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House Bills 5488 and 5489 (as passed by the House)
Sponsor: Representative Bronna Kahle (H.B. 5488)
Representative Felicia Brabec (H.B. 5489)
House Committee: Health Policy
Senate Committee: Health Policy and Human Services

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INTRODUCTION

Taken together, House Bills 5489 and 5488 would amend the Public Health Code to enact the Psychology Interjurisdictional Compact (which allows the day-to-day practice of telepsychology by psychologists, and the temporary in-person, face-to-face practice of psychology by psychologists, across state boundaries) and to allow a psychologist who had temporary authorization to practice under the Compact to do so.

The bills would have an indeterminate negative fiscal impact on the Department of Licensing and Regulatory Affairs. These costs could arise as a result of an increase in regulatory responsibilities (e.g., investigations, hearings, and enforcement actions), information technology (IT) costs, and possible Psychology Interjurisdictional Compact Commission annual assessments.

CONTENT

House Bill 5489 would enact within Article 15 (Occupations) of the Public Health Code the Psychology Interjurisdictional Compact, which would allow telehealth and temporary in-person, face-to-face practice of psychology across jurisdictional boundaries. Specifically, the Compact does the following:

- **Allows a psychologist to hold one or more Compact state licenses at a time.**
- **Allows any Compact state to require a psychologist not previously licensed in a Compact state to obtain and retain a license to be authorized to practice in the Compact state.**
- **Specifies that a home state's license authorizes a psychologist to practice in a receiving state or grants temporary authority to practice in a distant state only under certain circumstances.**
- **Requires Compact states to recognize the right of a psychologist licensed in a Compact state to practice telepsychology in other Compact states in which the psychologist is not licensed.**
- **Requires a psychologist licensed to practice in a Compact state to meet certain requirements.**
- **Specifies that a psychologist practicing in a receiving state is subject to that state's scope of practice, and that a psychologist practicing in a distant state is subject to that state's authority and law.**

- Requires a receiving state or distant state that takes adverse action against a psychologist to promptly notify the psychologist's home state and the Psychology Interjurisdictional Compact Commission.
- Grants a home state the power to impose adverse action against a psychologist's license issued by the home state.
- Grants a distant state the power to take adverse action on a psychologist's temporary authorization to practice within the distant state.
- Requires the Commission to provide for the development and maintenance of a coordinated licensure information system (coordinated database) and reporting system containing licensure and disciplinary action information on all psychologists and individuals to whom the Compact is applicable in all Compact states.
- Requires a Compact state to submit a uniform data set containing certain information to the coordinated database.
- Creates and establishes the Psychology Interjurisdictional Compact Commission, and prescribes its membership, voting procedures, meetings, and powers and authorities.
- Requires Commission meetings to be open to the public, but allows the Commission to convene in a closed, nonpublic meeting if it must discuss certain issues or matters.
- Requires the Commission to prescribe certain bylaws and rules to govern its conduct.
- Establishes an Executive Board to act on behalf of the Commission, and prescribes the Board's membership, duties, and responsibilities.
- Prescribes how the Commission must be financed.
- Requires the Commission to follow a prescribed rulemaking and rule adoption procedure.
- Requires the executive, legislative, and judicial branches of state government in each Compact state to enforce the Compact.
- Requires the Commission to enforce all provisions and rules of the Compact and take all actions necessary and appropriate to effectuate its purposes and intent.
- Prescribe the procedure for how a Compact state may withdraw from the Compact.

House Bill 5488 would amend Part 182 (Psychology) of the Public Health Code to modify the definition of "psychologist", and to allow a psychologist who had temporary authorization to practice under the Compact or was authorized to practice interjurisdictional telepsychology under the Compact to be authorized to practice psychology under the Code.

The bills are tie-barred.

House Bill 5489

Purpose

The Compact states that it is intended to regulate the day-to-day practice of telepsychology by psychologists across state boundaries and to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days within a calendar year.

The Compact also states that it is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state.

The Compact does not apply when a psychologist is licensed in both the home and receiving states. The Compact does not apply to permanent in-person, face-to-face practice, but does allow for authorization of temporary psychological practice.

The Compact states that it is designed to achieve the following purposes and objectives:

- Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice.
 - Enhance the states' ability to protect the public's health and safety, especially client and patient safety.
 - Encourage the cooperation of Compact states in the areas of psychology licensure and regulation.
 - Facilitate the exchange of information between Compact states regarding psychological licensure, adverse actions, and disciplinary hearings.
 - Promote compliance with the laws governing psychological practice in each Compact state.
- Invest all Compact states with the authority to hold licensed psychologists accountable through the mutual recognition of Compact state licenses.

Home State Licensure

The home state must be a Compact state where a psychologist is licensed to practice psychology. A psychologist may hold one or more Compact state licenses at a time. If the psychologist is licensed in more than one Compact state, the home state is the Compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of the Compact.

Any Compact state may require a psychologist not previously licensed in a Compact state to obtain and retain a license to be authorized to practice in the Compact state under circumstances not authorized by the authority to practice.

Any Compact state may require a psychologist to obtain and retain a license to be authorized to practice in a Compact state under circumstances not authorized by temporary authorization to practice under the terms of the Compact.

A home state's license authorizes a psychologist to practice in a receiving state only if the Compact state:

- Currently requires the psychologist to hold an active E.Passport.
- Has a mechanism in place for receiving and investigating complaints about licensed individuals.
- Notifies the Commission of any adverse action or significant investigatory information regarding a licensed individual.
- Requires and identity history summary of all applicants at initial licensure at least 10 years after activation of the Compact.
- Complies with the bylaws and rules of the Commission.

"Receiving state" means a Compact state where the client or patient is physically located when the telepsychological services are delivered.

"E.Passport" means a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) the promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

"Identity history summary" means a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, Federal employment, naturalization, or military services.

A home state's license grants temporary authorization to practice as a psychologist in a distant state only if the Compact state:

- Currently requires the psychologist to hold an active interjurisdictional practice certificate (IPC).
- Has a mechanism in place for receiving and investigating complaints about licensed individuals.
- Notifies the Commission of any adverse action or significant investigatory information regarding a licensed individual.
- Requires an identity history summary of all applicants at least 10 years after activation of the Compact.
- Complies with the bylaws and rules of the Commission.

"Distant state" means the Compact state where a psychologist is physically present (not through the use of telecommunications technology) to provide temporary in-person, face-to-face psychological services.

"In-person, face-to-face" means interactions in which the psychologist and the client or patient are in the same physical space. The term does not include interactions that may occur through the use of telecommunication technologies.

"Interjurisdictional practice certificate" means a certificate issued by the ASPPB that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one's qualifications for such practice.

Compact Privilege to Practice Telepsychology

Compact states must recognize the right of a psychologist licensed in a Compact state to practice telepsychology in other Compact states in which the psychologist is not licensed.

A psychologist licensed to practice in a Compact state must:

- Possess a current, full, and unrestricted license to practice psychology in a home state that is a Compact state.
- Have no history of adverse action.
- Have no criminal history reported on an identity history summary.
- Possess a current, active E.Passport.
- Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal history; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification.
- Meet other criteria as defined by rules of the Commission.
- Hold a graduate degree in psychology from a higher education institute that was, at the time the degree was awarded, regionally accredited by an accredited by the US Department of Education to grant degrees or by Provincial Statute or Royal Charter to grant doctoral degrees, or a foreign college or university deemed to be equivalent to a higher education institute described above by a foreign credential evaluation services that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation services.

The graduate degree in psychology must meet the following criteria:

- The program is clearly identified and labeled as a psychology program and specifies in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.
- The program stands as a recognizable, coherent, organizational entity within the institution.
- There is a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- The program consists of an integrated, organized, sequence of study.
- There is an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities.
- The designated director of the program is a psychologist and a member of the core faculty.
- The program has an identifiable body of students who are matriculated in the program for a degree.
- The program includes supervised practicum, internship, or field training appropriate to the practice of psychology.
- The program encompasses a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree.
- The program includes an acceptable residency as defined by the rules of the Commission.

The home state maintains authority over the license of any psychologist practicing in a receiving state.

A psychologist practicing in a receiving state is subject to its scope of practice. A receiving state may limit or revoke a psychologist's authority to practice in that state and take any other necessary actions under its applicable law to protect the health and safety of its residents. If a receiving state takes action, the state must notify the home state and the Commission.

If a psychologist's license in any home state, another Compact state, or any receiving state is restricted, suspended, or otherwise limited, the E.Passport must be revoked and the psychologist is not eligible to practice telepsychology in a Compact state.

Compact Temporary Authorization to Practice

Compact states must recognize the right of a psychologist, licensed in a Compact state, to practice temporarily in other Compact states (distant states) in which the psychologist is not licensed. To exercise the temporary authorization to practice, a psychologist licensed to practice in a Compact state must meet the criteria for licensure described above. A psychologist practicing temporarily in a distant state must practice within the scope of practice authorized by the distant state.

A psychologist practicing in a distant state is subject to the distant state's authority and law. A distant state may, in accordance with its due process law, limit or revoke a psychologist's temporary authorization to practice and may take any other necessary actions under applicable law to protect the health and safety of its residents. If a distant state takes action, it must notify the home state and the Commission.

If a psychologist's license in any home state, another Compact state, or any receiving state is restricted, suspended, or otherwise limited, the IPC must be revoked and the psychologist is not eligible to practice telepsychology in a Compact state.

Conditions of Telepsychology Practice in a Receiving State

A psychologist may practice in a receiving state only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority and under the following circumstances:

- The psychologist initiates a client or patient contact in a home state via telecommunications technologies with a client or patient in a receiving state.
- Other conditions regarding telepsychology as determined by the rules promulgated by the Commission.

Adverse Actions

A home state has the power to impose adverse action against a psychologist's license issued by the home state. A distant state has the power to take adverse action on a psychologist's temporary authorization to practice within that state. A receiving state may take adverse action on a psychologist's authority to practice within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice is terminated and the E.Passport is revoked, and the psychologists' temporary authorization to practice is terminated and the IPC revoked.

All home state disciplinary orders that impose adverse action must be reported to the Commission. A Compact state must report adverse actions in accordance with the rules of the Commission. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice. Other actions may be imposed as determined by the rules promulgated by the Commission.

A home state's psychology regulatory authority must investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee that occurred in a receiving state as it would if the conduct had occurred by a licensee within the home state. In those cases, the home state's law must control in determining any adverse action against a psychologist's license.

A distant state's psychology regulatory authority must investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization to practice that occurred in the distant state as it would if the conduct had occurred by a licensee within the home state. In those cases, the distant state's law must control in determining any adverse action against a psychologist's temporary authorization to practice.

Nothing in the Compact overrides a Compact state's decision that a psychologist's participation in an alternative program may be used instead of adverse action and that the participation must remain nonpublic if required by the Compact state's law. Compact states must require psychologists who enter any alternative program not to provide telepsychology services or provide temporary psychological services in any other Compact state during the term of the alternative program.

No other judicial or administrative remedies are available to a psychologist in the event a Compact state imposes an adverse action.

Additional Authorities Invested in a Compact State's Psychology Regulatory Authority

In addition to any other powers granted under state law, a Compact state's psychology regulatory authority must have the authority under the compact to do the following:

- Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence.
- Issue cease and desist and/or injunctive relief order to revoke a psychologist's authority to practice interjurisdictional telepsychology or temporary authority to practice.
- Complete any pending investigations of a psychologist and take any actions appropriate under its law.

The home state psychology regulatory authority promptly must report the conclusions of such investigations to the Commission. During the course of an investigation, a psychologist may not change his or her home state licensure. Once an investigation has been completed and pending the outcome of the investigation, the psychologist may change his or her home state licensure. The Commission promptly must notify the new home state of any these decisions. All information provided to the Commission or distributed by Compact states pursuant to the psychologists must remain confidential, filed under seal and used for investigatory and discipline matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact states.

Coordinated Licensure Information System

The Commission must provide for the development and maintenance of a coordinated licensure information system and reporting system containing licensure and disciplinary action information on all psychologists and individuals to whom the Compact is applicable in all Compact states.

Notwithstanding any other provision of state law to the contrary, a Compact state must submit a uniform data set to the coordinated databased on all licensees, including:

- Identifying information.
- Licensure data.
- Significant investigatory information.
- An indicator that a psychologist's authority to practice or temporary authorization to practice is revoked.
- Nonconfidential information related to alternative program participation information.
- Any denial of application for licensure, and the reasons for such denial.
- Other information that may facilitate the administration of the Compact.

The coordinated database administrator must notify all Compact states or any adverse action taken against, or significant investigative information on, any licensee in a Compact state.

Compact states reporting information to the coordinated database may designate information that may not be shared with the public without express permission of the Compact state reporting the information.

Any information submitted to the coordinated database that subsequently is required to be expunged by the law of the Compact state reporting the information must be removed from the coordinated database.

Establishment of the Psychology Interjurisdictional Compact Commission

The Compact creates and establishes a joint public agency known as the Psychology Interjurisdictional Compact Commission.

Venue is proper and judicial proceedings by or against the Commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission 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 is construed to be a waiver of sovereign immunity.

Membership, Voting, and Meetings. The Commission must consist of one voting representative appointed by each Compact state who serves as that state's commissioner. The state psychology regulatory authority must appoint its delegate. The delegate may act on behalf of the Compact state and must be one of the following:

- The executive director, executive secretary, or similar executive.
- A current member of the state psychology regulatory authority of a Compact state.
- A designee with the appropriate delegate authority to act on behalf of the Compact state.

Any commissioner may be removed or suspended from office as provided by the law of the State from which the commissioner is appointed. Any vacancy occurring in the Commission must be filled in accordance with the laws of the Compact state in which the vacancy exists.

Each commissioner is entitled to one vote with regard to the promulgation of rules and creation of bylaws. A commissioner must vote in person or by such other means as provided in the bylaws. The bylaws may provide for the commissioners' participation in meetings by telephone or other means of communication.

The Commission must meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws. All meetings must be open to the public, and public notice of all meetings must be given in the manner required in the Compact.

The Commission may convene in a closed, nonpublic meeting if it must discuss any of the following:

- Noncompliance of a Compact state with its obligations under the Compact.
- The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's personnel practices and procedures.
- Current, threatened, or reasonably anticipated litigation against the Commission.
- Negotiation of contracts for the purpose of sale of goods, services, or real estate.
- Accusation against any individual of a crime or formally censuring any individual.
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure of investigatory records compiled for law enforcement purposes.
- Disclosure of information related to any investigatory reports prepared by or on behalf of or for use the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact.
- Matters specifically exempted from disclosure by Federal and state statute.

If a meeting, or portion of a meeting, is closed, the Commission's legal counsel must certify that the meeting may be closed and must reference each relevant exempting provision.

The Commission must, by a majority vote of the commissioners, prescribe bylaws and rules to govern its conduct, including:

- Establishing the Commission's fiscal year.
- Providing reasonable standards and procedure for the establishment and meetings of other committees and for governing any general or specific delegating of any authority or function of the Commission.
- Providing reasonable procedures for calling and conducting Commission meetings.
- Establishing the titles, duties, and authority and reasonable procedures for the election of officers.
- Providing reasonable standards and procedure for the establishment of personnel policies and programs.
- Promulgating a code of ethics.
- Providing a mechanism for concluding the operations of the Commission and the equitable distribution of surplus funds.

The Commission must publish its bylaws in a convenient form and file a copy, and a copy of any amendments, with the appropriate agency or officer in each of the Compact states.

The Commission must maintain financial records. The Commission also must meet and take such actions as are consistent with the provision of the Compact and the bylaws.

Powers. The Commission has the following powers and authority:

- To promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact.
- To bring and prosecute legal proceeding or actions in the name of the Commission.
- To purchase and maintain insurance and bonds.
- To borrow, accept, or contract for services of personnel.
- To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualification of personnel, and other related personnel matters.
- To accept any appropriate donations, grants of money, equipment, supplies, materials and services, and to receive utilities and dispose of the same.
- To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any real, personal, or mixed property.
- To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any personal, real, or mixed property.
- To establish a budget and make expenditures.
- To borrow money.
- To appoint committees.
- To provide and receive information from, and to cooperate with, law enforcement agencies.
- To adopt and use an official seal.
- To perform other such functions as may be necessary or appropriate to achieve the purposes of the Compact.

Executive Board. The elected officers must serve as the Executive Board, which has the power to act on behalf of the Commission.

The Executive Board is comprised of the following six members:

- Five voting members elected from the current members of the Commission by the Commission
- One ex officio, nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities.

The ex officio member must have served as staff or member on a state psychology regulatory authority.

The Commission may remove any member of the Executive Board as provided in the bylaws. The Executive Board must meet at least annually.

The Executive Board has the following duties and responsibilities:

- Recommend to the Commission changes to the rules or bylaws, changes to Compact legislation, fees paid by Compact state, and any other applicable fees.
- Ensure Compact administration services are provided appropriately, contractual or otherwise.
- Prepare and recommend a budget.
- Maintain financial records on behalf of the Commission.
- Monitor Compact compliance of member states and provide compliance reports to the Commission.
- Establish additional committees as necessary.
- Other duties as provided in rules or bylaws.

Financing the Commission. The Commission must pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

The Commission may levy on and collect an annual assessment from each Compact state or impose fees on other parties to cover the costs of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget. The aggregate annual assessment amount must be allocated based on a formula to be determined by the Commission.

The Commission may not incur obligations of any kind before securing the funds adequate to meet the same. The Commission also may not pledge the credit of any of the Compact states, except by and with the authority of the Compact state.

The Commission must keep accurate accounts of all receipts and disbursements, which are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements must be audited yearly by a certified or licensed public accountant.

Qualified Immunity, Defense, and Indemnification. The members, officers, Executive Director, employees, and representatives of the Commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or 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. This provision is not construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

The Commission must defend any member, officer, Executive Director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission described above; however, the person may retain his or her own counsel.

The Commission must indemnify and hold harmless any member, officer, Executive Director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities.

Rulemaking

The Commission must exercise its rulemaking powers pursuant to the criteria set forth in the Compact and rules adopted thereafter. Rules or amendments to the rules must be adopted at a regular or special meeting of the Commission and become binding as of the date specified in each rule or amendment.

If a majority of the legislatures of the Compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then it has no further force and effect in any Compact state.

Before promulgation and adoption of a final rule, the Commission must file a notice of proposed rulemaking at least 60 days before the meeting at which the rule will be considered and voted on. The Commission must provide the notice on its website and the website of each Compact states' psychology regulatory authority, or the publication in which each state would otherwise publish proposed rules. The notice must include:

- The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.
- The text of the proposed rule or amendment and the reason for its proposal.
- A request for comments on the proposed rule from any interested person.
- The manner in which an interested person may submit notice to the Commission of his or her intention to attend the public hearing and any written comments.

Before a rule is adopted, the Commission must allow individuals to submit written data, facts, opinions, and arguments, which must be available to the public.

The Commission must grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by: a) at least 25 people who submit comments independently of each other; b) a governmental subdivision or agency; or c) a duly appointed person in an association that has at least 25 members. If a hearing is held on the proposed rule or amendment, the Commission must publish the place, time, and date of the public hearing.

A person wishing to be heard at the hearing must notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at least five business day before the date of the hearing. Hearings must be conducted in a manner that provides each person wishing to comment a fair and reasonable opportunity to do so, either orally or in writing. If a hearing is not held on its scheduled date or by the close of business on the scheduled date, the Commission must consider all written and oral comments it received.

No transcript of hearings is required, unless a written request for a transcript is made, in which case, the person making the request must bear the cost of producing a transcript. A recording may be made instead of a transcript, but the same conditions apply.

The Compact does not require separate hearing to be held for each rule and rules may be group together for convenience.

The Commission must, by a majority vote of all its members, take final action on a proposed rule and must determine its effective date, based on the rulemaking record and the text of the rule.

If no written notice of intent to attend the public hearing is received, the Commission may promulgate the proposed rule without a public hearing.

After determining that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures prescribed by the Compact are be applied retroactively, as soon as possible, but within 90 days after the effective date of the rule.

An emergency rule is a rule that must be adopted immediately to do the following:

- Meet an imminent threat to public health, safety, or welfare.
- Prevent a loss of Commission or Compact state funds.
- Meet a deadline for the promulgation of an administrative rule established by Federal law or rule.
- Protect public health and safety.

The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendments to correct typographical or grammatical errors or errors in format or consistency. If a revision is made, public notice of a revisions must be posted on the Commission website and is subject to challenge by any person for 30 days after posting. A revision may be challenged only on the grounds that the revision results in a material change to the rule. A challenge must be made in writing and delivered to the Chair of the Commission before the end of the 30-day period, and if no challenge is made, the revisions take effect without further action. If it was challenged, the revision may not take effect without the approval of the Commission.

Oversight, Dispute Resolution, and Enforcement

Oversight. The executive, legislative, and judicial branches of state government in each Compact state must enforce the Compact and take all actions necessary and appropriate to effectuate its purposes and intent. The provisions of the Compact and promulgated rules will stand as statutory law.

All courts must take judicial notice of the Compact and its rules in any judicial or administrative proceeding in a Compact state pertaining to the subject matter of the Compact that could affect the powers, responsibilities, or actions of the Commission.

The Commission is entitled to receive service of process in any proceeding and must have standing to intervene in them for all purposes. Failure to provide service of process to the Commission renders a judgment or order void as to the Commission, the Compact, or its promulgated rules.

Default, Technical Assistance, and Termination. If the Commission determines that a participating state defaulted in the performance of its obligations or responsibilities in relation to the Compact or promulgated rules, the Commission must provide written notice to the defaulting state and other Compact states of the nature of the default, the proposed means of remedying the default and any other action to be taken, and provide remedial training and specific technical assistance regarding the default.

If a defaulting state fails to remedy the default, the state could be terminated from the Compact by an affirmative vote of a majority of Compact states, and all rights, privileges, and benefits conferred by the Compact are terminated on the effective date of the termination. Remedying the default does not relieve that state of obligations or liabilities incurred during the period of default.

Termination of the membership of the defaulting state is imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate membership must be submitted by the Commissions to the governor, the majority and minority leaders of that state's legislature, and each of the Compact states.

A terminated state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination. The Commission does not bear any costs incurred by the terminated state, unless agreed upon in writing between the Commission and that state.

A defaulting state may appeal the action of the Commission by petitioning the US District Court for the State of Georgia or the Federal district where the Compact has its principal offices. The prevailing member will be awarded all costs of litigation, including reasonable attorney's fees.

Dispute Resolution. Upon request, the Commissions must attempt to resolve disputes related to the Compact that arise among participating states and between Compact and non-Compact states. The Commission must promulgate a rule providing for both mediation and binding dispute resolution.

Enforcement. The Commission, in the reasonable exercise of its discretion, must enforce the provisions and rules of the Compact.

By majority vote, the Commission may initiate legal action in the US District Court for the State of Georgia or the Federal district where the Compact has its principal offices, against a defaulting Compact state to enforce compliance with the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney fees

The remedies may not be the exclusive remedies of the Commission. It may pursue any other remedies available under Federal or state law.

Date of Implementation

The Compact goes into effect on the date on which it is enacted into law by the seventh Compact state. The provisions that become effective at that time are limited to the powers granted to the Commission relating to assembly and promulgation of rules. Afterward, the Commission must meet and exercise rulemaking powers when necessary to implement and administer the Compact.

Any state that joins the Compact after the Commission initial adopt of the rules is subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been adopted previously has the full force and effect of law on the day that that the Compact becomes law in that state.

Any state may withdraw from the Compact by enacting a statute repealing it.

A state's withdrawal does not take effect until six months after enactment of the repealing statute. Withdrawal does not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

Nothing in the Compact may be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between and Compact state and non-Compact state that does not conflict with the provisions of the Compact.

The Compact may be amended by Compact states. No amendment is effective and binding upon any Compact state until it is enacted into the law of all Compact states.

Construction and Severability

The Compact must be construed liberally so as to effectuate its purposes. If the Compact must be held contrary to the constitution of any state member, the Compact must remain in full force and effect as to the remaining Compact states.

House Bill 5488

Psychologist Defined

The bill would amend the Code to revise the definition of "psychologist", which currently means an individual licensed under Article 15 of the Public Health Code to engage in the practice of psychology. Under the bill, "psychologist" would mean an individual who is licensed or authorized under Article 15 to engage in the practice of psychology.

Temporary Authorization to Practice

Under the bill, a psychologist who had temporary authorization to practice under the Psychology Interjurisdictional Compact or was authorized to practice interjurisdictional telepsychology under the Compact would be authorized to engage in the practice of psychology under Article 15.

For purposes of Article 15, including the obligations of an individual who was licensed as a psychologist under Part 182, a psychologist who had temporary authorization to practice under the Compact or was authorized to practice interjurisdictional telepsychology under the Compact would be considered a psychologist who was licensed under Part 182.

MCL 333.18201 et al. (H.B. 5488)
Proposed MCL 333.16190 (H.B. 5489)

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bills would have an indeterminate negative fiscal impact on the Department of Licensing and Regulatory Affairs. The State's participation in the Compact could have a significant cost for the Department to participate because of the increased regulatory responsibilities that

could increase the volume of investigations required, increase the number of hearings held, and increase costs due to other enforcement actions that would be required. These costs are indeterminate and would depend on the actual increase in the number of hearings, investigations, and enforcement actions undertaken.

The Department also could see additional IT costs to ensure that the Department's current IT systems are compatible with the bill's requirements. Finally, the Psychology Interjurisdictional Compact Commission would be granted the authority to levy and collect annual assessments from Compact member states; however, whether it would do so, the amount of those assessments, is indeterminate.

Fiscal Analyst: Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.