

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 953 Psychology Interjurisdictional Compact

**SPONSOR(S):** Hunschofsky

**TIED BILLS:** HB 955 **IDEN./SIM. BILLS:** SB 1370

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	18 Y, 0 N	Morris	McElroy
2) Health Care Appropriations Subcommittee	14 Y, 0 N	Aderibigbe	Clark
3) Health & Human Services Committee	20 Y, 0 N	Morris	Calamas

### SUMMARY ANALYSIS

Current law allows a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member, or a registered out-of-state-health care provider to provide health care services to Florida patients via telehealth. It does not allow health care practitioners, including Florida licensed psychologists, to use telehealth to provide services to out-of-state patients.

The Psychology Interjurisdictional Compact (PSYPACT or compact) is an interstate compact, which is an agreement between states to enact legislation and enter into a contract for a specific, limited purpose. In 2015, the Association of State and Provincial Psychology Boards (ASPPB) adopted model legislation for the compact which facilitates the practice of psychology using telepsychology and in-person, face-to-face psychological practice to patients in other states. The compact establishes the Psychology Interjurisdictional Compact Commission (commission), made up of each party state's representative of the state licensing board. The commission is responsible for administering the compact. PSYPACT became effective in April, 2019, and currently has 27 member states. The bill enacts PSYPACT and authorizes Florida to enter into the compact.

Psychologists licensed in PSYPACT states may apply for authorization to practice telepsychology (APIT) and temporary authorization to practice (TAP), which are required under the compact to practice telepsychology and temporary in-person, face-to-face practice in other PSYPACT states. To practice telepsychology in PSYPACT states, psychologists licensed in compact states may apply to the Commission for authorization and obtain an E.Passport from the ASPPB. To conduct temporary in-person, face-to-face practice, a psychologist licensed in a compact state may apply to the Commission for temporary authority and obtain an interjurisdictional practice certificate from the ASPPB. Thus, under the compact a Florida licensed psychologist is eligible to provide services to out-of-state patients through either telehealth or a temporary authorization to practice.

The compact requires all participating states to report certain licensure information to a coordinated licensure information system (CLIS), including identifying information, licensure data, and adverse actions taken against a psychologist's license or practice privileges in a compact state. Such information is public under the compact unless a compact state designates the information it contributes to the CLIS as confidential, prohibiting disclosure to the public without express permission of the reporting state.

The bill has an insignificant fiscal impact on DOH which can be absorbed within existing resources. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Health Care Professional Shortage

There is currently a health care provider shortage in the U.S.<sup>1</sup> This shortage is predicted to continue into the foreseeable future and will likely worsen with the aging and growth of the U.S. population<sup>2</sup> and the passage of the Patient Protection and Affordable Care Act.<sup>3</sup> Aging populations create a disproportionately higher health care demand.<sup>4</sup> Additionally, as more individuals qualify for health care benefits, there will necessarily be a greater demand for more health care professionals to provide these services.

According to the U.S. Health Resources and Services Administration (HRSA), the U.S. will experience a 7% increase in demand for psychologists by 2030, producing a shortage of approximately 14,300 psychologists nationwide.<sup>5</sup> In Florida, HRSA estimates a shortage of 1,420 clinical, counseling, and school psychologists by 2030.<sup>6</sup> Exacerbated by the COVID-19 pandemic, the American Academy of Pediatrics declared a national state of emergency in children's mental health, creating a need for more mental health professionals and increased access to such.<sup>7</sup>

#### Psychologist Licensure in Florida

The Board of Psychology oversees the licensure and regulation of psychologists in this state.<sup>8</sup> To receive a license to practice psychology, an individual must:<sup>9</sup>

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<sup>1</sup> For example, as of December 31, 2021, the U.S. Department of Health and Human Services has designated 7,613 Primary Care Health Professional Shortage Area (HPSA) (requiring 15,184 additional primary care physicians to eliminate the shortage), 6,803 Dental HPSAs (requiring 11,181 additional dentists to eliminate the shortage), and 6,078 Mental Health HPSAs (requiring 6,851 additional mental health providers to eliminate the shortage). U.S. Department of Health and Human Services, *Designated Health Professional Shortage Areas Statistics* (Jan. 1, 2022), <https://data.hrsa.gov/Default/GenerateHPSAQuarterlyReport> (last visited Jan. 22, 2022).

<sup>2</sup> According to the U.S. Census Bureau, the U.S. population is expected to increase by almost 100 million between 2014 and 2060, and by 2030, one in five Americans is projected to be 65 and over. Sandra L. Colby & Jennifer M. Ortman, U.S. Census Bureau, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060* (March 2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf> (last visited Jan. 22, 2022).

<sup>3</sup> U.S. Dep't of Health and Human Services, *Department of Health and Human Services Strategic Plan: Goal 1: Strengthen Health Care*, available at <http://www.hhs.gov/secretary/about/goal5.html> (last visited on Jan. 22, 2022).

<sup>4</sup> One analysis measured current primary care utilization (office visits) and projected the impact of population increases, aging, and insured status changes. The study found that the total number of office visits to primary care physicians will increase from 462 million in 2008 to 565 million in 2025, and (because of aging) the average number of visits will increase from 1.60 to 1.66. The study concluded that the U.S. will require 51,880 additional primary care physicians by 2025. (Peterson, Stephen M., et al., "Projecting U.S. Primary Care Physician Workforce Needs: 2010-2025," *Annals of Family Medicine*, vol. 10, No. 6 (November/December 2012), available at <http://www.annfam.org/content/10/6/503.full.pdf+html> (last visited on Jan. 22, 2022).

<sup>5</sup> Health Resources Services Administration, *Behavioral Health Workforce Projections, 2016-2030: Clinical, Counseling and School Psychologists*, <https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/psychologists-2018.pdf> (last visited Jan. 22, 2022).

<sup>6</sup> Health Resources Services Administration, *State-Level Projections of Supply and Demand for Behavioral Health Occupations: 2016-2030* (September 2018), <https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/state-level-estimates-report-2018.pdf> (last visited Jan. 22, 2022).

<sup>7</sup> American Academy of Pediatrics, AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health, <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/> (last visited Jan. 22, 2022).

<sup>8</sup> Section 490.004, F.S.

<sup>9</sup> Section 490.005(1), F.S.

- Meet one of the following educational requirements:
  - Received a doctoral-level psychological education from an institution that had institutional accreditation from an agency recognized by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada, and had programmatic accreditation from the American Psychological Association;<sup>10</sup> or
  - Received the equivalent of a doctoral-level education from a program at a school or university located outside of the United States, which is officially recognized by the government of the country in which it is located as a program or institution to train students to practice professional psychology.
- Complete 2 years or 4,000 hours of supervised experience;
- Pass the Examination for Professional Practice in Psychology;<sup>11</sup> and
- Pass an examination on Florida laws and rules.

The American Psychological Association (APA) is recognized by the U.S. Department of Education and the Council for Higher Education Accreditation as the national accrediting authority for professional education and training in psychology.<sup>12</sup>

Applicants for licensure by endorsement must:<sup>13</sup>

- Be a diplomate in good standing with the American Board of Professional Psychology;
- Hold a doctoral degree in psychology with at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the U.S. within the 25 years preceding the date of application.

## Telehealth

A Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,<sup>14</sup> or a registered out-of-state-health care provider to provide health care services to Florida patients via telehealth.<sup>15</sup> Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.<sup>16</sup>

Under current law, in-state and out-of-state licensed or registered health care practitioners may use telehealth to provide health care services to patients physically located in Florida. The law does not allow health care practitioners, including Florida licensed psychologists, to use telehealth to provide services to out-of-state patients.

## Sovereign Immunity

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law.<sup>17</sup>

<sup>10</sup> Section 490.003(3), F.S., defines doctoral-level education as a Psy.D, an Ed.D., or a Ph.D in psychology.

<sup>11</sup> Rule 64B19-11.001, F.A.C.

<sup>12</sup> American Psychological Association, *Understanding APA Accreditation*, <http://www.apa.org/ed/accreditation/about/index.aspx> (last visited Jan. 20, 2022).

<sup>13</sup> Section 490.006, F.S.

<sup>14</sup> Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

<sup>15</sup> S. 456.47(4), F.S.

<sup>16</sup> S. 456.47(2), F.S.

<sup>17</sup> Fla. Const. art. X, s. 13.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.<sup>18</sup> According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . . ." Section 768.28(5), F.S., imposes a \$200,000 limit on the government's liability to a single person, and a \$300,000 total limit on liability for claims arising out of a single incident.

## Impaired Practitioner Program

The impaired practitioner treatment program was created to provide resources to assist health care practitioners who are impaired as a result of the misuse or abuse of alcohol or drugs, or both, or a mental or physical condition which could affect the practitioners' ability to practice with skill and safety.<sup>19</sup> For a profession that does not have a program established within its individual practice act, the DOH is required to designate an approved program by rule.<sup>20</sup> By rule, DOH designates the approved program by contract with a consultant to initiate intervention, recommend evaluation, refer impaired practitioners to treatment providers, and monitor the progress of impaired practitioners. The impaired practitioner program may not provide medical services.<sup>21</sup>

## Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governmental authority, or establish uniform guidelines, standards or procedures for the compact's member states.<sup>22</sup> Article 1, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other, without the consent of Congress. However, the case law has provided that not all interstate agreements are subject to congressional approval, but only those that may encroach on the federal government's power.<sup>23</sup> Florida is a party to multiple interstate compacts, including the Nurse Licensure Compact,<sup>24</sup> Driver's License Compact,<sup>25</sup> Compact on Adoption and Medical Assistance,<sup>26</sup> and the Interstate Compact on Educational Opportunity for Military Children.<sup>27</sup>

### Psychology Interjurisdictional Compact

The Psychology Interjurisdictional Compact (PSYPACT or compact) was created by the Association of State and Provincial Psychology Boards (ASPPB) and is an interstate compact that facilitates the practice of telepsychology and temporary in-person, face-to-face practice of psychology across state boundaries.<sup>28</sup> The compact establishes the Psychology Interjurisdictional Compact Commission (Commission) which is responsible for creating and finalizing bylaws, rules, and regulation. The Commission also grants psychologists authority to practice telepsychology and temporary in-person, face-to-face psychology across state lines.<sup>29</sup> Nothing in the compact is to be construed as a waiver of sovereign immunity.

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<sup>18</sup> Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

<sup>19</sup> Section 456.076, F.S. The provisions of s. 456.076, also apply to veterinarians under s. 474.221, F.S. and radiological personnel under s. 486.315, F.S.

<sup>20</sup> Section 456.076(1), F.S.

<sup>21</sup> Rule 64B31-10.001(1)(a), F.A.C.

<sup>22</sup> National Center for Interstate Compacts, *What Are Interstate Compacts?*, <https://compacts.csg.org/compacts/> (last visited Jan. 20, 2022).

<sup>23</sup> For example, see *Virginia v. Tennessee*, 148 U.S. 503 (1893), *New Hampshire v. Maine*, 426 U.S. 363 (1976)

<sup>24</sup> Section 464.0095, F.S.

<sup>25</sup> Section 322.44, F.S.

<sup>26</sup> Section 409.406, F.S.

<sup>27</sup> Section 1000.36, F.S.

<sup>28</sup> PSYPACT, About Us, <https://psypact.site-ym.com/page/About> (last visited Jan. 22, 2022).

<sup>29</sup> *Id.*



### *Home State Licensure (Article III)*

Under the compact, a psychologist must be licensed by his or her home state, which must be a compact state, to provide services permitted by the compact. PSYPACT authorizes psychologists with a home state license to practice telepsychology in receiving states only if the receiving state requires:

- The psychologist to hold an active E.Passport;
- A mechanism for receiving and investigating complaints about licensees;
- Notification to the Commission of any adverse action of significant investigatory information regarding a licensee;
- An identity history summary (background screening) of all applicants at initial licensure; and
- Compliance with the bylaws and rules of the Commission.

PSYPACT authorizes the practice of temporary, face-to-face practice in a distant state only if the compact state:

- Currently holds an active interjurisdictional practice certificate;
- Has a mechanism for receiving and investigating complaints about licensees;
- Notifies the Commission of any adverse action of significant investigatory information regarding a licensee;
- Requires an identity history summary (background screening) of all applicants at initial licensure; and
- Complies with the bylaws and rules of the Commission.

### *Compact Privilege to Practice Telepsychology (Article IV)*

PSYPACT authorizes the practice of telepsychology in a receiving state in which a psychologist is not licensed, only if the psychologist:

- Holds a graduate degree in psychology from an institute of higher education which, at the time the degree was awarded was:
  - Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees or authorize by provincial statute or royal charter to grant doctoral degrees; or
  - A foreign college or university deemed to be equivalent by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognizes foreign credential evaluation.
- Holds a graduate degree in psychology that meets designated criteria;
- Possess current, full and unrestricted license to practice psychology in a home state which is a compact state;
- Has no history of adverse action which violate the rules of the Commission;
- Has no criminal record history which violates the rules of the Commission;
- Possess a current and active E. Passport;
- Provides attestations regarding areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background and knowledge and adherence to legal requirements in the home and receiving states, and provides a release of information to allow for primary source verification in a manner specified by the Commission; and
- Meets other criteria as defined by the rules of the Commission.

PSYPACT also requires psychologists practicing under the compact to practice within his or her areas of competency and within the scope of practice of the receiving state. Receiving states are authorized to limit or revoke a psychologist's authority to practice interjurisdictional telepsychology and to take any necessary actions under applicable law to protect the health and safety of the receiving state's citizens. States taking such action must immediately notify the psychologist's home state and the Commission.

E. Passports must be revoked if a psychologist's home state license or other state license is restricted, suspended, or otherwise limited.

*Compact Temporary Authorization to Practice (Article V)*

The compact requires compact states to recognize the right of a psychologist licensed in a compact state to temporarily practice in other compact states where the psychologist is not licensed. To practice temporarily in another compact state, a licensed psychologist must:

- Hold a graduate degree in psychology from an institute of higher education which, at the time the degree was awarded was:
  - Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees or authorize by provincial statute or royal charter to grant doctoral degrees; or
  - A foreign college or university deemed to be equivalent by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognizes foreign credential evaluation.
- Hold a graduate degree in psychology from an educational program that:
  - Is identified and labeled as a psychology program and specify in institutional catalogues and brochures its intent to educate and train professional psychologists;
  - Stands as a recognizable, coherent, organizational entity within the institution;
  - Has clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
  - Consists of an integrated, organized sequence of study;
  - Has an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;
  - Has a director who must be a psychologist and a member of the core faculty;
  - Has an identifiable student body who are matriculated in that program for a degree;
  - The program must include supervised practicum, internship, or filed training appropriate to the practice of psychology;
  - Has a curriculum must encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for a master's degree; and
  - Includes an acceptable residency as defined by Commission rules.
- Possess a current, full and unrestricted license to practice psychology in a home state which is a compact state;
- Have no history of adverse action or criminal record history that violate Commission rules;
- Possess a current, active interjurisdictional practice certificate;
- Provide attestations regarding areas of intended practice and work experience and allow for primary source verification in a manner specified by the Commission; and
- Meet other criteria as defined by the Commission rules.

A psychologist practicing in a distant state under a temporary authorization to practice must practice within the scope of practice within such state and is subject to its authority and laws. A distant state may limit or revoke a psychologist's temporary authorization in accordance with state law and take any necessary action under the state's law to protect the health and safety of its citizens. Any action taken by a distant state must be reported to the home state and the Commission and the psychologist's interjurisdictional practice certificate must be revoked.

### *Compact of Telepsychological Practice in a Receiving State (Article VI)*

A psychologist must practice interjurisdictional telepsychology in accordance with the scope of practice of the receiving jurisdiction and within the rules of the commission, as well as:

- The psychologist initiates a client/patient contact in home state via telecommunications technologies with a client/patient in a receiving state; or
- Other condition regarding telepsychology as determined by rule promulgated by the commission.

### *Adverse Actions (Article VII)*

This section covers how the compact, home and receiving states will conduct and report adverse actions. As well as the consequences for a psychologist who receives adverse actions.

The home state may take adverse actions against a psychologist license. A receiving state may take adverse action on a psychologist authority to practice interjurisdictional telepsychology and temporary authorization to practice within that receiving state.

If a home state takes adverse action against a psychologist's license, a psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. In addition, that psychologist's temporary practice is terminated, and the IPC is revoked. All adverse actions taken should be reported to the Commission.

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

Nothing in the compact will override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the compact state's law. The psychologist must cease providing services while in an alternative program.

### *Additional Authorities Invested in a Compact State's Psychology Regulatory Authority (Article VIII)*

PSYPACT authorizes compact states to maintain their psychologist regulatory authority, including:

- Issuing subpoenas, for both hearings and investigations; and
- Issuing orders to cease and desist and injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology or through temporary authorization.

The compact also prohibits a psychologist from changing their home state status if an investigation is taking place. The compact encourages conclusions of all investigations to be reported to the Commission. All information provided to the Commission or distributed by compact states pursuant to the psychologist shall remain confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated discretionary sharing of information by compact states.

### *Coordinated Licensure Information System (Article IX)*

The compact requires all compact states to share licensee information. Compact states must submit a uniform dataset to a coordinated database on all psychologists to whom the compact is applicable, as required by the rules of the commission. The database allows for expedited sharing of adverse action against compact psychologists. The coordinated database information must be expunged according to laws of the reporting compact state.



## *Establishment of the Psychology Interjurisdictional Compact Commission (Article X)*

The compact establishes the Psychology Interjurisdictional Compact Commission as the ruling commission. The Commission must consist of one voting representative appointed by each compact state who serves as that state's Commissioner. The applicable state regulatory board must also appoint a delegate to represent the Board of Psychology. Vacancies of Commissioners must be filled in accordance of the laws of the compact state. Each commissioner is granted one vote in regard to creation of rules and bylaws and must have the opportunity to participate in the business and affairs of the Commission.

### *Rulemaking (Article XI)*

PSYPACT provides rule-making authority to the Commission. Rules and amendments to the rules passed by the Commission are binding on the party states as of the effective date specified in each rule or amendment.

Prior to the promulgation and adoption of a rule, and at least 60 days in advance, the Commission must provide notice of the meeting at which the rule is to be considered and voted upon. The notice must be posted on the Commission's website and the website of the licensing board of each member state, or the publication in which each state would otherwise publish proposed rules, and include:

- The time, date, and location of the meeting;
- The text of the proposed rule or amendment,
- The reason for the proposed rule or amendment;
- A request for comment from interested persons; and
- The manner in which interested persons may submit comments.

The public may submit written comments, which must be made publicly available, prior to the adoption of the proposed rule. The Commission must hold a public hearing before it adopts a rule if requested by:

- At least 25 people submit comments independently of each other;
- A governmental entity; or
- A duly appointed person in an association having at least 25 members.

If a hearing is held, the Commission must publish the place, time, and date of the scheduled public hearing. Anyone wishing to speak at the hearing must notify the Executive Director of the Commission, or another designated member, within five business days before the hearing. Hearings must be conducted in a manner that provides fair and reasonable opportunity for the public to comment orally or in writing. Transcripts of hearings are not required unless a written request is made. Recordings may be made in lieu of transcripts. The Commission may make transcripts of hearings if it so chooses. Rules may be grouped together in the same hearing for convenience of the Commission.

Following the hearing, the Commission must consider all comments received from the public. A majority vote of the Commission is required for adoption of rules and the Commission may decide the effective date of the rule.

The commission has the authority to consider and adopt emergency rules, without prior notice, if there is an imminent threat to public health, safety, or welfare; to prevent a loss of funds of the commission or a party state; or to meet a deadline for the promulgation of an administrative rule that is required by federal law. The standard rule-making procedure is to be applied retroactively as soon as possible but no later than 90 days after the effective date of the emergency rule.

### *Oversight, Dispute Resolution and Enforcement (Article XII)*

The executive, legislative, and judicial branches of state government in each compact state is charged with enforcing the compact and must take any necessary action to effectuate its purpose and intent.

The Commission is entitled to receive service of process relating to its powers, responsibilities, or actions, and may intervene in any proceeding affecting such.

If a party state defaults in the performance of its duties or responsibilities under the compact, the Commission must notify the defaulting state, as well as other party states, in writing of the nature of the default and proposed cure of the default. The Commission will also provide remedial training and technical assistance related to the default. If the defaulting state fails to cure the default, the Commission may terminate its membership in PSYPACT, upon majority affirmative vote of the majority of the administrators. The Commission must notify the governor and the majority and minority leaders of the defaulting state's legislature, as well as all compact states, of its intent to suspend or terminate the state's membership in the compact. However, termination of membership is to only be imposed after all other means of compliance have been exhausted.

A termination of membership in the compact may be appealed by petitioning the U.S. District Court for the state of Georgia or the federal district in which the compact's principal office is located. The compact's principal office is located in Tyrone, Georgia. The Commission may also bring an action in federal court against a defaulting state to enforce compliance with the provisions of the compact. The Commission may seek injunctive relief, damages, or any other remedies available under state or federal law. A prevailing party in either action is entitled to court costs and reasonable attorneys' fees.

In the event that a dispute arises between party states, the Commission will attempt to resolve such disputes. The compact directs the Commission to promulgate a rule that provides for mediation and binding dispute resolution.

*Date of Implementation of Psychology Interjurisdictional Compact Commission and Associated Rules, Withdrawal and Amendment (Article XIII)*

The compact became effective on the date of enactment in the seventh compact state, which occurred on April 9, 2019.<sup>33</sup> States that join after the adoption of the rules shall be subject to the rules as they exist on the date which the compact becomes law in that state.

To withdraw from PSYPACT, a state must enact a statute repealing the compact. Such withdrawal does not take effect until six months after the enactment of the repealing legislation. Any adverse actions or investigations that occur prior to the effective date of a withdrawal must be reported as required under the compact.

The compact may be amended by the party states; however, an amendment will not be effective until it is enacted into the laws of all compact states.

*Construction and Severability (XIV)*

This compact is to be liberally construed to effectuate its purposes. PSYPACT contains a severability clause that provides that if the entire compact is found to be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining compact states.

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<sup>33</sup> PSYPACT, *History*, <https://psypact.site-ym.com/page/History> (last visited Jan. 22, 2022).

## Effect of the Bill

### Psychologist Licensure Compact

The bill enacts the Psychology Interjurisdictional Compact (see description of compact provisions in the Background section) and authorizes Florida to enter into the compact with all other jurisdictions that have legally joined the compact. This allows an eligible Florida licensed psychologist to provide services to out-of-state patients through either telehealth or a temporary authorization to practice.

The bill amends current law to allow PSYPACT implementation. It requires DOH to report any significant investigation information relating to a psychologist practicing under the compact to the coordinated database. It requires psychologists practicing under the compact to withdraw from all practice under the compact if the psychologist is in an impaired practitioner program. It requires the Board of Psychology (Board) to appoint an individual to serve on the Commission and exempts out-of-state licensed psychologists who practice under the compact from psychologist licensure requirements in this state. The bill authorizes the Board to take adverse action against a psychologist's authority to practice under the compact and impose disciplinary actions for violation of prohibited acts.

The bill makes conforming changes to statute to reference the compact and the requirements under the compact. The bill does not require changes to Florida's licensure and license renewal requirements.

### Sovereign Immunity

The bill provides that an individual of the Board, when serving as the state administrator of the compact, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state. The bill also provides that the Commission will pay any claims or judgments pursuant to s. 768.28, F.S., and may maintain insurance coverage to pay any such claims or judgments.

The bill provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

- Section 1:** Creates s. 490.0075, F.S., relating to Psychology Interjurisdictional Compact.
- Section 2:** Amends s. 456.073, F.S., relating to disciplinary proceedings.
- Section 3:** Amends s. 456.076, F.S., relating to impaired practitioner program.
- Section 4:** Amends s. 490.004, F.S., relating to Board of Psychology.
- Section 5:** Amends s. 490.005, F.S., relating to licensure by examination.
- Section 6:** Amends s. 490.006, F.S., relating to licensure by endorsement.
- Section 7:** Amends s. 490.009, F.S., relating to discipline.
- Section 8:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liberty for damages caused during a riot; limitation on attorney fees; statute of limitation; exclusions; indemnification; risk management programs.
- Section 9:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

2. Expenditures:

DOH estimates one full-time equivalent (FTE) position will be needed to implement the provisions of the bill at a total cost of \$56,892 (\$44,314/Salary \$12,272/Expense \$306/Human Resources).<sup>34</sup> A review of the department's vacant positions shows there are sufficient existing vacancies from which resources can be redirected to fund a new position to implement the provisions of this legislation. These positions have been vacant for over 180 days, and the department has the ability to internally reorganize personnel as needed.

DOH may also experience an increase in cost related to annual membership with PSYPACT, additional complaints and investigations, and updating licensure systems and can be absorbed within current resources.<sup>35</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fees associated with applying for a license in a compact state would be eliminated for a psychologist whose home state is Florida and wants to practice in a compact state, as well as a psychologist whose home state is in a compact state and wishes to practice in Florida.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

As discussed below in the section entitled, "RULE-MAKING AUTHORITY," the bill delegates authority to the commission to adopt rules that facilitate and coordinate the implementation and administration of the Psychology Interjurisdictional Compact.

If enacted into law, the state will effectively bind itself to rules not yet adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.<sup>3637</sup> Under this holding, the constitutionality of the bill's

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<sup>34</sup> Department of Health Agency Analysis of 2022 House Bill 953 (Jan. 21, 2022).

<sup>35</sup> *Id.*

<sup>36</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772 (1945)).

<sup>37</sup> This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the

adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely address this issue in the context of interstate compacts.

The most recent opportunity Florida courts have had to address this issue appears to be in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).<sup>38</sup> The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."<sup>39</sup> The court states that "the precise legal effect of the ICPC compact administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.<sup>40</sup> However, in a footnote, the court provided:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. See *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.<sup>41</sup>

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill's delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of legislative authority. This case, however, does not appear to be binding as precedent as the court's footnote discussion is dicta.<sup>42</sup>

#### B. RULE-MAKING AUTHORITY:

The bill authorizes the Commission to adopt rules to facilitate and coordinate the implementation and administration of the compact. The compact specifies that the rules have the force and effect of law and are binding in all compact states. If a compact state fails to meet its obligations under the compact or the promulgated rules, the state may be subject to remedial training, alternative dispute resolution, suspension, termination, or legal action.

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minimum standards and guidelines as ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

<sup>38</sup> 801 So.2d 1047 (Fla. 1<sup>st</sup> DCA 2001).

<sup>39</sup> *Id.* at 1052.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

The compact details the rule-making process that must be followed including, notice, an opportunity for public participation, and hearings. The compact also provides a procedure for emergency rule-making in cases of imminent danger to public health, safety, or welfare, to prevent financial loss to the state's or commission, or to comply with federal laws or regulations. All rules and amendments are binding on party state as of the effective date specified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**