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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. White and Plummer

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### SUMMARY

- Enters Ohio as a party to the Audiology and Speech-Language Pathology Interstate Compact, the purpose of which is to facilitate interstate practice of audiology and speech-language pathology and improve public access to audiology and speech-language pathology services.
- As a member of the Compact, requires Ohio to allow an audiologist or speech-language pathologist licensed in another member state to practice in Ohio, subject to Ohio laws and rules governing the practice of audiology and speech-language pathology.
- Requires the State Speech and Hearing Professionals Board to select two individuals to serve as delegates to the Audiology and Speech-Language Pathology Compact Commission.
- Requires Ohio to submit data regarding audiology and speech-language pathology licensees to the Commission's data system, including information related to identification, licensure, and adverse actions.

### DETAILED ANALYSIS

#### Audiology and Speech-Language Pathology Interstate Compact

The Audiology and Speech-Language Pathology Interstate Compact is an agreement between member states to increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses. Interstate compacts are created when an offer is made by one state by adopting the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting compact language that mirrors the original. Once the required number of

states has adopted the pact, the “contract” among them is valid and becomes effective as provided.<sup>1</sup>

As of April 2021, this Compact has been enacted into law in ten states (Alabama, Kansas, Kentucky, Louisiana, Oklahoma, Nebraska, North Carolina, Utah, West Virginia, and Wyoming), reaching the threshold for activation and establishing the Audiology and Speech-Language Pathology Compact Commission.<sup>2</sup> At present, 12 states, including Ohio, have legislation pending to join the Compact. The other states are the following: Colorado, Georgia, Indiana, Iowa, Maryland, New Hampshire, New Mexico, Oregon, South Carolina, Texas, and Washington.

The Compact distinguishes between a member state, home state, and remote state as follows:<sup>3</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 must designate a home state where he or she has a current license in good standing.<sup>4</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 audiology or speech-language pathology (referred to as the compact privilege, see below).

### **State participation in the Compact**

All of the following requirements apply to a state’s participation in the Compact:

- A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state must be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice under the compact privilege in each member state.
- A state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice, including the submission of fingerprints or other biometric-based information.
- Upon application for a privilege to practice, the licensing board in the issuing remote state must ascertain, through the Commission’s data system, whether (1) the applicant has ever held or holds a license issued by another state, (2) there are any encumbrances

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<sup>1</sup> Council of State Governments, *Understanding Interstate Compacts*, available at <https://www.csg.org/knowledgecenter/docs/ncic/UnderstandingInterstateCompacts-background.pdf>.

<sup>2</sup> Section 12. See also <https://aslpcompact.com/>.

<sup>3</sup> Section 2.

<sup>4</sup> Section 6.

on any license or privilege to practice held by the applicant, or (3) any adverse action has been taken against any license or privilege to practice held by the applicant.

- Each member state must require an applicant to obtain or retain a license in the home state and meet the home state’s qualifications for licensure or renewal as well as all other applicable state laws.
- An audiologist or speech-language pathologist must (1) hold a graduate degree in their respective field, (2) have completed supervised clinical practicum experience and or postgraduate professional experience, (3) have passed a national examination approved by the Commission, (4) hold an active, unencumbered license, and (5) not have been convicted or found guilty of a felony related to the practice of audiology or speech-language pathology.
- The privilege to practice is derived from the home state license.
- An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is provided.
- Individuals not residing in a member state must continue to be able to apply for a member state’s single-state license as provided under the laws of the member state.
- Member states must comply with the bylaws and rules and regulations of the Commission.

### **Compact privilege**

Compact privilege is defined in the Compact as legal authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules.<sup>5</sup> The Compact specifies that the licensee, while practicing in a remote state, is subject to that state’s regulatory authority.<sup>6</sup> For purposes of the privilege, an audiologist or speech-language pathologist must only hold one home state license at a time.<sup>7</sup>

Under the Compact, the practice of audiology or speech-language pathology occurs in the member state where the patient, client, or student is located and at the time of the patient, client, or student encounter.<sup>8</sup>

Each member state is required to grant the compact privilege to a licensee holding an active, 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>

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<sup>5</sup> Section 2.H.

<sup>6</sup> Section 4.I.

<sup>7</sup> Section 4.B.

<sup>8</sup> Section 2.H.

## Requirements to grant privilege

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

1. The licensee must hold an active license in the home state and have no encumbrance on any state license;
2. The licensee must be eligible for a compact privilege in any member state;
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 Audiology and Speech-Language Pathology Compact Commission (see “**Audiology and Speech-Language Pathology 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 report to the Commission any adverse action taken by a nonmember state within 30 days of the date the action is taken.<sup>10</sup>

## Restrictions on home state license

If a home state license is encumbered, the licensee will lose the compact privilege in any remote state until both of the following occur: (1) the home state license is no longer limited and (2) two years have elapsed from the date of the adverse action.<sup>11</sup>

Once an encumbered license in a home state is restored to good standing, the licensee must meet the requirements above (see “**Requirements to grant privilege**”) to obtain the compact privilege in a remote state.<sup>12</sup>

## Expiration

The compact privilege is valid until the expiration date of the home license. The licensee must comply with all of the requirements described above to maintain the compact privilege in a remote state.<sup>13</sup>

## Change in primary state of residence

Except in the case of active duty military personnel or their spouses, if an audiologist or speech-language pathologist changes primary state of residence by moving between two member states, the audiologist or speech-language pathologist must apply for licensure in the

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<sup>9</sup> Sections 3.J and 4.A.

<sup>10</sup> Section 4.A.

<sup>11</sup> Section 4.J.

<sup>12</sup> Sections 4.E and F.

<sup>13</sup> Section 4.G.

new home state. The license issued by the prior home state must be deactivated in accordance with applicable rules adopted by the Commission.<sup>14</sup>

The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence. A license must not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.<sup>15</sup>

If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a nonmember state, the license issued by the prior home state must be converted to a single-state license, valid only in the former home state.<sup>16</sup> For purposes of the Compact, a single-state license is defined as 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 states.<sup>17</sup>

### **Active duty military**

The Compact includes provisions specific to active duty military personnel and their spouses. It requires the spouse or service member to designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. After designating a home state, the individual must only change their home state through application for licensure in the new home state.<sup>18</sup>

### **Telehealth**

Member states are required to recognize the right of an audiologist or speech-language pathologist, licensed in a home state, to practice in any member state via telehealth under the compact privilege and rules promulgated by the Commission.<sup>19</sup>

### **Adverse actions**

Adverse action is defined as any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or

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

<sup>15</sup> Sections 4.D and 4.E.

<sup>16</sup> Section 4.F.

<sup>17</sup> Section 2.

<sup>18</sup> Section 6.

<sup>19</sup> Section 5.

privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.<sup>20</sup>

### **Home state**

The Compact provides that only the home state has the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.<sup>21</sup> 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 in the home state. In doing so, the home state must apply its own state laws to determine appropriate action.

The home state also must complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state has the authority to take appropriate action and must promptly report the conclusions of the investigations to the administrator of the Compact's data system. The administrator of the coordinated licensure information system must promptly notify the new home state of any adverse actions.<sup>22</sup>

### **Remote state**

The Compact authorizes a remote state, in accordance with existing state due process law, to take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state.<sup>23</sup> In addition to imposing an adverse action against a licensee's compact privilege, a remote state may issue subpoenas for hearings and investigations.<sup>24</sup>

### **Member states generally**

Any member state may take adverse action against a licensee's compact privilege in that member state.<sup>25</sup> It may recover from the licensee the costs related to the adverse action against the licensee.<sup>26</sup> Joint investigations between member states are also permissible.<sup>27</sup>

The Compact preserves a member state's ability to permit participation in an alternative program in lieu of adverse action.<sup>28</sup> "Alternative program" is defined as a nondisciplinary

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<sup>20</sup> Section 2.B.

<sup>21</sup> Section 7.A.3.

<sup>22</sup> Section 7.C.

<sup>23</sup> Section 7.A.

<sup>24</sup> Section 7.A.2.

<sup>25</sup> Section 7.E.

<sup>26</sup> Section 7.D.

<sup>27</sup> Section 7.F.

<sup>28</sup> Section 7.I.

monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.<sup>29</sup>

## **Audiology and Speech-Language Pathology Compact Commission**

The bill provides for Compact member states to create and establish a joint public agency known as the Audiology and Speech-Language Pathology Compact Commission.<sup>30</sup> As a party to the Compact, the State Speech and Hearing Professionals Board must select two delegates to the Commission within 30 days of Ohio entering the Compact.<sup>31</sup> The delegates must be current members of the Board, one an audiologist and the other a speech-language pathologist. Each of the two delegates is entitled to one vote regarding promulgating rules and creating bylaws, and must have an opportunity 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 of communication.<sup>32</sup>

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

### **Powers and duties**

The Commission must enforce the provisions and rules of the Compact.<sup>33</sup> 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 Committee, or other committees in limited circumstances, such as to discuss noncompliance of member states, employment matters, litigation, contract negotiations, or trade secrets.<sup>34</sup>

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;
4. Hiring employees and performing matters related to personnel;
5. Accepting donations and grants and taking actions regarding real and personal property;
6. Appointing committees;

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<sup>29</sup> Section 2.C.

<sup>30</sup> Section 8.

<sup>31</sup> Section 8.B and R.C. 4753.171.

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

<sup>33</sup> Section 11.B.

<sup>34</sup> Section 8.E.

7. Performing other functions as necessary and appropriate to achieve the purposes of the Compact.<sup>35</sup>

### **Data system**

The Commission is required to develop, maintain, and utilize a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states. Each member state must submit a uniform data set to the data system on all 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, 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 to any other member state. Similarly, investigative information pertaining to a licensee in a member state must only be available to other member 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.<sup>36</sup>

### **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 and collect annual assessments on member states and impose 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>37</sup>

### **Executive Committee**

The Compact provides that the Executive Committee has the power to act on behalf of the Commission.<sup>38</sup> The Executive Committee, which must meet at least annually, is comprised of the following ten members:

1. Seven voting members elected by the Commission from its current membership;

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<sup>35</sup> Section 8.C.

<sup>36</sup> Section 9.

<sup>37</sup> Section 8.E.

<sup>38</sup> Section 8.D.



2. Two ex-officio, nonvoting members, one from a recognized national audiology professional association and one from the recognized national speech-language pathology association, each selected by their respective associations;
3. One ex-officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards, selected by the organization.

The 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;
- 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.<sup>39</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>40</sup>

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<sup>39</sup> Section 10.B.

<sup>40</sup> Section 8.F.

## **Dispute resolution**

The Compact requires the Commission, upon the request of a member state, 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.<sup>41</sup>

## **Withdrawal and default**

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>42</sup>

The Compact also authorizes the Commission, by majority vote, to initiate legal action in the U.S. District Court for the District of Columbia or the federal district court where the Commission has its principal offices against a member state in default in order to enforce compliance with the Compact's provisions and its rules and bylaws. The relief sought may include both injunctive relief and damages.<sup>43</sup>

## **Binding effect of Compact and other laws**

The Compact contains provisions regarding the binding effect of the Compact and its impact on other laws.<sup>44</sup> These include all of the following:

- It does not prevent the enforcement of any other law of a member state that is not inconsistent with the Compact.
- All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.
- All lawful actions of the Commission, including all rules and bylaws adopted by the Commission, are binding upon the member states.
- All agreements between the Commission and the member states are binding in accordance with their terms.
- In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

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<sup>41</sup> Section 11.A.

<sup>42</sup> Section 12.C.

<sup>43</sup> Section 11.B.

<sup>44</sup> Section 14.

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## HISTORY

Action	Date
Introduced	04-12-21

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