

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 56

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Psychology Interjurisdictional Compact

DATE: April 11, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Barr</u>	<u>Money</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 56 establishes Florida as a member state in the Psychology Interjurisdictional Compact (PSYPACT or compact). Pursuant to the compact, and with appropriate authorizations, a licensed psychologist may engage in the practice of interjurisdictional telepsychology and also obtain a temporary authorization to practice psychology in-person, face-to-face for up to 30 days per calendar year with clients and patients in member states other than the one in which he or she is licensed.

The bill also amends statutes to facilitate implementation of the PSYPACT to:

- Require the Department of Health (DOH) to report any significant investigatory information relating to a psychologist practicing under the PSYPACT to the coordinated licensure information system.
- Require the monitoring contract of a psychologist practicing under the PSYPACT who is in the impaired practitioner program to withdrawal from all practice under the compact.
- Require the board of psychology to appoint an individual to be the state's commissioner on the PSYPACT commission.
- Exempt from licensure in this state a psychologist licensed in another state who is only practicing within the scope and pursuant to the PSYPACT.
- Authorize the Board of Psychology to take adverse action against a psychologist's credentials to practice pursuant to the PSYPACT and to impose any other applicable penalties for violation of the compact.

- Designate the state’s commissioner on the PSYPACT commission and others, when acting in this state within the scope of his or her compact responsibilities, an agent of the state for purposes of the limited waiver of sovereign immunity and providing that the commission shall pay any claims or judgments pursuant to the waiver of sovereign immunity.

The bill has a negative fiscal impact on the Department of Health. *See* Section V of this analysis.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Practice of Psychology

“Practice of psychology” means the observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health. Psychological services may be rendered to individuals, couples, families, groups, and the public without regard to place of service.

- The use of specific modalities within the practice of psychology is restricted to psychologists appropriately trained in the use of such modalities.
- The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is requested or received for services rendered.¹

The Board of Psychology is responsible for the licensure and regulation of the practice of psychology in Florida. There are two pathways for licensure to practice psychology in Florida:

- Licensure by examination² – The applicant must:
 - Have a doctoral degree from an American Psychological Association accredited program; or the equivalent from a school or university located outside the U.S.;
 - Have had at least two years or 4,000 hours of experience in the field of psychology in association with or under the supervisions of a licensed psychologist;
 - Pass the psychology licensure examination;
 - Pass the Florida law and rules examination; and
 - Complete the application and pay the applicable fees.
- Licensure by endorsement³ – The applicant must:
 - Be a diplomate in good standing with the American Board of Professional Psychology, Inc.; or
 - Possess a doctoral degree in psychology and have at least 10 years of experience as a licensed psychologist within the past 25 years;
 - Pass the Florida law and rules examination; and
 - Complete the application and pay the applicable fees.

¹ Section 490.003(4), F.S.

² Section 490.005, F.S.

³ Section 490.006, F.S.

Telehealth

Section 456.47, F.S., authorizes certain health care practitioners, including licensed psychologists, persons licensed under a multistate health care licensure compact of which Florida is a member state, or a licensed practitioner in another state who registers with the applicable board in Florida, to provide services to patients in Florida through telehealth. Telehealth means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

A telehealth provider and a patient may be in separate locations when telehealth is used to provide health care services to a patient; however, a practitioner licensed in another state and registered to provide health care services through telehealth may not provide in-person services to patients located in this state. Florida's law authorizing the use of telehealth to provide services does not authorize a Florida-licensed practitioner, including a Florida-licensed psychologist, to use telehealth to provide services to out-of-state patients.⁴

Sovereign Immunity

Sovereign immunity bars lawsuits against a state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. Section 768.28, F.S., provides a limited waiver of sovereign immunity for liability for torts up to \$200,000 per person for any claim or judgment and up to \$300,000 in total for liability arising out of the same incident or occurrence.

Interstate Compacts Generally

An interstate compact is a contract between two or more states. It carries the force of statutory law and may establish uniform guidelines, standards, or procedures for agencies in the compact's member states. Interstate compacts addressing regulatory matters may be structured quite differently. Currently, there are several professions utilizing an interstate compact to address regulatory matters and each profession has taken a different approach when writing its compact language. The professions of medicine, nursing, and physical therapy are examples.⁵

Florida has enacted two health care practitioner compacts – the Nurse Licensure Compact enacted in 2016⁶ and the Professional Counselors Licensure Compact enacted in 2022.⁷

⁴ Section 456.47, F.S.

⁵ See What is a Compact? Audiology and Speech Language Pathology, available at: https://aslpcompact.com/wp-content/uploads/2019/08/80057-What-is-a-Compact_Final.pdf (last visited March 29, 2023).

⁶ Section 464.0095, F.S.

⁷ Section 491.017, F.S.

Psychology Interjurisdictional Compact

The PSYPACT is an interstate compact designed to facilitate the practice of telepsychology and the temporary in-person, face-to-face practice of psychology across state boundaries.⁸ The PSYPACT was created by the Association of State and Provincial Psychology Boards (ASPPB), a membership organization composed of state and provincial psychology regulatory authorities that are responsible for the licensure and registration of psychologists throughout the United States and Canada. Thirty-six states and territories have enacted the PSYPACT.⁹ Once enacted into law, a state joins the PSYPACT Commission (commission) and designates one voting member to the commission. The commission is the governing body of the compact.

If a psychologist wishes to practice through telepsychology under the PSYPACT, the psychologist must obtain an Authority to Practice Interjurisdictional Telepsychology (APIT) at an initial cost of \$40 with a \$20 annual renewal fee from the PSYPACT Commission. It also requires an active ASPPB e-passport at an initial cost of \$400 with a \$100 annual renewal fee.¹⁰

If a psychologist wants to practice in a temporary, in-person, face-to-face mode for up to 30 days per calendar year under the PSYPACT, the psychologist must obtain a Temporary Authorization to Practice (TAP) from the PSYPACT Commission at a cost of \$40, with an annual renewal of \$20. It also requires an Interjurisdictional Practice Certificate (IPC) of \$200, with an annual renewal fee of \$50.¹¹

III. Effect of Proposed Changes:

Section 1 creates s. 490.0075, F.S., the Psychology Interjurisdictional Compact.

Article I – Purpose

The stated purposes and objectives of the compact are:

- Increase access to psychologists through telepsychological practice across state lines and temporary, in-person, face-to-face services in a state where the psychologist is not licensed.
- Enhance a member state's ability to protect a client's or patient's safety.
- Encourage the cooperation of compact states in the areas of licensure and regulation.
- Facilitate the exchange of information between compact states regarding licensure, adverse actions, and disciplinary history.
- Promote compliance with the laws governing the practice of psychology in each compact state.
- Invest all compact states with the authority to hold psychologists accountable through the mutual recognition of compact state licenses.

⁸ PSYPACT Overview, available at: <https://psypact.org/page/About> (last visited March 29, 2023).

⁹ PSYPACT Map, available at: <https://psypact.org/mpage/psypactmap> (last visited March 29, 2023). The 36 states include Alabama, Arizona, Arkansas, Colorado, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Rhode Island has enacted the PSYPACT but it is not yet effective).

¹⁰ PSYPACT Fees available at: <https://psypact.org/page/fees> (last visited March 29, 2023).

¹¹ *Id.*

Article II - Definitions

The following terms used in the compact are defined.

- “Adverse action” means any disciplinary action that is a matter of public record and that is taken by a state’s psychology regulatory authority against an individual’s license to practice psychology in that state.
- “Association of State and Provincial Psychology Boards” means the membership organization composed of state and provincial psychology regulatory authorities that are responsible for the licensure and registration of psychologists throughout the United States and Canada.
- “Authority to practice interjurisdictional telepsychology” “APIT” means a licensed psychologist’s authority to practice telepsychology, within the limits authorized under the compact, in a compact state other than the one in which he or she is licensed.
- “Bylaws” means those rules established by the compact commission pursuant to article X for its governance, or for directing and controlling its actions and conduct.
- “Client or patient” means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, or consulting services.
- “Commissioner” means the voting representative appointed by each state psychology regulatory authority pursuant to article X.
- “Compact state” means a state, the District of Columbia, or a US territory that has enacted the compact legislation and that has not withdrawn pursuant to subsection (3) of article XIII or been terminated pursuant to subsection (2) of article XII.
- “Confidentiality” means the principle that data or information is not made available or disclosed to unauthorized persons or processes.
- “Coordinated licensure information system” or “coordinated database” means an integrated process administered by the ASPPB for collecting, storing, and sharing information on psychologists’ licensure and enforcement activities related to psychology licensure laws and the Compact.
- “Day” means any part of a day in which a psychologist practices psychology.
- “Distant state” means the compact state, which is not the home state, where a psychologist is physically present, not through the use of telecommunication technologies, to provide temporary in-person, face-to-face psychological services.
- “E-passport” means a certificate issued by the ASPPB which allows a licensed psychologist to provide telepsychological services across state lines.
- “Executive board” 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” means a compact state where a psychologist is licensed to practice psychology, as provided in article III.
- “Identity history summary” means a summary of information retained by the Federal Bureau of Investigation, or another designee with similar authority, in connection with arrests and, in some instances, federal employment or military service.
- “In-person, face-to-face” means interactions in which the psychologist and the client or patient are in the same physical space and does not include interactions that may occur through the use of telecommunication technologies.

- “Interjurisdictional Practice Certificate” or “IPC” means the certificate issued by the ASPPB which grants a psychologist temporary authority to practice based on notification to the state psychology regulatory authority of one’s intention to practice temporarily and verification of one’s qualifications for such practice.
- “License” means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without such authorization.
- “Noncompact state” means a state that is not a compact state.
- “Psychologist” means an individual licensed by a state psychology regulatory authority to independently practice psychology in that state.
- “Psychology Interjurisdictional Compact Commission” or “commission” means the national administration of which all compact states are members.
- “Receiving state” means a compact state where the client or patient is physically located when the telepsychological services are delivered.
- “Rule” means a written statement by the commission adopted pursuant to article XI which has the full force and effect of statutory law in a compact state and which implements, interprets, or prescribes a policy or provision of the compact or is an organizational, procedural, or practice requirement of the commission. The term also includes the amendment, repeal, or suspension of an existing rule.
- “Significant investigatory information” means:
 - Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate a violation of state statute or rule which would be considered more substantial than a minor infraction; or
 - Investigative information that indicates that the psychologist represents an immediate threat to public health and safety, regardless of whether the psychologist has been notified or had an opportunity to respond.
- “State” means a state, commonwealth, territory, or possession of the United States, or the District of Columbia.
- “State psychology regulatory authority” means the board, office, or agency with the legislative mandate to license and regulate the practice of psychology in that state.
- “Telepsychology” means the provision of psychological services using telecommunication technologies.
- “Temporary authorization to practice” means a licensed psychologist’s authority to conduct temporary in-person, face-to-face practice, within the limits authorized under the compact, in another compact state.
- “Temporary in-person, face-to-face practice” means when a psychologist is physically present, not through the use of telecommunication technologies, in the distant state to provide psychological services for up to 30 days within a calendar year and with notification to the distant state.

Article III – Home State Licensure

The home state is a compact state where a psychologist is licensed to practice psychology. A psychologist may hold more than one compact state license at a time. If he or she holds more than one and is practicing telepsychology, the home state is where the psychologist is physically present when the services are delivered. If a psychologist is practicing telepsychology under

circumstances that are not authorized in the APIT, or practicing under the temporary authorization beyond the scope of the TAP, then the compact state may require licensure in that state.

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

- Requires the psychologist to hold an active e-passport,
- Has a mechanism in place for receiving and investigating complaints,
- Notifies the commission of any adverse action or significant investigatory information regarding a licensed individual,
- Requires an identity history summary at initial licensure, including the result of fingerprints or other biometric data check compliant with the FBI requirements within 10 years after activation of the compact, and
- Complies with the commission's bylaws and rules.

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

- Requires the psychologist to hold an IPC,
- Has a mechanism in place for receiving and investigating complaints,
- Notifies the commission of any adverse action or significant investigatory information regarding a licensed individual,
- Requires an identity history summary at initial licensure, including the result of fingerprints or other biometric data check compliant with the FBI requirements within 10 years after activation of the compact, and
- Complies with the commission's bylaws and rules.

Article IV – Compact Privilege to Practice Telepsychology

Compact states must recognize the right of a psychologist to practice telepsychology under the APIT. To qualify to practice telepsychology, a psychologist must:

- Hold a graduate degree in psychology awarded by an accredited institution of higher education recognized by the U.S. Department of Education or the equivalent;
- Hold a graduate degree in psychology which meets the following criteria:
 - The program must be identified, labeled, and advertise as a psychology program to educate and train psychologists,
 - The program stands as a recognizable and coherent organizational entity within the institution,
 - There is a clear authority and primary responsibility for the core and specialty areas,
 - The program consists of an integrated, organized sequence of study,
 - There is an identifiable psychology faculty in sufficient size and breadth,
 - The designated director of the program is a psychologist and member of the core faculty,
 - The program has an identifiable body of students matriculated in that program for a degree,
 - The program includes supervised practicum, internship, or field training,

- The program encompasses 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 master's degrees, and
- The program includes an acceptable residency as defined by the rules of the commission.
- Possess a current, full, and unrestricted license to practice psychology in a home state that is a compact state;
- Have no history of adverse actions that violate the rules of the commission;
- 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 background, 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 in a manner specified by the commission; and
- Meet other criteria as defined by the rules of the commission.

The home state maintains authority over the license of the psychologist practicing in a receiving state under the APIT. The psychologist practicing in a receiving state under the APIT must comply with the receiving state's scope of practice. A receiving state may limit or revoke a psychologist's APIT in the receiving state and take other necessary actions to protect the receiving state's citizens. If a receiving state takes action, it must promptly notify the home state and the commission.

If a psychologist's license or the APIT in any receiving state is encumbered, the psychologist's e-passport must be revoked and the psychologist is not eligible to practice telepsychology under the APIT.

Article V – Compact Temporary Authorization to Practice

Compact states agree to recognize the right of a psychologist licensed in a compact state to practice temporarily in other compact states or distant states in which the psychologist is not licensed but is physically present to provide temporary, in-person, face-to-face psychological services. In order to practice in a distant state under the compact a psychologist must:

- Hold a graduate degree in psychology awarded by an accredited institution of higher education recognized by the U.S. Department of Education or the equivalent;
- Hold a graduate degree in psychology which meets the following criteria:
 - The program must be identified, labeled, and advertise as a psychology program to educate and train psychologists,
 - The program stands as a recognizable and coherent organizational entity within the institution,
 - There is a clear authority and primary responsibility for the core and specialty areas,
 - The program consists of an integrated, organized sequence of study,
 - There is an identifiable psychology faculty in sufficient size and breadth,
 - The designated director of the program is a psychologist and member of the core faculty,
 - The program has an identifiable body of students matriculated in that program for a degree,
 - The program includes supervised practicum, internship, or field training,

- The program encompasses 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 master's degrees, and
- The program includes an acceptable residency as defined by the rules of the commission.
- Possess a current, full, and unrestricted license to practice psychology in a home state that is a compact state;
- Have no history of adverse actions that violate the rules of the commission;
- Possess a current, active IPC;
- Provide attestations in regard to 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 provide a release of information to allow for primary source verification in a manner specified by the commission; and
- Meet other criteria as defined by the rules of the commission.

A psychologist practicing in a distant state under a temporary authorization to practice shall practice within the scope of practice authorized by the distant state and is subject to the distant state's authority and law. A distant state may limit or revoke a psychologist's temporary authorization in the distant state and take other necessary actions to protect the distant state's citizens. If a receiving state takes action, it must promptly notify the home state and the commission.

If a psychologist's license or his or her temporary authorization to practice in any distant state is encumbered, the psychologist's IPC must be revoked and the psychologist is not eligible to practice telepsychology under the temporary authorization.

Article VI Conditions of Telepsychology Practice in a receiving state

A psychologist may practice in a receiving state under the APIT only within the scope of practice defined by the state psychology regulatory authority as defined by commission rules, and under the following circumstances:

- The psychologist initiates a client or patient contact in a home state via telecommunication technologies with the client or patient in a receiving state, and
- Other conditions regarding telepsychology as determined by commission rules.

Article VII Adverse Actions

A home state may take adverse action against a psychologist's license issued by the home state. A distant state may take adverse action against a psychologist's TAP within that distant state. A receiving state may take adverse action against a psychologist's APIT within the receiving state.

A home state may take adverse action against a psychologist's license 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 APIT is terminated and the e-passport is revoked. In addition, any TAP is terminated and the IPC is revoked. No other judicial or administrative remedies are available to a psychologist if his or her

home state takes adverse action against the psychologist's license and the APIT and TAP are terminated and the e-passport and IPC are revoked.

All home state disciplinary orders that take adverse action and adverse action taken by a compact state must be reported to the commission. If disciplinary action against a psychologist is reported he or she is not eligible for telepsychology or temporary in-person practice. Other action may be imposed as determined by the rules adopted by the commission.

A home state's regulatory authority must investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state in the same manner as if the conduct had occurred in the home state. The home state's law controls in determining applicable adverse action against the 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 a TAP. The distant state's law controls in determining applicable adverse action against the psychologist's license.

The compact does not override a compact state's decision to use alternate programs in lieu of adverse action, and that action may remain confidential if required by the compact state's law. The compact state must require that psychologists who enter an alternative program do not provide telepsychology services under the APIT or temporary psychological services under the TAP during the term of the alternate program.

Article VIII Additional Authorities Invested in a Compact State's Regulatory Authority

In addition to other powers authorized under state law, a compact state's regulatory authority may:

- Issue subpoenas for hearings and investigations for attendance and records production. Any subpoenas issued to another compact state must be enforced by courts in the other compact state. The issuing state's regulatory authority must pay the fees and expenses.
- Issue cease and desist or injunctive relief orders to revoke a psychologist's APIT or TAP.

During the course of an investigation, a psychologist may not change his or her home state licensure. Once an investigation is completed and pending the outcome of the investigation, the psychologist may change his or her home state licensure. The investigating state must report the conclusions of the investigation to the commission and the commission must promptly notify the new home state.

All information provided to the commission or distributed by a compact state related to the psychologist must be confidential and used only for investigatory or disciplinary matters. The commission is authorized to create additional rules for mandated or discretionary sharing of information by compact states.

Article IX – Coordinated Licensure Information System

The commission must develop and maintain a coordinated database and a reporting system containing licensure and disciplinary action for all psychologists practicing under the compact.

The compact overrides a compact state's laws to the contrary and requires the submission of a uniform data set on all licensees containing:

- Identifying information;
- Licensure data;
- Significant investigatory information;
- Adverse actions against a psychologist's license;
- Any indicator that a psychologist's APIT or TAP is revoked;
- Any denial of application for licensure and the reason for the denial;
- Other information determined by commission rules.

The coordinated database administrator must promptly notify all compact states of adverse action taken against any licensee in a compact state.

A compact state may designate information that may not be shared with the public without the express permission of the compact state. Any information submitted to the coordinated database which is subsequently required to be expunged by law must be removed from the coordinated database.

Article X – Establishment of the Psychology Interjurisdictional Compact Commission

The commission is a body politic and an instrumentality of the compact states. Venue and judicial proceedings by or against the commission may only be brought in a court of competent jurisdiction where the principal office of the commission is located. However, the commission may waive this restriction if it adopts or consents to participate in alternate dispute resolution proceedings.

The compact does not waive sovereign immunity except to the extent sovereign immunity is waived in the party states.

Membership, Voting, and Meetings

Each member state must appoint a commissioner with authority to act on behalf of the compact state. Vacancies must be filled in accordance with the laws of that compact state. Each commissioner is entitled to one vote with regard to the adoption of rules and creation of bylaws and may otherwise participate in the business and affairs of the commission. Voting must be in-person or as provided in the bylaws.

The commission must meet at least once during each calendar year and additional meetings must be held as set forth in the bylaws. All meetings are open to the open and notice must be given. However, the commission may convene in a closed, nonpublic meeting to discuss:

- A compact state's noncompliance.
- Matters related to the commission's internal personnel practices and procedures.

- Current, threatened, or reasonably anticipated litigation.
- Contract negotiations.
- Accusation of any person of a crime or a formal censure of a person.
- Information disclosing trade secrets or commercial or financial information that is privileged or confidential.
- Personal information in which disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Investigatory records compiled for law enforcement purposes.
- Information related to investigatory reports for use by the commission regarding compliance issues pursuant to the compact.
- Matters specifically exempted from disclosure by federal or state statute.

If a meeting or portion of a meeting is closed, the commission's legal counsel must identify each relevant exempting provision. The commission must keep detailed minutes about all matters discussed, actions taken, participants, views expressed, and documents considered. These minutes and documents must remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

Bylaws

Bylaws or rules must be adopted by a majority vote of the commissioners. These may address:

- Establishing a fiscal year of the commission.
- Providing reasonable standards and procedures:
 - For the establishment and meetings of other committees;
 - Governing delegation of an authority or function of the commission;
 - For calling and conducting commission meetings;
 - For establishing personnel policies and programs. Notwithstanding any civil service or other similar law of a compact state, the bylaws exclusively govern these.
- Establishing the titles, duties, and authority of officers, and the election thereof.
- Adopting a code of ethics.
- Providing a mechanism for concluding the operation of the commission, including disposition of assets once all debts and obligations are satisfied.
- Maintenance of financial records.

Each compact state must be given access to the bylaws.

Powers

The commission may:

- Adopt rules to implement and administer the compact. The rules have the force and effect of law and are binding in all compact states.
- Bring and prosecute legal proceedings or action in the name of the commission, provided a state's regulatory authority for psychology licensure to sue or be used under applicable law is not affected.
- Purchase and maintain insurance and bonds.
- Borrow, accept, or contract for personnel services from compact states.

- Hire employees and elect or appoint officers, fix compensation, define duties, and establish policies relating to conflicts of interest, personnel qualifications, and other personnel matters.
- Accept and dispose of donations and grants, avoiding any appearance of impropriety.
- Lease, purchase, own, hold, or use any property, real or personal, avoiding any appearance of impropriety.
- Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property.
- Establish a budget and make expenditures.
- Borrow money.
- Appoint committees consisting of commissioners, state regulators or legislators, consumer representatives, or other interested persons as designated in the compact and bylaws.
- Cooperate with law enforcement agencies.
- Adopt and use an official seal.
- Perform other functions as necessary or appropriate to achieve the purposes of the compact.

Executive Board

The executive board may act on behalf of the commission. It consists of five voting members elected by the commission and one ex-officio non-voting member from the ASPPB, who has served as staff for or as a member of a state psychology regulatory authority and is selected by his or her respective organization. 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 entire commission changes to the bylaws, compact legislation, or fees paid by compact states.
- Ensure compact administration services are appropriately provided.
- Prepare and recommend a budget.
- Maintain financial records on behalf of the commission.
- Monitor compact compliance of member states and report to the commission.
- Establish additional committees as necessary.
- Perform other duties as provided in the rules or bylaws.

Financing

The commission shall pay the reasonable expenses of its establishment, organization, and ongoing operations. The commission may accept any appropriate revenue sources, donations, and grants of money, equipment, supplies, and services.

The commission may levy and collect an annual assessment from each compact state or impose fees on other parties sufficient to cover the budgeted cost of operations and activities. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall adopt a rule that is binding upon all compact states.

The commission may not incur obligations before securing the funds adequate to meet the obligation and may not pledge the credit of any compact state, except by and with the authority of the compact state.

The commission must maintain accurate accounts of all receipts and disbursements, which are subject to the audit and accounting procedures established under the bylaws. In addition, all receipts and disbursements must be audited yearly by a certified or licensed public accountant and the report must be included in and become part of the commission's annual report.

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, provided that nothing herein may be 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 will defend any of the above referenced persons in any civil action seeking to impose liability that occurred, or the person against whom the claim is made reasonably believed occurred, within the scope of commission employment, duties, or responsibilities, provided the incident did not result from that person's intentional or willful or wanton misconduct. This does not prohibit such person from retaining his or her own counsel.

The commission will indemnify and hold harmless any of these persons for the amount of any settlement or judgment obtained against that person arising out of an incident that occurred, or the person against whom the claim is made reasonably believed occurred, within the scope of commission employment, duties, or responsibilities, provided the incident did not result from that person's intentional or willful or wanton misconduct.

Article XI – Rulemaking

Rules and amendments become binding as of the date specified in each rule or amendment and must be adopted at a regular or special meeting of the commission. If a majority of the legislatures of compact states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, the rule does not have further force and effect in any compact state.

At least 60 days before the meeting at which a rule will be considered and voted upon, the commission must file a notice of proposed rulemaking on its website and on the website of each compact state's psychology regulatory authority or in a publication the state would otherwise publish a proposed rule. The notice must include the text and the reason for the proposed rule, a request for comment from any interested person along with the manner in which the interested person may attend a public hearing or submit written comments.

The commission must hold a public hearing before it adopts a rule or an amendment if a hearing is requested by: at least 25 individuals who submit comments independently of each other; a governmental subdivision or agency; or a duly appoint person in an association that has at least 25 members.

Persons wishing to be heard at a hearing must notify the commission's executive director in writing at least five business days before the schedule date of the hearing and these persons must be provided a fair and reasonable opportunity to comment orally or in writing. A transcript is not required but if one is requested, the person requesting it is responsible for the cost. A hearing is not required if the executive director does not receive any notices of intent to attend the public hearing.

A majority vote of the commission is required to adopt the rule after consideration of all written and oral comments received and an effective date is determined.

Upon determination that an emergency exists, the commission may adopt an emergency rule without the procedures outlined above but must then proceed with the rulemaking procedures above.

A revision to a previously adopted rule or amendment for non-substantive corrections must be posted on the commission's website. A person may challenge the revisions within 30 days on the grounds that the revision results in a material change to a rule. If a challenge is not made, the revision takes effect without further action.

Article XII – Oversight; Default, Technical Assistance, and Termination; 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 action necessary and appropriate to effectuate the compact's purpose and intent. The compact and rules adopted thereunder have standing as statutory law.

All courts must take judicial notice of the compact and rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the compact. The commission is entitled to receive services of process in any such proceeding and has standing to intervene for all purposes. Failure to provide service of process to the commission renders a judgement or an order void as to the commission, the compact, or adopted rules.

Default, technical assistance, and termination

If the commission determines that a compact state has defaulted in its obligation under the compact, the commission must:

- Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed remedies, and any other action to be taken by the commission; and
- Provide remedial training and specific technical assistance regarding the default.

If the state fails to remedy the default, the state may be terminated from the compact upon majority vote of the compact states. A remedy of the default does not relieve the offending state of any obligations incurred during the period of default. Termination of membership is a last resort after all other means of securing compliance have been exhausted. A defaulting state may appeal the action of the commission by petitioning the United States District Court for the state

of Georgia or the federal district court where the compact has its principal office. The prevailing party must be awarded all costs of such litigation, including reasonable attorney fees.

Dispute resolution

Upon a compact state's request, the commission must attempt to resolve disputes related to the compact arising among compact states and between compact and noncompact states. The commission must adopt a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

Enforcement

The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact. By majority vote, the commission may initiate legal action in the U.S. District Court for the state of Georgia or the federal district court where the compact has its principal office against a compact state in default to enforce compliance with the compact. The relief sought may include injunctive relief and damages. The prevailing party must be awarded all costs of such litigation, including reasonable attorney fees. The commission may also pursue any other remedies available under federal or state law.

Article XIII – Date of implementation of the Psychology Interjurisdictional Compact Commission and association rules; Withdrawal; and Amendments

The compact becomes effective on the date on which seven states enact the compact into law.¹² Any state that joins the compact after the commission's initial adoption of rules is subject to the rules as they exist on the date the state law enacting the compact becomes effective.

A state may withdraw from the compact by enacting a statute repealing the compact; however, the withdrawal does not take effect until six months after enactment of the repealing statute. Withdrawal does not affect the continued requirement of the state's psychology regulatory authority to comply with the investigative and adverse action reporting requirement of the compact before the effective date of withdrawal.

The compact may not be construed to invalidate or prevent any psychology licensure agreement between a compact state and a noncompact state which does not conflict with the provisions of the compact.

The compact may be amended by the compact states but an amendment is not effective and binding upon any compact state until enacted into the law of all compact states.

Article XIV – Construction and Severability

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

¹² The compact became effective on April 9, 2019.

Section 2 amends s. 456.073, F.S., relating to disciplinary proceedings of practitioners, to require the department to report any significant investigatory information relating to a psychologist practicing under the PSYPACT to the coordinated database pursuant to the compact. It also clarifies the type of information that may be provided to law enforcement or to any other regulatory agency, specifically the complaint or any information obtained pursuant to the department's investigation.

Section 3 amends s. 456.076, F.S., relating to the impaired practitioner program, to require if the impaired practitioner is a psychologist practicing under the PSYPACT, the terms of the monitoring contract require withdrawal from all practice under the compact.

Section 4 amends s. 490.004, F.S., to require the board of psychology to appoint an individual to be the state's commissioner on the PSYPACT commission.

Section 5 amends s. 490.005, F.S., relating to licensure by examination, to exempt from licensure in this state a psychologist licensed in another state who is only practicing within the scope and pursuant to the PSYPACT.

Section 6 amends s. 490.006, F.S., relating to licensure by endorsement, to exempt from licensure in this state a psychologist licensed in another state who is only practicing within the scope and pursuant to the PSYPACT.

Section 7 amends s. 490.009, F.S., relating to discipline of psychologists, to reference the PSYPACT in s. 490.0075, F.S., and to authorize the board to take adverse action against a psychologist's Authority to Practice Interjurisdictional Telepsychology or his or her Temporary Authorization to Practice under the PSYPACT and to impose any other applicable penalties.

Section 8 amends s. 768.28, F.S., relating to sovereign immunity, to designate the individual appointed as the state's commissioner on the PSYPACT commission, when serving in that capacity; and any administrator, officer, executive director, employee, or representative of the commission, when acting with the scope of his or her employment, duties, or responsibilities in this state; is considered an agent of the state. The commission shall pay any claims or judgments pursuant to the waiver of sovereign immunity and may maintain insurance coverage to pay any such claims or judgments.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The compact authorizes the commission to “adopt reasonable rules to effectively and efficiently achieve the purposes of the compact,” and these rules carry the force of law in member states, which is potentially an unlawful delegation of legislative authority. Although the compact has been effective for several years and the commission has adopted rules to implement the compact, if enacted into law, the state will bind itself to rules not yet adopted by the commission. However, if Florida finds that rules adopted by the commission are not acceptable, the compact provides a mechanism for a majority of state legislatures to override the commission’s rules. Furthermore, the state maintains the ability to withdraw from the compact.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Although the Association of State and Provincial Psychology Boards (ASPPB) imposes fees for various authorizations to practice pursuant to the compact, psychologists will be able to practice telepsychology and engage in temporary, in-person, face-to-face practice in other states without becoming licensed and paying individual state fees to practice psychology in the other states.

The ASPPB fees are:

- ASSB e-passport: \$400 initial; \$100 annual renewal
- Authority to Practice Interjurisdictional Telepsychology (APIT): \$40 initial; \$20 annual renewal
- Interjurisdictional Practice Certificate (IPC): \$200 initial; \$50 annual renewal
- Temporary Authorization to Practice (TAP): \$40 initial cost and \$20 annual renewal

¹³

Licensed Florida psychologists who have not previously undergone a level 2, fingerprint-based state and national criminal history record check must have one completed to

¹³ PSYPACT Fees available at: <https://psypact.org/page/fees> (last visited March 29, 2023).

practice under the compact. The cost for such record checks and five years of fingerprint retention is \$45.25.¹⁴

C. Government Sector Impact:

The Department of Health indicates it will experience a workload impact associated with implementing the compact, including processing applications, issuing new and renewal licenses, and reviewing and investigating additional complaints. At this time, the DOH is requesting one full-time equivalent position at a total cost of \$59,312 to address the workload. As participation in the PSYPACT increases, the staffing needs may increase.

The DOH will experience a nonrecurring workload and expenditure increase to update various information technology systems to comply with the multistate licensing, data collection and reporting requirements of the compact. However the full impact is indeterminate at this time.

In addition, the DOH will be required to pay an annual PSYPACT membership fee to ASPPB on behalf of the state. While that amount is unknown at this time, DOH indicates current budget authority is adequate to cover the cost.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently the practice of psychology in Florida does not require fingerprinting as a condition of licensure. The compact requires a home state's licensure provisions to require an identity history summary at initial licensure, including the result of fingerprints or other biometric data check compliant with the FBI requirements within 10 years after activation of the compact.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 490.004, 490.005, 490.006, 490.009, and 768.28.

This bill creates section 490.0075 of the Florida Statutes.

¹⁴ The Florida Department of Law Enforcement, *SB 56 Bill Analysis* (Jan. 12, 2023)(on file with the Senate Appropriations Committee on Health and Human Services).

¹⁵ The Department of Health, *HB 33 Bill Analysis* (Jan. 12, 2023)(on file with the Senate Appropriations Committee on Health and Human Services).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on April 4, 2023:

The CS removes, “Nothing in the compact may be construed to be a waiver of sovereign immunity,” from the underlying bill and replaces it with, “The compact does not waive sovereign immunity except to the extent sovereign immunity is waived in the party states.”

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
