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S.B. 5
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Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Roegner and Blessing

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SUMMARY

- Enters Ohio as a party to the Physical Therapy Licensure Compact, the purpose of which is to facilitate the interstate practice of physical therapy and improve public access to physical therapy services.
- As a member of the Compact, requires Ohio to extend the privilege to practice to a physical therapist or physical therapist assistant who is licensed in another member state, subject to Ohio's laws and rules governing the practice of physical therapy.
- Requires appointment of a member of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to the Physical Therapy Compact Commission – a joint public agency created by the Compact to enforce the provisions and rules of the Compact.
- Requires Ohio to submit data regarding physical therapy licensees to the Commission's data system, including information related to identification, examination, licensure, investigations, compact privilege, and adverse action.

DETAILED ANALYSIS

Physical Therapy Licensure Compact

The Physical Therapy Licensure Compact is an agreement between member states to improve access to physical therapy services for the public by increasing the mobility of eligible physical therapy providers to work in multiple states.¹ The bill enacts the Compact in Ohio.²

¹ PT Compact, *About Us*, <http://ptcompact.org/about-compact>.

² R.C. 4755.57; Section 1 (Citations to "Section" in this analysis are references to provisions of the Compact).

Currently, 29 other states have joined the Compact.³ The Compact preserves states' regulatory authority to protect public health and safety through state licensure.⁴

The Compact distinguishes between a member state, home state, remote state, and party state as follows:⁵

A "member state" is a state that has enacted the Compact.

A "home state" is the member state that is the licensee's primary state of residence. In the case of a licensee who is active duty military or the spouse of a licensee who is active duty military, the home state may be designated as the home of record, permanent change of station (PCS), or the state of current residence if different from the home of record or PCS state.⁶

A "remote state" is a member state, other than the home state, where a licensee is exercising or seeking to exercise the right to practice physical therapy (referred to as the compact privilege, see below).

A "party state" is any member state where a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

Compact privilege

Compact privilege is defined in the Compact as authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the state where the patient is located and at the time of the patient encounter.⁷

Each member state is required to grant the compact privilege to a licensee holding a valid, unencumbered license in another member state, as set forth in the Compact. Member states may charge a fee for granting the compact privilege.⁸

Requirements to grant privilege

All of the following must be met for a licensee to exercise the compact privilege:

1. The licensee must hold a license in the home state and have no encumbrance on any state license;
2. The licensee must not have had the licensee's compact privilege removed in any remote state, and if the licensee's compact privilege in a remote state has been removed, the

³ PT Compact, *Compact Map*, <http://ptcompact.org/ptc-states>.

⁴ Section 1.

⁵ Section 2.

⁶ Sections 5 and 2.1.

⁷ Sections 2.4 and 4.C.

⁸ Section 3.C and D.

removal must have ended, all fines must have been paid, and two years must have elapsed since the date of the adverse action;

3. The licensee must not have had any adverse action against any license or compact privilege within the previous two years;
4. The licensee must notify the Physical Therapy Compact Commission (see “Physical Therapy Compact Commission” below) that the licensee is seeking the compact privilege within a remote state;
5. The licensee must pay any applicable fees, including any state fee;
6. The licensee must meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege (a jurisprudence requirement is an assessment of knowledge regarding laws and rules governing the practice of physical therapy in a state);
7. The licensee must report to the Commission any adverse action taken by a nonmember state within 30 days of the date the action is taken.⁹

Restrictions on home state license

If a home state license is limited in any way, the licensee will lose the compact privilege in any remote state until (1) the home state license is no longer limited and (2) two years have elapsed from the date of the adverse action.

Once a restricted license in a home state is restored to good standing, the licensee must meet the requirements above to obtain the compact privilege in a remote state.¹⁰

Compact privilege related to athletic team employment under Ohio law

The bill amends existing Ohio law that provides an exemption from certain state regulations for an individual who holds a current, unrestricted license to practice physical therapy in another state and is practicing under contract or employment with an athletic team located where the individual is licensed to practice. Under current law, such an individual may practice in Ohio when the team is participating in a sporting event in Ohio, but the individual is limited (1) in the persons that may be treated, (2) from providing physical therapy at a health care facility, and (3) in the amount of days that physical therapy may be provided. The bill provides that those limitations do not apply if the person is practicing in accordance with the compact privilege.¹¹

⁹ Section 4.A, D, G, and H.

¹⁰ Section 4.E and F.

¹¹ R.C. 4755.48(G).

Expiration

The compact privilege is valid until the expiration date of the home license. The licensee must comply with all of the requirements above to maintain the compact privilege in a remote state.¹²

Adverse actions

The Compact provides that a home state has the exclusive power to impose adverse action against a license it issues. Adverse action is defined as disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination.¹³

The home state may take adverse action based on investigative information of a remote state, so long as it follows its own procedures. Any member state, however, may investigate violations of statutes and rules authorizing the practice of physical therapy, and take adverse action against a licensee's compact privilege in that member state. Joint investigations between member states are also permissible.¹⁴

In addition to imposing adverse action against a licensee's compact privilege, a remote state may (1) issue subpoenas for hearings and investigations and (2) recover from the licensee the costs related to the adverse action against the licensee (if authorized by state law).¹⁵

The Compact preserves a state's ability to permit participation in an alternative program in lieu of adverse action, but the state must require licensees who enter into alternative programs in lieu of discipline to agree not to practice in other member states during the term of the alternative program, unless prior authorization from the other member state is given.¹⁶ "Alternative program" is defined as a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. It includes substance abuse issues.¹⁷

Physical Therapy Compact Commission

The bill provides that Compact member states create and establish a joint public agency known as the Physical Therapy Compact Commission.¹⁸ As a party to the Compact, the Physical Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board must select one delegate to the Commission within 90 days of Ohio entering the

¹² Section 4.B.

¹³ Section 2.2.

¹⁴ Section 6.B, D, and F.

¹⁵ Section 6.E.

¹⁶ Section 6.C.

¹⁷ Section 2.3.

¹⁸ Section 7.

Compact.¹⁹ The delegate must be a current member of the Board who is a physical therapist, physical therapist assistant, public member, or administrator of the Board. The delegate is entitled to one vote regarding promulgating rules and creating bylaws, and is to participate in the business and affairs of the Commission. Generally, votes are to be in person, except that the bylaws may provide for participation and voting by telephone or other means.²⁰

The delegate may be removed or suspended from office in accordance with Ohio law. The Board must fill any vacancy.

Powers and duties

The Commission must enforce the provisions and rules of the Compact.²¹ It is required to meet at least once per calendar year. Generally, meetings must be open to the public. The Compact permits closed, nonpublic meetings of the Commission, the Executive Board, or other committees in limited circumstances, such as to discuss noncompliance of member states, employment matters, litigation, or trade secrets.²²

The Commission has numerous powers and duties, some of which include:

1. Establishing bylaws;
2. Maintaining financial records, establishing a budget, making expenditures, and borrowing money;
3. Promulgating rules to facilitate and coordinate implementation and administration of the Compact, including emergency rules;
4. Hiring employees and performing matters related to personnel;
5. Accepting donations and gifts and taking actions regarding real and personal property;
6. Appointing committees;
7. Performing other functions as necessary and appropriate to achieve the purposes of the Compact.

Data system

The Commission is required to develop, maintain, and utilize a coordinated database and reporting system containing licensure, adverse action, and 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 license or compact privilege, (4) nonconfidential information related to alternative program participation,

¹⁹ Section 7.B and R.C. 4755.571.

²⁰ Section 7.B.

²¹ Section 10.D.

²² Section 7.E.

(5) any denial of an application for licensure and reasons for the denial, and (6) other information specified in Commission rules.

The Commission must promptly notify all member states of any adverse action taken against a licensee or applicant for a license. Adverse action information for a licensee is to be available only to member states. Similarly, investigative information received by a physical therapy licensing board pertaining to the investigation of a licensee in a member state will only be available to other party states.

The Compact provides for the ability of a state to designate information in the data system as not to be shared with the public, and it also provides a mechanism for expunging information from the data system.²³

Financing

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 other parties to cover costs. The Commission must keep accurate records of receipts and disbursements, which must be audited 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.²⁴

Executive Board

The Compact provides that the Executive Board has the power to act on behalf of the Commission. The Executive Board, which must meet annually, is comprised of the following nine members:

1. Seven voting members elected by the Commission from its current membership;
2. One ex-officio, nonvoting member from the recognized national physical therapy professional association, selected by the association;
3. One ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards, selected by the organization.

Duties and responsibilities of the Executive Board include:

- a. Recommending changes to rules, bylaws, Compact legislation, and fees paid by member states and licensees;
- b. Ensuring Compact administration services are appropriately provided;
- c. Preparing and recommending the budget;
- d. Maintaining financial records;

²³ Section 8.

²⁴ Section 7.F.

- e. Monitoring Compact compliance of member states and providing compliance reports;
- f. Establishing additional committees;
- g. Any other duties provided in bylaws.

Rulemaking

The Commission has the power to adopt rules pursuant to the criteria and process set forth in the Compact. 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 is to have no further force or effect.²⁵

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 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 is required to defend individuals entitled to the immunity, but individuals also may retain their own counsel.

The Commission is required to 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.²⁶

Dispute resolution

The Compact requires the Commission to attempt to resolve Compact disputes that arise among member states and between member states and nonmember states. The Commission is required to promulgate a rule providing for both mediation and binding dispute resolution.²⁷

Participation in the Compact

To participate in the Compact, a state – including Ohio – must do all of the following:

1. Fully participate in the Commission’s data system;
2. Have a mechanism for receiving and investigating complaints about licensees;
3. Notify the Commission of any adverse action or availability of investigative information about a licensee;

²⁵ Section 9.

²⁶ Section 7.G.

²⁷ Section 10.C.

4. Fully implement a criminal background check requirement and use the results in making licensure decisions in accordance with the Compact;
5. Comply with rules of the Commission;
6. Use a recognized national examination as a licensure requirement;
7. Have continuing competence requirements (educational or professional activities relevant to the practice or area of work) as a condition of license renewal.²⁸

Withdrawal and termination

The Compact permits member states to withdraw by enacting a statute repealing the Compact. Such a withdrawal is effective six months after the repeal.²⁹

The Compact provides a process for notifying a member state if the state has defaulted in performing its obligations or duties under the Compact. If the defaulting state fails to cure the default, it may be terminated from the Compact upon an affirmative vote of a majority of all member states. 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 offices. The prevailing member is to be awarded costs of litigation, including attorney's fees.³⁰

HISTORY

Action	Date
Introduced	01-19-21
Reported, S. Health	02-03-21
Passed Senate (32-0)	02-03-21

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²⁸ Sections 3.A and 2.5.

²⁹ Section 11.

³⁰ Section 10.B.