



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 258
133rd General Assembly

Bill Analysis

[Click here for S.B. 258's Fiscal Note](#)

Version: As Reported by House Health

Primary Sponsor: Sen. Gavarone

Emma Carroll, Research Analyst

SUMMARY

PSYPACT

- Enters Ohio in the multi-jurisdictional psychology compact known as PSYPACT.
- Regulates the practice of telepsychology and temporary in-person psychology across state boundaries for participating states.
- Establishes the Psychology Interjurisdictional Compact Commission.
- Creates the Coordinated Licensure Information System.
- Outlines the procedure for implementing and withdrawing from PSYPACT.

Regulation of massage therapy

- Standardizes, for purposes of regulation by the State Medical Board, townships, and municipal corporations, terminology regarding massage therapy and individuals authorized to perform massage therapy.
- As part of that standardization:
 - Eliminates a township's authority to issue licenses to individuals who perform massage therapy;
 - Specifies that if a township opts to regulate massage establishments, the regulations must require all massage therapy to be performed only by specified state-licensed professionals or massage therapy students;
 - Purports to require a municipal corporation that opts to regulate massage establishments to require all massage therapy to be performed by a state-licensed professional or a student, similar to township regulation.
- Regarding a township's authority to regulate massage establishments, eliminates a permit requirement and otherwise modifies permit application procedures

TABLE OF CONTENTS

PSYPACT	2
Purpose and history	2
PSYPACT and Ohio	3
Psychology Interjurisdictional Compact Commission	3
Rulemaking	4
Oversight, dispute resolution, and enforcement	4
Home State licensure	4
Requirements to practice telepsychology and temporary face-to-face psychology	5
Educational requirements	5
Other requirements	6
Scope of practice	6
Disciplinary actions	6
Coordinated Licensure Information System	6
Implementation and withdrawal	7
Regulation of massage therapy	7
Standardization of terminology	7
Regulation of massage therapy by the Medical Board	8
Authority of townships to regulate massage therapy	8
Mandatory regulation of individuals performing massage therapy	8
Permissive regulations	9
Prohibitions	10
Permit applications	10
Jurisdiction for appeals	11
Authority of municipal corporations to regulate massage therapy	11

DETAILED ANALYSIS

PSYPACT

Purpose and history

The Psychology Interjurisdictional Compact (PSYPACT) is a multi-jurisdictional psychology contract. It was created in 2015 to regulate the practice of telepsychology and

temporary in-person, face-to-face, psychology across state boundaries, including the District of Columbia and United States Territories.¹

As of December 16, 2020, PSYPACT has been enacted by 15 states. There is pending PSYPACT legislation in 12 states, including Ohio, and in the District of Columbia. The Compact became operational when seven states officially enacted legislation.² This occurred April 23, 2019, when Georgia was the seventh state to do so.³

PSYPACT and Ohio

This bill enters Ohio into PSYPACT, permitting eligible Ohio psychology license holders to practice telepsychology and temporary in-person, face-to-face, psychology with patients in other Compact States.⁴ The Compact does not invalidate or prevent other cooperative agreements between Ohio and non-Compact States.⁵

Under PSYPACT, telepsychology is described as the provision of psychological services using telecommunication technologies.⁶ Temporary in-person, face-to-face, psychology is where a psychologist is physically present with a patient in a state other than the one in which the psychologist is licensed for up to 30 days within a calendar year.⁷

Psychology Interjurisdictional Compact Commission

All states participating in PSYPACT help establish the Psychology Interjurisdictional Compact Commission, a collective governing agency overseeing the implementation of PSYPACT. The Commission consists of one voting member from each participating state, as selected by each state's Psychology Regulatory Authority and has all the powers necessary to administer and carry out the business of the Compact.⁸

Under the bill, the State Board of Psychology is responsible for appointing Ohio's member on the Commission. The initial appointment must be made within 30 days after the

¹ Association of State and Provincial Psychology Boards, "PSYPACT," available at <https://www.asppb.net/page/PSYPACT>.

² Association of State and Provincial Psychology Boards, "PSYPACT Legislative Updates," available at <https://www.asppb.net/mpage/legislative>.

³ ASPPB, "PSYPACT Becomes Operational," available at <https://www.asppb.net/news/448039/PSYPACT-becomes-Operational.htm>.

⁴ R.C. 4732.40.

⁵ Article XIII (of PSYPACT).

⁶ Article II(AA).

⁷ Article II(CC).

⁸ Article X.

bill's effective date. The Board must fill any vacancy in this position within 30 days after the vacancy occurs.⁹

Rulemaking

The Commission has power to make rules for PSYPACT. Rules must be approved by a majority vote of Commission members, and any rule rejected by the legislatures of a majority of member states will no longer have any effect. Before adopting a rule, the Commission must post notice of the proposed rule online and allow for both public comments and a public hearing. This requirement may be waived in the case of an emergency including a threat to public health, safety, or welfare; potential loss of Commission or Compact State funds; or to meet a deadline for an administrative rule established by federal law.¹⁰ PSYPACT itself may be amended only if changes to the Compact are enacted into law in all Compact States.¹¹

Oversight, dispute resolution, and enforcement

PSYPACT operates as statutory law and each Compact State is responsible for enforcing its provisions. If the Commission determines that a state has failed to uphold PSYPACT's obligations, they may take actions to enforce compliance including remedial training, technical assistance, litigation, or other available remedies. If the state continues to violate the terms of the Compact, an affirmative vote by the majority of the Compact States may terminate that state's membership. The Commission is responsible for mediating disputes between member states.¹²

Home State licensure

Under PSYPACT, a "Home State" is the state, or states, where a psychologist is licensed. In the practice of telepsychology, this is in contrast to the "Receiving State" where a remote patient is physically located.¹³ The Compact does not apply when a psychologist is licensed in both the Home and Receiving States.¹⁴

If a psychologist is licensed in more than one state, for the purposes of telepsychology, the person's Home State is the state where the person is physically present when the services are administered.¹⁵ In the practice of temporary in-person psychology, the Home State is

⁹ R.C. 4732.41.

¹⁰ Article XI.

¹¹ Article XIII(E).

¹² Article XII.

¹³ Article II(V).

¹⁴ Article I.

¹⁵ Article III(B).

contrasted with the “Distant State” where the psychologist and the patient are in the same physical space away from the psychologist’s licensing state.¹⁶

A Home State’s license authorizes a psychologist to practice telepsychology and temporary in-person psychology in other Compact States if the Home State meets the following criteria:

- The Home State must require the psychologist to hold an E.Passport or an Interjurisdictional Practice Certificate (IPC). An E.Passport is a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) authorizing telepsychology practice.¹⁷ An IPC is a certificate issued by the ASPPB that grants Temporary Authority to Practice in a Distant State.¹⁸
- The Home State must have a mechanism in place for receiving and investigating complaints about licensed individuals.
- The Home State must notify the Commission of any adverse action or significant investigatory information regarding license holders.
- Within ten years of activating the Compact, the Home State must require an Identity History Summary of license applicants. This includes the use of fingerprints or other biometric data checks consistent with the requirements of the FBI.
- The Home State must comply with the Bylaws and Rules of the Commission.¹⁹

Requirements to practice telepsychology and temporary face-to-face psychology

Educational requirements

To practice telepsychology and temporary in-person, face-to-face, psychology in other Compact States, a psychologist must hold a graduate degree from an institute of higher learning that was appropriately accredited at the time the degree was awarded. This includes regional accreditation by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or regional accreditation by an accrediting body authorized by Provincial Statute or Royal Charter to grant doctoral degrees. Alternatively, a foreign college or university can be deemed equivalent to the former accreditation by a recognized foreign credential evaluation service such as members of the National Association of Credential Evaluation.²⁰

¹⁶ Article II(K).

¹⁷ Article II(L).

¹⁸ Article II(Q).

¹⁹ Article III.

²⁰ Article IV(B)(1).

Other requirements

To practice telepsychology or temporary in-person, face-to-face, psychology in Receiving and Distant States, a psychologist must possess a current, full, and unrestricted license to practice psychology in the psychologist's Home State. In addition to a license, the psychologist must also possess a current and active E.Passport or IPC. The psychologist must have no history of adverse action that violates the Rules of the Commission and have no criminal record. The psychologist must attest to criminal record, areas of intended practice, conformity with standards of practice, technological competence, knowledge and adherence to legal requirements in both home and receiving states, and provide a release of information to allow for primary source verification. Finally, the psychologist must meet other criteria as defined by the Rules of the Commission.²¹

Scope of practice

A psychologist practicing telepsychology with a patient in a Receiving State is subject to the Receiving State's scope of practice, although the Home State maintains authority over the psychologist's license.²² A psychologist practicing under the Temporary Authorization to Practice in-person psychology is subject to the scope of practice, authority, and law of the state where the psychologist is practicing.²³

Disciplinary actions

Regarding telepsychology, a Receiving State's Psychology Regulatory Authority may take adverse action against a psychologist's Authority to Practice Interjurisdictional Telepsychology, and the Home State must investigate reported inappropriate conduct by a licensee in a Receiving State. Regarding temporary in-person, face-to-face, psychology, a Distant State's Psychology Regulatory Authority is responsible for conducting investigations of inappropriate conduct that occurred in that state and may take adverse action against a psychologist's Temporary Authorization to Practice within that Distant State.²⁴

A Home State retains the power to impose adverse action against a psychologist's license. Each Compact State has the right to require a psychologist's participation in an alternative program in lieu of adverse action, and may keep that participation nonpublic if required by the Compact State's law.²⁵

Coordinated Licensure Information System

The Commission is responsible for developing and maintaining a Coordinated Licensure Information System to record licensure and disciplinary action information for all psychologists

²¹ Article IV(B)(3) to (8) and Article V.

²² Article IV(C) and (D).

²³ Article V(C) and (D).

²⁴ Article VII.

²⁵ Article VII.

to whom PSYPACT applies. All Compact States must submit uniform data and promptly notify all other Compact States of any adverse action taken against, or any significant investigative information on, any licensee. Compact States may designate information that may not be shared with the public.²⁶

Implementation and withdrawal

As noted above, enactment by at least seven states is required to make PSYPACT effective, which has already occurred. Any states that join after this benchmark, such as Ohio, are subject to the rules already created by the Commission. A Compact State may withdraw from the agreement by enacting a repeal statute that must take effect at least six months after enactment.²⁷ If PSYPACT is found to be contrary to the constitution of any member states, it will still be in effect for the remaining Compact States.²⁸

Regulation of massage therapy

The bill makes changes to the laws governing massage therapy as they relate to (1) professions regulated by the State Medical Board and (2) the authority of townships and municipal corporations to regulate massage establishments and their employees.

Standardization of terminology

As discussed in detail below, under current law, the Medical Board regulates “massage therapy” as a limited branch of medicine. Separately, townships have the authority to regulate “massage establishments” and “masseurs” and “masseuses” performing “massages” at those establishments. Municipal corporations may regulate massaging. The bill modifies the definition of “massage therapy” in the context of regulation by the Medical Board²⁹ and applies that definition to township³⁰ and municipal corporation³¹ regulatory authority. It also standardizes criminal law terminology regarding advertising massage services.³²

Under the bill, “massage therapy” is no longer limited to the treatment of disorders of the human body, and means the manipulation of soft tissue through the systemic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion. It also includes the external application of water, heat, cold, topical preparations, and mechanical devices, as used adjunctive to the manipulation of soft tissue and joint movements.

²⁶ Article IX.

²⁷ Article XIII.

²⁸ Article XIV.

²⁹ R.C. 4731.04(D).

³⁰ R.C. 503.40(A).

³¹ R.C. 715.61.

³² R.C. 2927.17.

The bill specifically excludes from the definition of “massage therapy” the manipulation of the reproductive organs, perineum, rectum, or anus unless performed pursuant to a prescription issued by a physician or under the supervision of a physician.³³

Regulation of massage therapy by the Medical Board

Under the bill, the Medical Board continues to regulate massage therapy as a limited branch of medicine. The bill clarifies, however, that the following are not required to hold a license to practice massage therapy:

- A person authorized to practice any of the following regulated professions, so long as the scope of practice authorizes the person to use massage techniques: barbers, cosmetologists, nurses, physician assistants, chiropractors, occupational therapists, physical therapists, athletic trainers, acupuncturists, and oriental medicine practitioners;
- An enrolled student practicing massage therapy as part of a program of study that is in good standing as determined by the Board;
- A person holding a license issued by the Board to practice cosmetic therapy and whose practice may include massage techniques;
- A person who holds certification issued by the American Reflexology Certification Board and who practices reflexology in Ohio or an enrolled student practicing reflexology as part of a program of study at a school, college, or institution registered with the Board of Career Colleges and Schools. “Reflexology” means a protocol of manual techniques that are applied to specific areas on the feet, hands, and outer ears for the purpose of stimulating the complex neural pathways linking body systems to achieve optimal bodily function.³⁴

Authority of townships to regulate massage therapy

Under current law, a township may regulate massage establishments within the unincorporated territory of the township. In order for a township to do so, it must require the establishment to obtain a permit from the township and any individual wishing to perform massage to obtain a township-issued license. The bill makes the obligation to require a permit optional³⁵ and eliminates the ability of a township to issue licenses to persons performing massage therapy.³⁶

Mandatory regulation of individuals performing massage therapy

Instead of township-issued licenses, the bill provides that if a board of township trustees has adopted a resolution to regulate massage establishments, the regulations must require that

³³ R.C. 4731.04(D).

³⁴ R.C. 4731.04(E), 4731.15(F), and 4731.41(A).

³⁵ R.C. 503.41 and 503.43.

³⁶ R.C. 503.45 and 503.46, repealed.

all massage therapy be performed by a person who provides massage therapy as a portion of, or incidental to, the services that may be provided under a license from one or more of the following licensing boards: (1) the State Cosmetology and Barber Board, regarding barber services or cosmetology services, (2) the Board of Nursing, regarding nursing services, (3) the Medical Board, regarding medical services by physician assistants or physicians, and regarding acupuncture and oriental medicine, (4) the State Chiropractic Board, regarding chiropractic services, (5) the Medical Board, regarding massage therapists, and (6) the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, regarding services of occupational therapists, physical therapists, and athletic trainers.³⁷ Additionally, the regulations must permit a massage therapy student to perform massage therapy if the student is enrolled and actively participating in a massage therapy educational program in good standing as determined by the Medical Board.³⁸ The regulations cannot exclude any of the persons identified above from performing massage therapy.³⁹

The bill prohibits any person from knowingly acting as a massage therapist in a massage establishment in an unincorporated area of a township without first obtaining a state-issued license or being a student, as described above.⁴⁰ A violator is guilty of a third degree misdemeanor.⁴¹

The bill also removes from current law a provision allowing a township to require persons performing massage to undergo periodic physical exams to determine if the person has a communicable disease.⁴²

Permissive regulations

The bill clarifies existing law, which authorizes a board of township trustees to regulate and require the registration of massage establishments and their employees. In doing so, the bill refers to establishment regulations and registration requirements. The bill defines “registration” as providing information to the board to indicate the location of the establishment, the names of individuals employed there, and evidence of current licensure or student status, as described above, for anyone providing massage therapy.⁴³ So, while a township that has adopted a resolution to regulate massage establishments must require massage therapy to be performed by licensed persons or students, as discussed above, enforcement in the form of registering the establishment and employees is technically permissive.

³⁷ R.C. 503.411(A)(1) through (6).

³⁸ R.C. 503.411(A)(7).

³⁹ R.C. 503.411(A).

⁴⁰ R.C. 503.411(B).

⁴¹ R.C. 503.50(B).

⁴² R.C. 503.47(D).

⁴³ R.C. 503.41.

Regarding massage establishment regulations, the bill specifically permits any of the following:

- A requirement to comply with zoning resolutions and amendments;
- Prohibited hours of operation;
- Prohibitions, as specified below;
- Other regulations the board considers necessary for the health, safety, and welfare of township residents, except for the licensure of massage therapists and the regulation of medicine or licensed health professionals.⁴⁴

Prohibitions

Current law lists several prohibitions that apply when a board of township trustees has adopted a resolution to regulate massage establishments. In addition to modifying the prohibitions to account for the bill's (1) standardization terminology and (2) elimination of township-issued licenses for persons performing massage therapy, the bill otherwise modifies the prohibitions as follows:

- Specifies that the prohibitions apply only when the township has included a permit requirement to operate a massage establishment;
- Eliminates the criminal offense for employees of massage establishments performing certain sexual activities during a massage in a massage establishment in the unincorporated area of a township.⁴⁵

The bill generally maintains provisions prohibiting an owner or operator of a massage establishment from knowingly (1) refusing to allow appropriate local authorities to access the establishment for health and safety inspections, operating during hours designated as prohibited, or (2) employing any person under 18.⁴⁶

Permit applications

The bill removes a current requirement that an applicant for a permit to operate a massage establishment provide the applicant's Social Security number. It requires a permit applicant to provide proof that the applicant complies with the township's zoning regulations. In addition, the bill modifies the requirement for including the name and address of any stockholder holding more than 2% of the stock of a corporate applicant by limiting the requirement to a corporate applicant having less than 50 employees or any stockholder holding more than 25% of the stock of a corporate applicant having more than 50 employees.⁴⁷

⁴⁴ R.C. 503.411(C).

⁴⁵ R.C. 503.42.

⁴⁶ R.C. 503.42(B).

⁴⁷ R.C. 503.43.

Jurisdiction for appeals

Current law and the bill give the right to appeal to any person adversely affected by an order of the board of township trustees denying or revoking a permit to operate a massage establishment. The bill narrows the jurisdiction where the appeal may be filed to only the court of common pleas in the county where the township is located. Under current law, an appeal can also be filed in the county where the permit holder's place of business is located or where the person is a resident.⁴⁸

Authority of municipal corporations to regulate massage therapy

Under current law, municipal corporations generally may regulate all persons engaged in the trade, business, or profession of massaging. The bill instead authorizes a municipal corporation to regulate and license massage establishments within its jurisdiction and permits the registration of persons performing massage therapy at a massage establishment. It further provides that if a municipal corporation regulates massage establishments, it must require all massage therapy to be performed by a person in an otherwise licensed profession or a student, as described above⁴⁹ (see "**Mandatory regulation of individuals performing massage therapy**").

The effect of this provision, however, is unclear. Municipal corporations have authority under the Home Rule Amendment to the Ohio Constitution to adopt police, sanitary, and similar regulations that are not in conflict with general laws.⁵⁰ A court could determine this authority includes regulating a massage establishment to the extent it does not conflict with the state's general laws.

HISTORY

Action	Date
Introduced	01-08-20
Reported, S. Finance Subcommittee on Health & Medicaid	05-20-20
Passed Senate (32-0)	05-20-20
Reported, H. Health	12-15-20

S0258-RH-133/ts

⁴⁸ R.C. 503.48.

⁴⁹ R.C. 715.61.

⁵⁰ Ohio Constitution, Article XVIII, Section 3.