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Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Roegner

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SUMMARY

- Enters Ohio into the Respiratory Care Interstate Compact to facilitate the interstate practice of respiratory therapy with the goal of improving public access to respiratory therapy services by allowing licensed respiratory therapists to practice in other member states.
- Establishes requirements for respiratory therapist licensees, including active military members and their spouses, in Compact member states to practice in other member states.
- Authorizes adverse actions (administrative, civil, equitable, or criminal action) against, and joint investigations of, licensees by member and remote states.
- Provides for the establishment and administration of the Respiratory Care Interstate Compact Commission, a joint government agency whose membership consists of all Compact member states.
- Specifies procedures for Compact oversight, dispute resolution, enforcement, effective date, member state withdrawal, and amendment.
- Provides for Compact construction and severability, relationship with state legislatures, and definitions.
- Requires an individual who holds a Respiratory Care Interstate Compact Privilege in Ohio to complete a criminal records check, unless the individual's home state has already completed an equivalent one, and authorizes the State Medical Board to take action on the Compact Privilege based on the results.

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DETAILED ANALYSIS

Respiratory Care Interstate Compact

Purpose

Under the bill, Ohio becomes a member state of the Respiratory Care Interstate Compact. At the time of the bill's passage in the Senate, the following states are Compact members: Alabama, Iowa, Kansas, Kentucky, Montana, Nebraska, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.[1] The Compact's purpose is to facilitate the interstate practice of respiratory therapy with the goal of improving public access to those services by allowing respiratory therapists licensed in a member state to practice in other member states. The Compact preserves states' regulatory authority to protect public health and safety through their current systems of state licensure.

The Compact is designed to achieve the following objectives:

- Increase public access to respiratory therapy services by creating a responsible, streamlined pathway for licensees to practice in member states with the goal of improving outcomes for patients;
- Enhance states' ability to protect the public's health and safety;
- Promote the cooperation of member states in regulating the practice of respiratory therapy within those states;
- Ease states' administrative burdens by encouraging the cooperation of member states in regulating multi-state respiratory therapy practice;
- Support relocating active military members and members' spouses;
- Promote mobility and address workforce shortages.[2]

Member state participation

To participate in the Compact, a member state must:

1. Enact a Compact that is not materially different from the model Compact;
2. License respiratory therapists;

[1] American Association for Respiratory Care, Respiratory Care Interstate Compact.

[2] R.C. 4761.20, Section 1.

3. Participate in the Commission's data system;
4. Have a mechanism in place for receiving and investigating complaints against licensees and Compact privilege holders;
5. Notify the Commission of any adverse action against a licensee, a Compact privilege holder, or a license applicant;
6. Notify the Commission of the existence of significant investigative information;
7. Comply with the Commission's rules;
8. Grant the Compact privilege to an active home state licensee and meet the applicable licensee requirements (see below, "**Compact privilege**") in a member state;
9. Complete a criminal background check for each new licensee at the time of initial licensure.

Where expressly authorized or permitted by federal law, regardless of when the federal law takes effect, a member state's Compact enactment authorizes the member state's respiratory therapy licensing authority to perform criminal background checks. The absence of such a federal law does not prevent or preclude such authorization where it may be derived or granted through means other than the Compact's enactment.

The bill states that nothing in the Compact prohibits a member state from charging a fee for granting and renewing the Compact privilege.[3]

Compact privilege

Licensee requirements

To exercise the Compact privilege under the Compact, the licensee must:

1. Hold and maintain an active home state license as a respiratory therapist;
2. Hold and maintain an active credential from the National Board for Respiratory Care (or its successor) that would qualify the respiratory therapist for licensure in the remote state where the licensee is seeking the privilege;
3. Not have had any adverse action against a license within the previous two years;
4. Notify the Commission that the licensee is seeking the Compact privilege in the remote state;
5. Pay any applicable fees, including any state and Commission fees and renewal fees, for the Compact privilege;
6. Meet any jurisprudence requirements established by the remote state;
7. Report to the Commission adverse action taken by any nonmember state within 30 days from the date it is taken;

[3] R.C. 4761.20, Section 3.

8. Report to the Commission the licensee's address on application and any address change within 30 days;
9. Consent to accept by mail, at the licensee's address on record, the (1) service of process for any action brought against the licensee by the Commission or a member state, and (2) service of a subpoena for any action brought or investigation conducted by the Commission or a member state.[4]

Privilege maintenance

The Compact privilege is valid until the licensee's home state license expires or is revoked, unless it is terminated by adverse action (see below, "**Adverse action**"). The licensee must comply with all the licensee requirements (see above, "**Licensee requirements**") to maintain the Compact privilege in a remote state. The licensee maintains Compact privilege if those requirements are met, no adverse actions are taken, and the licensee has paid any applicable Compact privilege renewal fees.[5]

Removal of privilege

If a remote state removes a licensee's Compact privilege, the licensee loses or becomes ineligible for Compact privilege in that state until the state no longer limits or restricts the privilege.

If a licensee's home state license is restricted, the licensee loses the Compact privilege in all remote states until the following occur:

1. The home state license is no longer restricted;
2. Two years have elapsed after the license restriction has ended; and
3. Licensee requirements are met (see above).[6]

Scope of practice

A licensee working in a remote state under the Compact is required to function within the scope of practice authorized by that state for the type of license held. Scope of practice procedures, actions, processes, and the circumstances may be established through means, including statute, regulations, case law, and other processes available to the state respiratory therapy licensing authority or other government agency.[7]

Active military members and members' spouses

An active military member, or the member's spouse, must 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.

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[4] R.C. 4761.20, Section 4.A.

[5] R.C. 4761.20, Section 4.B.

[6] R.C. 4761.20, Section 4.D to F.

[7] R.C. 4761.20, Section 4.C.

An active military member and spouse cannot be required to pay the Commission any Compact privilege fee. If a remote state chooses to charge a Compact privilege fee, it may choose to charge a reduced fee or no fee to an active military member and member's spouse.[8]

Adverse actions

By member state

The member state where a licensee is licensed has authority to impose adverse action against the license issued by that state. The state is permitted to take adverse action based on significant investigative information of a remote or home state, so long as the member state follows its own procedures for imposing adverse action.[9]

The bill defines "adverse action" as any administrative, civil, equitable, or criminal action permitted by a state's laws and is imposed by any state regulatory authority over respiratory therapists.[10]

By remote state

A remote state has the authority to (1) take adverse actions against a licensee's Compact privilege in that state, (2) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence, and (3) unless otherwise prohibited by state law, recover the costs of investigations and disposition of cases resulting from any adverse action from the licensee.[11]

Subpoenas

Subpoenas may be issued by a member state's respiratory therapy licensing authority for the attendance and testimony of witnesses and the production of evidence from another member state. The subpoenas issued by a member state's licensing authority must be enforced in the latter state, according to the practice and procedure of that court applicable to subpoenas issued in the proceedings pending before it.[12]

The issuing authority is required to pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located.

A member state cannot issue a subpoena to gather evidence of conduct in another member state that is lawful in that state for the purpose of taking adverse action against a licensee or application for a Compact privilege in the member state. Nothing in the Compact authorizes a member state to impose discipline against a respiratory therapist's Compact

[8] R.C. 4761.20, Section 5.

[9] R.C. 4761.20, Section 6.A and B.

[10] R.C. 4761.20, Section 2.B.

[11] R.C. 4761.20, Section 6.D.1 to 3.

[12] R.C. 4761.20, Section 6.D.b may require an amendment to clarify which state is being referred to as the "latter state."

privilege in that member state based on the individual's otherwise lawful practice in another state.[13]

Joint investigations

In addition to the authority granted to a member state by its own respiratory therapy practice laws, a member state may participate with other member states in joint investigations of licensees. However, a state that receives a joint investigation request has no obligation to respond to any subpoena issued regarding an investigation of conduct or practice that was lawful in that state at the time it was undertaken.

Member states are required to share any significant investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact. All such information must be kept confidential, except as otherwise mutually agreed upon by the sharing and receiving states.[14]

The bill defines "significant investigative information" as information, records, and documents received or generated by a state respiratory therapy licensing authority for an investigation for which a determination has been made that there is probable cause to believe that the licensee has violated a statute or regulation that is considered more than a minor infraction for which the licensing authority could pursue adverse action against the licensee.[15]

Compact authority for adverse actions

Nothing in the Compact permits a member state to do the following:

- Override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation must remain nonpublic if required by the member state's laws.
- Impose discipline against a licensee's Compact privilege in that member state for the individual's otherwise lawful practice in another state.
- Take any adverse action or disciplinary action against a licensee or Compact privilege holder for conduct or practice that was legal in the member state at the time it was undertaken.[16]

Respiratory Care Interstate Compact Commission

Establishment

Under the bill, the Compact member states must create and establish the Respiratory Care Interstate Compact Commission, a joint government agency whose membership consists of all member states that have enacted the Compact. The Commission is an instrumentality of the

[13] R.C. 4761.20, Section D.4 and 5.

[14] R.C. 4761.20, Section E.

[15] R.C. 4761.20, Section 2.Z.

[16] R.C. 4761.20, Section 6.C., 6.D.5, 6.F, and 6.G.

Compact member states acting jointly and not an instrumentality of any one state. The Commission comes into existence on or after the Compact's effective date (see below, "**Effective date**").[17]

Membership and voting

Each member state must have, and is limited to, one commissioner selected by that state's respiratory therapy licensing authority. The State Medical Board must select an individual to serve as commissioner no later than 60 days after Ohio enters the Compact. The commissioner must be an administrator of the licensing authority or an administrator's designated staff member. Each commissioner is entitled to one vote on all matters before the Commission that require a vote by commissioners.

A commissioner must vote in person or by other means as provided in the bylaws. The bylaws may allow commissioners to meet by telecommunication, video conference, or other means of communication.

The Commission is required to establish, by rule or bylaw, a term of office and term limits for commissioners. It may recommend to a member state the removal or suspension of any commissioner from office. The State Medical Board must fill the Ohio commissioner vacancy within 60 days of the vacancy.[18]

Commission authority

The Commission has the following powers:

1. Establish and amend the fiscal year of the Commission;
2. Establish and amend bylaws and policies, including a code of conduct and conflict of interest;
3. Establish and amend rules, which are binding in all member states;
4. Maintain its financial records in accordance with the bylaws;
5. Meet and take such actions as are consistent with the Compact's provisions, the Commission's rules, and the bylaws;
6. Initiate and conduct legal proceedings or actions in the name of the Commission, provided that the standing of any respiratory therapist licensing authority to sue or be sued under applicable law is not affected;
7. Maintain and certify records and information provided to a member state as the authenticated business records of the Commission, and designate an agent to do so on the Commission's behalf;
8. Purchase and maintain insurance and bonds;

[17] R.C. 4761.20, Section 7.A.

[18] R.C. 4761.20, Section 7.B.1 to 7 and 4761.21.

9. Accept or contract for services of personnel, including member state employees;
10. Conduct an annual financial review;
11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the Compact's purposes, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
12. Assess and collect fees;
13. Accept appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that the Commission avoids any appearance of impropriety and conflict of interest;
14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;
15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
16. Establish a budget and make expenditures;
17. Borrow money in a fiscally responsible manner;
18. Appoint committees, including standing committees, composed of commissioners' state regulators, state legislators or their representatives, and consumer representatives, and other interested persons as may be designated in the Compact and the bylaws;
19. Provide and receive information from, and cooperate with, law enforcement agencies;
20. Establish and elect an executive committee, including a chair, vice-chair, secretary, treasurer, and other offices the Commission establishes by rule or bylaw;
21. Enter contracts or arrangements for the management of the affairs of the Commission;
22. Determine whether a state's adopted Compact language is materially different from the model Compact language and if the state qualifies for participation;
23. Perform other functions as necessary or appropriate to achieve the Compact's purposes.[19]

Meetings

The Commission is required to meet at least once during each calendar year. Additional meetings may be held as provided in the bylaws. All meetings that are not closed must be open to the public. The Commission must post notice of public meetings on its website at least 30 days before the public meeting.

[19] R.C. 4761.20, Section 7.C.

An emergency public meeting may be convened by providing at least 24 hours prior notice on the Commission's website, and any other means as provided in its rules, for any of the reasons provided with notice of proposed rulemaking (see below, "**Rulemaking**"). The Commission's legal counsel is required to certify that one of the reasons justifying an emergency public meeting has been met.

All meeting notices must provide the time, date, and location of the meeting, and, if it is to be held or accessible via telecommunication, video conference, or other electronic means, the mechanism for accessing it.

The Commission or the executive committee (see below, "**Executive committee**") may convene in a closed, nonpublic meeting to receive or solicit legal advice or to discuss:

- Noncompliance of a member state with its obligations under the Compact;
- The employment, compensation, discipline or other matters, practices or procedures related to specific employees;
- Current or threatened discipline of a licensee or Compact privilege holder by the Commission or by a member state's respiratory therapy licensing authority;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- Accusing any person of a crime or formally censuring any person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Investigative records compiled for law enforcement purposes;
- Information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues;
- Legal advice;
- Matters specifically exempted from disclosure by federal or member state law;
- Other matters in accordance with Commission rules.

If a meeting, or portion of a meeting, is closed, the presiding officer must state that the meeting will be closed and reference each relevant exempting provision. Each reference must be recorded in the minutes. The Commission must keep minutes in accordance with its rules and bylaws. All documents considered in connection with an action must be identified in the minutes.

All minutes and documents of a closed meeting are to remain under seal, subject to release only by a majority vote of the Commission or court order.[20]

Executive committee

The executive committee has the power to act on behalf of the Commission according to the Compact's terms. The powers, duties, and responsibilities of the executive committee includes:

- Overseeing the day-to-day activities of the Compact's administration, including enforcement and compliance with its provisions, rules, and bylaws, and other necessary duties;
- Recommending to the Commission changes to the rules or bylaws, changes to the Compact legislation, fees charged to member states and licensees, and other fees;
- Ensuring Compact administration services are appropriately provided, including by contract;
- Preparing and recommending the budget;
- Maintaining financial records on behalf of the Commission;
- Monitoring Compact compliance of member states and providing compliance reports to the Commission;
- Establishing additional committees as necessary;
- Exercising the Commission's powers and duties during the interim between Commission meetings, except for adopting or amending rules and bylaws and exercising any other powers and duties expressly reserved to the Commission by rule or bylaw;
- Performing other duties as provided in the rules or bylaws.

The executive committee is to be composed of up to nine members, including seven voting members elected by the Commission from its current membership and two ex-officio, nonvoting members.

The Commission may remove any executive committee member as provided in the Commission's bylaws.

The executive committee is required to meet at least annually. Meetings must be open to the public, except that it may meet in a closed, nonpublic meeting to receive or solicit legal advice or to discuss specified issues (see above, "**Meetings**"). The executive committee must give advance notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the Commission's business. Additionally, it may convene an emergency public meeting by providing at least 24 hours prior notice on the Commission's website under certain circumstances (see above, "**Meetings**"). If it does so, the Commission's

[20] R.C. 4761.20, Section 7.B.8 and 7.F.

legal counsel must certify that one of the reasons justifying an emergency public meeting has been met.[21]

Annual report

The Commission must adopt and provide an annual report to the member states.[22]

Financing

The Commission is required to pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities. It is permitted to accept appropriate revenue sources. It may levy on and collect an annual assessment from each member state and impose fees on licensees to whom it grants a Compact privilege to cover the cost of the operations and activities of the Commission and its staff. The aggregate annual assessment amount for member states, if any, must be allocated based on a formula that the Commission promulgates by rule.

The Commission is prohibited from incurring obligations of any kind prior to securing the funds or a loan adequate to meet the obligation. Further, it cannot pledge the credit of any of the member states, except by and with the member state's authority.

It is required to keep accurate accounts of all receipts and disbursements. Receipts and disbursements are subject to the financial review and accounting procedures established under its bylaws. However, all receipts and disbursements are subject to an annual financial review by a certified or licensed public accountant. The financial review report must be included in and become part of the Commission's annual report.[23]

Qualified immunity, defense, and indemnification

Regarding any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or as determined by the Commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, the following apply:

- The member states and the Commission's commissioners, officers, executive directors, employees, and agents are immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability. The procurement of insurance of any type by the Commission cannot in any way compromise or limit the immunity granted;
- The Commission must defend any commissioner, officer, executive director, employee, and agent in any civil action seeking to impose liability. The bill provides that nothing is to be construed to prohibit that person from retaining their own counsel at their own expense;

[21] R.C. 4761.20, Section 7.D.

[22] R.C. 4761.20, Section 7.E.

[23] R.C. 4761.20, Section 7.G.

- The Commission is required to indemnify and hold harmless any commissioner, member, officer, executive director, employee, and agent for any settlement or judgment obtained against that person;

The bill provides that nothing in the Compact is to be construed to do any of the following:

- Limit a licensee's liability for professional malpractice or misconduct, which is governed solely by applicable state laws;
- Protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of a person;
- Waive or otherwise abrogate a member state's state action immunity or state action affirmative defense with respect to federal antitrust claims;
- Waive sovereign immunity by the member states or by the Commission.[24]

Data system

The Commission is required to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and the presence of significant investigative information.

A member state must submit a uniform data set to the data system as required by the Commission rules, including:

- Identifying information;
- Licensure data;
- Adverse actions against a licensee, license applicant, or Compact privilege holder and related information;
- Nonconfidential information related to alternative program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under member state law;
- Any denial of application for licensure, and the reason for the denial;
- The presence of current significant investigative information;
- Other information that may facilitate the Compact's administration or public protection, as determined by Commission rules.

A member state is prohibited from submitting any information that constitutes criminal history record information to the data system. The records and information provided to a member state pursuant to the Compact or the data system, when certified by the Commission or its agent, constitute the authenticated business records of the Commission, and are entitled to

[24] R.C. 4761.20, Section 7.H.

any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a member state.

Significant investigative information pertaining to a licensee in any member state can only be made available to other member states.

It is the member states' responsibility to report and monitor any adverse action against a licensee. Adverse action information pertaining to a licensee in any member state is available to any other member state.

Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state. Any information submitted to the data system that is subsequently expunged under federal law or the contributing member state law must be removed from the data system.[25]

Rulemaking

Promulgation and validity

The Commission must promulgate reasonable rules to effectively and efficiently implement and administer the Compact's purposes and provisions. A rule is invalid and without force or effect only if a court of competent jurisdiction holds that it is invalid because the Commission exercised its rulemaking authority in a manner that is (1) beyond the Compact's scope and purposes or the powers granted by the Compact or (2) based on another applicable standard of review.

Commission rules have the force of law in each member state. The Commission must exercise its rulemaking powers under the bill's criteria and rules adopted under the bill. Rules are binding as of the date specified in each rule.

If the majority of the member states' legislatures reject a rule or portion of a rule within four years of the rule's adoption, then the rule has no further force and effect in any member state. The legislature must reject a rule or portion of a rule by enactment of a statute or resolution, in the same manner used to adopt the Compact originally.[26]

Hearings for proposed rules

Rules are to be adopted at a regular or special meeting of the Commission. Prior to adoption of a proposed rule, the Commission must hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments. At least 30 days before the meeting, the Commission is required to provide a notice of proposed rulemaking:

- On the Commission's website or other publicly accessible platform;
- To persons who have requested notice of the Commission's notices of proposed rulemaking;

[25] R.C. 4761.20, Section 8.

[26] R.C. 4761.20, Section 9.A to D.

- In any other way as the Commission specifies by rule.

The notice of proposed rulemaking must include:

- The public hearing's time, date, and location at which the Commission will hear public comments on the proposed rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed rule;
- If the hearing is held via telecommunication, video conference, or other electronic means, the mechanism for access to the hearing;
- The text of the proposed rule and the reason for it;
- A request for comments on the proposed rule from any interested person;
- The way interested persons may submit written comments.

All hearings must be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed rule are to be available to the public.

The bill provides that nothing in the Compact is to be construed as requiring a separate hearing on each rule. Rules may be grouped for the Commission's convenience at hearings.[27]

Actions on proposed rules

The Commission must, by majority vote of all commissioners, take final action on the proposed rule based on the rulemaking record and the rule's full text. It may adopt changes to the proposed rule provided that the changes are consistent with the rule's original purpose. It must provide an explanation of the reasons for substantive changes made to the proposed rule as well as reasons for substantive changes not made that were recommended by commenters.

The Commission is required to determine a reasonable effective date for the rule. Except for an emergency (see below, "**Emergency rule adoption**"), the rule's effective date can be no sooner than 30 days after issuing the notice that it adopted or amended the rule.[28]

Emergency rule adoption

The Commission, on determination that an emergency exists, may consider and adopt an emergency rule with 24 hours' notice and an opportunity to comment. The usual rulemaking procedures are to be retroactively applied to the rule as soon as reasonably possible and no later than 90 days after the rule's effective date. An emergency rule is one that must be adopted immediately to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or member state funds;

[27] R.C. 4761.20, Section 9.E to J.

[28] R.C. 4761.20, Section 9.K.

3. Meet a deadline for the rule's promulgation that is established by federal law or rule; or
4. Protect public health and safety.[29]

Rule revision

The Commission, or an authorized committee of the Commission, may direct revisions to a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revision is to be posted on the Commission's website. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that it results in a material change to the rule. A challenge must be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, it cannot take effect without the Commission's approval.[30]

Limitations

Under the bill, no member state's rulemaking process or procedural requirements applies to the Commission, and the Commission has no authority over any member state's rulemaking process or procedural requirements that do not pertain to the Compact.

Further, nothing in the Compact, nor any Commission rule or regulation, is to be construed to limit, restrict, or in any way reduce the ability of a member state to enact and enforce laws, regulations, or other rules related to the practice of respiratory therapy in that state, where those laws, regulations, or other rules are not inconsistent with the Compact's provisions.[31]

Oversight, dispute resolution, and enforcement

Oversight

Each member state's executive and judicial branches must enforce the Compact and take all actions necessary and appropriate to implement it. Venue is proper and judicial proceedings by or against the Commission are to be brought solely and exclusively in a court where the Commission's principal office is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing in the Compact affects or limits the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any such similar matter.

The Commission is entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact and has standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process renders a judgment or order void as to the Commission, the Compact, or rules.[32]

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[29] R.C. 4761.20, Section 9.L.

[30] R.C. 4761.20, Section 9.M.

[31] R.C. 4761.20, Section 9.N and 9.O.

[32] R.C. 4761.20, Section 10.A.

Default, technical assistance, and termination

If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact or rules, it must provide written notice to the state. The defaulting notice must describe the default, the proposed means of curing the default, and any other action that the Commission may take, and offer training and specific technical assistance regarding the default. The Commission must provide a copy of the defaulting notice to the other member states.

If a defaulting state fails to cure the default, it may be terminated from the Compact on the majority vote of the commissioners. All rights, privileges, and benefits conferred on that state may be terminated. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

Termination of Compact membership can be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the Commission to the defaulting state's governor, the majority and minority leaders of the defaulting state's legislature, the defaulting state's respiratory therapy licensing authority, and each of the member states' respiratory therapy licensing authorities.

A state whose membership has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the termination's effective date, if necessary. The terminated state is required to immediately provide notice to all licensees and Compact privilege holders (of which the Commission has a record) within the state. It must continue to recognize all licenses granted by the Compact for at least 180 days after the notice of termination.

The Commission does not bear any costs related to a defaulting or terminated state, unless agreed upon in writing between the Commission and the state. The defaulting state may appeal the Commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.[33]

Dispute resolution

On a member state's request, the Commission is required attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states. It must promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.[34]

Enforcement

By majority vote, as may be further provided by rule, the Commission may initiate legal action against the defaulting state to enforce compliance with the Compact's provisions and rules. A member state may also initiate legal action against the Commission.

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[33] R.C. 4761.20, Section 10.B to H.

[34] R.C. 4761.20, Section 10.I.

Legal action by the Commission or a member state is to be taken in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. By enactment of the Compact, a member state consents to the Compact's venue and jurisdiction requirements. Any relief sought by either party may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney's fees. These remedies are not the exclusive remedies of the Commission. It may pursue any other remedies available under federal or the defaulting state's law. No person other than a member state can enforce the Compact against the Commission.[35]

Effective date, withdrawal, and amendment

Effective date

The Compact goes into effect on the date it is enacted into law by the seventh member state. Since the bill's introduction on March 18, 2025, one state, Washington, enacted the Compact into law. On or after the Compact's effective date, the Commission is required to convene and review the enactment of each of the first seven member states (known as the charter member states) to determine if the Compact legislation enacted by each charter member state is materially different than the model Compact.

A charter member state whose enactment is found to be materially different from the model Compact is entitled to its default process (see above, "**Default, technical assistance, and termination**"). If any member state is later found to be in default, or is terminated or withdraws from the Compact, the Commission remains in existence and the Compact remains in effect even if the number of member states is less than seven.

Any member states enacting the Compact after the charter member states are subject to the same Compact process and Commission rules to determine if their enactments are materially different from the model Compact and whether they qualify for participation in the Compact.

All actions taken for the benefit of the Commission or for purposes of the Compact's administration before the Compact's or the Commission's effective dates must be considered the Commission's actions, unless specifically repudiated by the Commission. The Commission owns and has all rights to any intellectual property developed on behalf or in furtherance of the Commission by individuals or entities involved in organizing or establishing it, as may be further set forth in Commission rules.

Any state that joins the Compact after the Commission's initial adoption of rules and bylaws is subject to the rules and bylaws as they exist on the Compact's effective date for that state. Any rule that has been previously adopted has the full force and effect of law on the date the Compact becomes law in that state.[36]

[35] R.C. 4761.20, Section 10.J.

[36] R.C. 4761.20, Section 11.A.

Withdrawal

Any member state may withdraw from the Compact by enacting a statute repealing it. The member state's withdrawal will take effect 180 days after enactment of the repealing statute. Withdrawal does not affect the continuing requirement of the withdrawing state's respiratory therapy licensing authority to comply with the Compact's investigative and adverse action reporting requirements before the effective date of withdrawal.

The withdrawing state must immediately provide notice of its withdrawal to all licensees and Compact privilege holders (of which the Commission has a record) within the state. The withdrawing state is required to continue to recognize all licenses granted under the Compact for at least 180 days after the date the withdrawal notice. The bill provides that nothing in the Compact can be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the Compact's provisions.[37]

Amendment

The Compact may be amended by the member states. No amendment to the Compact is effective and binding on any member state until it is enacted into the laws of all member states.[38]

Construction and severability

The Compact and the Commission's rulemaking authority are to be liberally construed to effectuate its purposes, implementation, and administration. Compact provisions that expressly authorize or require the promulgation of rules cannot be construed to limit the Commission's rulemaking authority solely for those purposes.

The Compact's provisions are severable. If any phrase, clause, sentence, or provision is held by a court to be contrary to the constitution of any member state, state seeking participation in the Compact, or the United States, or if its applicability to any government, agency, person, or circumstance is held to be unconstitutional by a court, the validity of the remainder of the Compact and any other government, agency, person, or circumstance are not affected.

The Commission may deny or terminate a state's participation in the Compact if it determines that the member state's constitutional requirement is a material departure from the Compact. Otherwise, if the Compact is held to be contrary to the member state's constitution, it remains in full force and effect for the remaining member states and for the affected member state for all severable matters.[39]

Consistent effect and conflict with other state laws

The bill states that nothing in the Compact prevents or inhibits the enforcement of any other member state law that is consistent with the Compact. Any member state's laws, statutes,

[37] R.C. 4761.20, Section 11.B and C.

[38] R.C. 4761.20, Section 11.D.

[39] R.C. 4761.20, Section 12.

regulations, or other legal requirements in conflict with the Compact are superseded to the extent of the conflict, including any subsequently enacted state laws. All permissible agreements between the Commission and the member states are binding in accordance with their terms. Nothing in the Compact impacts initial licensure, except as otherwise expressly set forth in the bill.[40]

Definitions

Under the bill, the following definitions apply for purposes of the Compact, unless context requires otherwise:

- "Active military member" is any person with a full-time duty status in the U.S. Armed Forces, including members of the National Guard and Reserve.
- "Adverse action" is any administrative, civil, equitable, or criminal action permitted by a state's laws and imposed by any state regulatory authority over respiratory therapists. Such authority includes license denial, censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice, but does not include participation in an alternative program.
- "Alternative program" is a nondisciplinary monitoring or practice remediation process by the appropriate regulatory authority for a respiratory therapist. This includes programs to which licensees with substance abuse or addiction issues are referred in lieu of adverse action.
- "Charter member states" are those member states that were the first seven states to enact the Compact into law.
- "Commission" or "Respiratory Care Interstate Compact Commission" is the government instrumentality and body politic whose membership consists of all member states that have enacted the Compact.
- "Commissioner" is the individual appointed by a member state to serve as the state's Commission member.
- "Compact" is the Respiratory Care Interstate Compact.
- "Compact privilege" means the authorization granted by a remote state to allow a member state licensee to practice as a respiratory therapist in the remote state under the remote state's laws and rules. The practice of respiratory therapy occurs in the member state where the patient is located at the time of the patient encounter.
- "Criminal background check" is the member state's submission of fingerprints or other biometric-based information on license applicants at the time of initial licensing for the purpose of obtaining that applicant's criminal history record information from the Federal Bureau of Investigation and the state's criminal history record repository.

[40] R.C. 4761.20, Section 13.

- "Data system" means the Commission's repository of information about licensees as described in the Compact (see above, "**Data system**").
- "Domicile" is the jurisdiction which is the licensee's principal home for legal purposes.
- "Encumbered license" is a license that a state's respiratory therapy licensing authority has limited in any way.
- "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them, by the Commission.
- "Home state" is the member state that is the licensee's primary domicile, except as provided for active military members or members' spouses (see above, "**Active military members and members' spouses**").
- "Home state license" is an active license to practice respiratory therapy in a home state that is not an encumbered license.
- "Jurisprudence requirement" is an assessment of an individual's knowledge of state laws and regulations governing the practice of respiratory therapy in that state.
- "Licensee" is an individual who currently holds an authorization from the state to practice as a respiratory therapist.
- "Member state" is a state that has enacted the Compact and been admitted to the Commission in accordance with the Compact's provisions and Commission rules.
- "Model Compact" is the model for the Compact on file with The Council of State Governments or other entity as designated by the Commission.
- "Remote state" means a member state where a licensee is exercising or seeking to exercise the Compact privilege.
- "Respiratory therapist" or "respiratory care practitioner" is an individual who holds a credential issued by the National Board for Respiratory Care (or its successor) and holds a license in a state to practice respiratory therapy. For purposes of the Compact, any other title or status adopted by a state to replace the term "respiratory therapist" or "respiratory care practitioner" is deemed synonymous with "respiratory therapist" and confers the same rights and responsibilities to the licensee under Compact.
- "Respiratory therapy," "respiratory therapy practice," "respiratory care," "the practice of respiratory care," and "the practice of respiratory therapy" means the care and services provided by or under the direction and supervision of a respiratory therapist or respiratory care practitioner as defined by state law and regulations.
- "Respiratory therapy licensing authority" is a state's agency, board, or other body that is responsible for respiratory therapist licensing and regulation.
- "Rule" is a regulation promulgated by an entity that has the force and effect of law.

- "Scope of practice" means (1) the procedures, actions, and processes a respiratory therapist licensed in a state or practicing under a state's Compact privilege is permitted to undertake in that state and (2) the circumstances under which the respiratory therapist is permitted to undertake those procedures, actions, and processes. Such procedures, actions, and processes, and the circumstances may be established through means, including statute, regulations, case law, and other processes available to the state respiratory therapy licensing authority or other government agency.
- "Significant investigative information" is information, records, and documents received or generated by a state respiratory therapy licensing authority for an investigation for which a determination has been made that there is probable cause to believe that the licensee has violated a statute or regulation that is considered more than a minor infraction for which the licensing authority could pursue adverse action against the licensee.
- "State" is any state, commonwealth, district, or territory of the United States.[41]

Background checks

Additionally, under the bill but not as part of the Compact, any individual who holds a Compact Privilege must comply with background check requirements under Ohio law within 60 days of receiving the Compact Privilege in Ohio, unless a criminal records check that meets equivalent requirements has already been completed in the individual's home state.

On receipt of the criminal records check results, the bill permits the State Medical Board to pursue any disciplinary action on the Compact Privilege authorized under Ohio law.[42]

HISTORY

Action	Date
Introduced	03-18-25
Reported, S. Health	06-10-26
Passed Senate (33-0)	06-10-26

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[41] R.C. 4761.20, Section 2.

[42] R.C. 4761.22; R.C. 4761.09 and 4776.01 to 4776.04, not in the bill.