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## Final Analysis

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**Primary Sponsor:** Sen. Roegner

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## SUMMARY

### Occupational Therapy Licensure Compact

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

### Contracting for continuing education assistance

- Permits the Board's Occupational Therapy Section to contract with the Ohio Occupational Therapy Association for assistance in performing duties related to continuing education.

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## DETAILED ANALYSIS

### Occupational Therapy Licensure Compact

The Occupational Therapy Licensure Compact is an agreement between member states to improve access to occupational therapy services by increasing mobility of eligible occupational therapy providers to work in multiple states.<sup>1</sup> Language to establish the Compact was finalized in November 2020, and the Compact goes into effect when it is enacted by the tenth state.<sup>2</sup>

The act ratifies and enacts the Compact in Ohio and enters the state as a party to the Compact with other member states.<sup>3</sup> The Compact specifies that it preserves states' regulatory authority to protect public health and safety through state licensure.<sup>4</sup> According to the Compact, nothing in it impacts Ohio's requirements for a license to practice as an occupational therapist or occupational therapy assistant.<sup>5</sup>

The Compact distinguishes between a member state, home state, and remote state as follows:<sup>6</sup>

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 licensee may designate a home state for the duration of the service member's time on active duty.<sup>7</sup>

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 occupational therapy (referred to as the compact privilege, see below).

#### Compact privilege

Compact privilege is authorization granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or occupational therapy

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<sup>1</sup> R.C. 4755.14; Section 1 (citations to "Section" in this analysis are references to provisions of the Compact).

<sup>2</sup> American Occupational Therapy Association, *Interstate Professional Licensing Compact*, <https://www.aota.org/Advocacy-Policy/State-Policy/Licensure/Interstate-Professional-Licensing-Compact.aspx>; Section 12.A.

<sup>3</sup> R.C. 4755.14.

<sup>4</sup> Section 1.

<sup>5</sup> Section 3.F.

<sup>6</sup> Section 2.

<sup>7</sup> Section 6.

assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the state where the patient is located and at the time of the patient encounter.<sup>8</sup>

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.<sup>9</sup>

### **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 have a valid U.S. Social Security number or a National Practitioner Identification Number;
3. The licensee must be eligible for a compact privilege in any member state;
4. The licensee must have paid all fines and completed all requirements resulting from any adverse action and at least two years have elapsed since any adverse action against any license or compact privilege;
5. The licensee must notify the Occupational Therapy Compact Commission (see **“Occupational Therapy Compact Commission”** below) that the licensee is seeking the compact privilege in a remote state;
6. The licensee must pay any applicable fees;
7. 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 the laws and rules governing the practice of occupational therapy in a state);
8. The licensee must complete a criminal background check;
9. The licensee must report to the Commission any adverse action taken by a nonmember state within 30 days after the action is taken.<sup>10</sup>

### **Impact of restriction on home state license**

If a licensee’s home state license is limited in any way, the licensee automatically loses 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.

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<sup>8</sup> Sections 1 and 2.D.

<sup>9</sup> Section 3.B and C.

<sup>10</sup> Section 4.A, D, G, and H.

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.<sup>11</sup>

### **Impact of compact privilege removal by a remote state**

If a remote state removes a licensee's compact privilege, the licensee's compact privilege in any other member state may be removed until the time for which the compact privilege was removed has ended, all fines have been paid and all conditions have been met, two years have elapsed, and the Commission reinstates the licensee's compact privilege. If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges must be restored.<sup>12</sup>

### **Practicing in a remote state**

The Compact requires any licensee practicing occupational therapy in a remote state under the compact privilege to practice in accordance with the laws and regulations of the remote state. A licensee practicing in a remote state as an occupational therapy assistant must be supervised by an occupational therapist who is either licensed or holds a compact privilege in the remote state.<sup>13</sup> In addition, the Compact provides that licensees practicing occupational therapy in a remote state are subject to the remote state's regulatory authority, meaning a remote state may, in accordance with due process, temporarily remove a licensee's compact privilege, impose fines, or take other actions that are necessary to protect the health and safety of the citizens of the state. A licensee may be ineligible for a compact privilege in any state until a remote state has reinserted the licensee's compact privilege in the remote state.<sup>14</sup>

### **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.<sup>15</sup>

### **Establishing a new home state**

The Compact provides that an occupational therapist or occupational therapy assistant cannot hold an active home state license in more than one member state at a time for Compact purposes. A licensee may, however, move between two member states and establish a new home state under the compact privilege. To establish a new home state, a licensee must file for a new home state license, pay all applicable fees, and notify both the current and new home state as required by any rules established for compacting states. Applying in this manner

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<sup>11</sup> Section 4.E and F.

<sup>12</sup> Section 4.H and I.

<sup>13</sup> Section 4.C and D.

<sup>14</sup> Section 4.E.

<sup>15</sup> Section 4.B.

removes the need for primary source verification for certain criminal background check requirements and jurisprudence requirements of the new home state.<sup>16</sup>

### **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 licensing board or other authority against an occupational therapist or occupational therapy assistant. The home state must give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state, applying its own laws to determine appropriate action.<sup>17</sup>

The home state may take adverse action based on investigative information from a remote state, so long as the home state follows its own procedures. While states that are not the home state cannot impose adverse action against the license, a member state may investigate violations of statutes and rules authorizing the practice of occupational therapy and take adverse action against a licensee's compact privilege in that member state. Joint investigations between member states are also permissible.<sup>18</sup>

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).<sup>19</sup>

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 alternative programs in lieu of discipline to agree not to practice in other member states during the term of the alternative program, unless the other member state gives prior authorization.<sup>20</sup> "Alternative program" is defined as a nondisciplinary monitoring or practice remediation process approved by an occupational therapy licensing board.<sup>21</sup>

If a member state imposes adverse action against a licensee, it must immediately notify the administrator of the Commission's data system (see "**Data system**" below).

### **Occupational Therapy Compact Commission**

In accordance with the Compact, member states create and establish a joint public agency known as the Occupational Therapy Compact Commission.<sup>22</sup> For Ohio, the act requires

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<sup>16</sup> Section 5.

<sup>17</sup> Section 2.B and C.

<sup>18</sup> Section 7.B, F, and G.

<sup>19</sup> Section 7.E.

<sup>20</sup> Section 7.H and J.

<sup>21</sup> Section 2.C.

<sup>22</sup> Section 8.

the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to select one delegate to the Commission within 90 days of Ohio's entering the Compact.<sup>23</sup> The delegate must be a Board member who is an occupational therapist, occupational therapy 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 Commission's business and affairs. Generally, votes are to be in person, but the bylaws may provide for participation and voting by telephone or other means.<sup>24</sup>

Under the Compact, Ohio's delegate to the Commission may be removed or suspended from office in accordance with Ohio law. If any vacancy occurs in Ohio's delegate position, the act requires the Board's Occupational Therapy Section to fill the vacancy within 90 days.

### **Powers and duties**

The Commission must enforce the provisions and rules of the Compact.<sup>25</sup> It must meet at least annually. 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.<sup>26</sup>

The Commission has a number of powers and duties, some of which include:<sup>27</sup>

1. Establishing bylaws and a code of ethics for the Commission;
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 provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and

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<sup>23</sup> Section 8.B and R.C. 4755.141.

<sup>24</sup> Section 8.B.

<sup>25</sup> Section 11.D.

<sup>26</sup> Section 8.E.

<sup>27</sup> Section 8.C.

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, (5) any denial of an application for licensure and reasons for the denial, (6) other information specified in Commission rules, and (7) current significant investigative information.

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

The Compact permits a state to designate information in the data system that may not be shared with the public, and it also provides a mechanism for expunging information from the data system.<sup>28</sup>

### **Financing**

The Commission is required to pay the reasonable expenses of its establishment, organization, and ongoing activities. It 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.<sup>29</sup>

### **Executive Committee**

The Compact provides that the Executive Committee has the power to act on the Commission's behalf. The Executive Committee, which must meet annually, consists of the following nine members:

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

Duties and responsibilities of the Executive Committee include:

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<sup>28</sup> Section 9.

<sup>29</sup> Section 8.F.

- Recommending changes to rules, bylaws, Compact legislation, and fees paid by member states and licensees;
- Ensuring Compact administration services are appropriately provided;
- Preparing and recommending the budget;
- Maintaining financial records;
- Monitoring Compact compliance of member states and providing compliance reports;
- Establishing additional committees;
- Any other duties provided in the bylaws.<sup>30</sup>

### **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.<sup>31</sup>

### **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.<sup>32</sup>

### **Enforcement and dispute resolution**

The Compact requires each member state's executive, legislative, and judicial branches of government to enforce it.

The Compact requires the Commission to attempt to resolve Compact disputes that arise among member states and between member states and nonmember states. The

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<sup>30</sup> Section 8.D.

<sup>31</sup> Section 10.

<sup>32</sup> Section 8.G.



Commission is required to promulgate a rule providing for both mediation and binding dispute resolution.<sup>33</sup>

### **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 the availability of investigative information about a licensee;
4. Fully implement a criminal background check requirement and use the results in making licensing decisions in accordance with the Compact;
5. Comply with the rules of the Commission;
6. Use a recognized national examination as a license requirement;
7. Have continuing competence and education requirements as a condition of license renewal.<sup>34</sup>

### **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.<sup>35</sup>

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.<sup>36</sup>

### **Contracting for assistance with continuing education duties**

The act permits the Board’s Occupational Therapy Section to contract with the Ohio Occupational Therapy Association, or its successor organization, for assistance in performing any duties prescribed in the Section’s rules regarding the amount, scope, and nature of

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<sup>33</sup> Section 11.A and C.

<sup>34</sup> Section 3.A.

<sup>35</sup> Section 12.C.

<sup>36</sup> Section 11.B.

continuing education requirements for occupational therapists and occupational therapy assistants, including waivers of the requirements.<sup>37</sup>

## HISTORY

Action	Date
Introduced	01-19-21
Reported, S. Health	02-03-21
Passed Senate (32-0)	02-03-21
Reported, H. Health	03-10-21
Passed House (95-2)	03-17-21
Senate concurred in House amendments (33-0)	03-24-21

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<sup>37</sup> R.C. 4755.062.