional or willful or wanton misconduct. The Commission must defend such persons in related civil actions, but the person may retain their own counsel as well. The Commission must indemnify such persons for the amount of a related settlement or judgment.¹⁸

Data system

The Commission must develop and operate a coordinated database and reporting system containing licensure, adverse action, and investigative information on all individuals licensed by member states.¹⁹ Each member state must submit a uniform data set to the data system for each licensee, including:²⁰

1. Identifying information;
2. Licensure data;
3. Adverse action;
4. Nonconfidential information related to alternative program participation;
5. License application denial information;
6. Significant investigative information;
7. Other information as specified in Commission rules.

The Commission must promptly notify all member states of adverse action against a licensee or license applicant. Adverse action information and investigative information is available to other member states. Member states may designate information provided to the data system as not to be shared with the public.²¹

Privilege to practice

Member states must grant the privilege to practice (i.e. provide a legal authorization to practice professional counseling that is equivalent to that of a license) to a licensee holding a

¹⁷ Section 11.L. and M.

¹⁸ Section 9.G.

¹⁹ Section 10.A.

²⁰ Section 10.B.

²¹ Section 10.C., D., and E.

valid unencumbered license in another member state.²² A member state may charge a fee for granting the privilege to practice.²³

To exercise the privilege to practice, a licensee must:²⁴

1. Hold a license in the home state, which is the licensee's primary state of residence,²⁵ and the home state must be a member state;
2. Have a valid Social Security number or national practitioner identifier;
3. Be eligible for the privilege to practice by virtue of not having the licensee's privilege to practice removed by a remote state;
4. Not have an encumbrance or restriction against any license or privilege to practice within the prior two years;
5. Notify the Commission that the licensee is seeking the privilege to practice in a remote state or states;
6. Pay any applicable fees, including any state fee;
7. Meet home state continuing education requirements;
8. Meet any remote state jurisprudence requirements (assessments of an individual's knowledge of the laws and rules governing the practice of professional counseling in a particular state);²⁶
9. Report to the Commission any adverse action, encumbrance, or restriction on a license taken by a nonmember state within 30 days of the action.

A licensee providing professional counseling services in a remote state under a privilege to practice must adhere to the laws and regulations, including scope of practice, of the remote state.²⁷ Such a licensee is subject to the remote state's regulatory authority. Except as discussed below, the privilege to practice is valid until the expiration of the home state license.²⁸

A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, or take other necessary actions to protect the health and safety of citizens. If a home state license is encumbered, the licensee will lose the privilege to practice in any remote state until the home state license is unencumbered and the licensee has not had any encumbrances or

²² Section 3.F.

²³ Section 3.C.

²⁴ Section 4.A.

²⁵ Section 2.K.

²⁶ Section 2.N.

²⁷ Section 4.C. and 15.A.

²⁸ Section 4.B.

restrictions against any license or privilege to practice within the previous two years. If a licensee's privilege to practice in a remote state is removed, the licensee may lose the privilege to practice in all other remote states until the period of time for which the privilege to practice was removed has ended, all fines have been paid, and the licensee has not had any encumbrance or restriction against a license or privilege to practice within the previous two years.²⁹

Privilege to practice telehealth

Member states must recognize the right of a licensed professional counselor with a home state license to practice professional counseling in a member state via telehealth. Telehealth is defined in the bill as the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.³⁰ A licensee practicing professional counseling in a remote state under the Compact must adhere to laws and regulations of the remote state.³¹

Adverse actions

The Compact provides that a remote state has the authority to take adverse action against a licensed professional counselor's privilege to practice within that state. Adverse actions are administrative, civil, equitable, or criminal actions permitted under state laws and imposed by a licensing board or other authority, such as revocation, suspension, probation, monitoring, imposition of limitations on practice, or other licensure encumbrances.³² Subpoenas may be issued related to hearings and investigations.³³

Only a home state can take adverse action against the license issued by the home state. A home state must give the same priority and effect to reported conduct from a member state as it would if the conduct occurred in the home state. If a licensee changes primary state of residence during the course of an investigation, the home state must complete the pending investigation. The administrator of the data system must promptly notify the new home state of any adverse actions.³⁴

If adverse action is taken by a home state, the privilege to practice in all other member states is deactivated until all encumbrances have been removed from the home state license. All home state disciplinary orders must state that the licensee's privilege to practice is deactivated in all member states during the pendency of the order.³⁵

²⁹ Section 4.D. through H.

³⁰ Section 2.Y.

³¹ Section 7.

³² Section 2.B.

³³ Section 8.A.

³⁴ Section 8.B. and C.

³⁵ Section 8.G.

The Compact also provides the following regarding adverse actions:³⁶

1. Member states may recover from licensees costs of investigations if permitted by state law;
2. Member states may take adverse action based on factual findings of a remote state;
3. Member states may participate in joint investigations and must share information in furtherance of investigations initiated under the Compact;
4. Member states that take adverse action must promptly notify the administrator of the data system;
5. Member states may permit participation in an alternative program, which is a nondisciplinary monitoring or practice remediation process,³⁷ in lieu of adverse action.

Obtaining a new home state license

A licensed professional counselor may hold a home state license in only one member state at a time; however, the Compact does not interfere with a licensee's ability to hold a single state license in multiple states. The Compact does not affect member state requirements for issuance of single state licenses.³⁸ A single state license is a license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.³⁹

If a licensed professional counselor moves residences between two member states, the counselor must file an application for a new home state license, pay applicable fees, and notify the current and new home states. Upon receiving the application, the new home state must use the data system to verify the counselor meets eligibility criteria. The state need not conduct primary source verification, except criminal records checks (if applicable) and completion of any requisite jurisprudence requirements of the new home state. If the counselor cannot meet Compact criteria, the new home state may apply its requirements for issuing a single state license.⁴⁰

Active duty military personnel and spouses

Active duty military personnel or their spouse must designate a home state where the individual has a current license in good standing. The individual may retain the home state designation while the service member is on active duty.⁴¹

³⁶ Section 8.

³⁷ Section 2.C.

³⁸ Section 5.A. and D.

³⁹ Section 2.W.

⁴⁰ Section 5.B.

⁴¹ Section 6.

Commission oversight, dispute resolution, and enforcement

The Compact provides that the executive, legislative, and judicial branches of government for each state must enforce the Compact and take necessary actions to effectuate its purpose and intent. Additionally, the Commission may initiate legal proceedings to enforce compliance with the Compact. The Compact and its rules are to have standing as statutory law.⁴²

If the Commission determines that a member state has defaulted under the Compact, the Commission is required to provide written notice to that state and all member states, as well as provide remedial training and assistance. If a defaulting state fails to cure the default, that state may be terminated from the Compact by a majority vote of all member states. The Compact contains additional details regarding the termination process as well as a right to appeal.⁴³

Withdrawal

Any member state may withdraw from the Compact by enacting a law repealing the Compact. A withdrawal is effective six months after enactment of a repealing statute. Withdrawing states must continue to comply with investigative and adverse action reporting requirements prior to the effective date of the withdrawal.⁴⁴

Construction and severability

The Compact provides that it is to be liberally construed and its provisions are severable.⁴⁵

Binding effect of Compact and other laws

The Compact provides that any laws in a member state in conflict with the Compact are superseded to the extent of the conflict. Lawful actions of the Commission, including rules and bylaws, are binding on member states. However, if a provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict in that member state.⁴⁶

⁴² Section 12.A. and I.

⁴³ Section 12.B. through G.

⁴⁴ Section 13.C.

⁴⁵ Section 14.

⁴⁶ Section 15.C., D., and F.

HISTORY

Action	Date
Introduced	06-28-21
Reported, S. Health	10-06-21
Passed Senate (33-0)	11-10-21
Reported, H. Behavioral Health and Recovery Supports	05-23-22
