

WEST VIRGINIA LEGISLATURE
2018 FIRST EXTRAORDINARY SESSION

Introduced
House Bill 105

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 20, 2018]

1 A BILL to amend and reenact §30-41-2 of the Code of West Virginia, 1931, as amended, as
 2 contained in Chapter 177, Acts of the Legislature, Regular Session, 2018, related to
 3 creating the Physical Therapy Licensure Compact Act; establishing Commission rule-
 4 making authority; providing for legal enforcement of compact rules and provisions; and
 5 establishment of proper venue, and retention of sovereign immunity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. PHYSICAL THERAPY LICENSURE COMPACT ACT.

§30-41-2. Authority to execute compact.

1 The West Virginia Board of Physical Therapy, on behalf of the State of West Virginia, is
 2 hereby authorized to execute a compact in substantially the following form with any one or more
 3 of the states of the United States, and the Legislature hereby signifies in advance its approval
 4 and ratification of such compact:

“PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

7 The purpose of this Compact is to facilitate interstate practice of physical therapy with the
 8 goal of improving public access to physical therapy services. The practice of physical therapy
 9 occurs in the state where the patient/client is located at the time of the patient/client encounter.
 10 The Compact preserves the regulatory authority of states to protect public health and safety
 11 through the current system of state licensure.

12 This Compact is designed to achieve the following objectives:

- 13 1. Increase public access to physical therapy services by providing for the mutual
 14 recognition of other member state licenses;
- 15 2. Enhance the states’ ability to protect the public's health and safety;
- 16 3. Encourage the cooperation of member states in regulating multi-state physical therapy
 17 practice;
- 18 4. Support spouses of relocating military members;

19 5. Enhance the exchange of licensure, investigative, and disciplinary information between
20 member states; and

21 6. Allow a remote state to hold a provider of services with a compact privilege in that state
22 accountable to that state's practice standards.

23 SECTION 2. DEFINITIONS

24 As used in this Compact, and except as otherwise provided, the following definitions shall
25 apply:

26 1. 'Active duty military' means full-time duty status in the active uniformed service of the
27 United States, including members of the National Guard and Reserve on active duty orders
28 pursuant to 10 U.S.C. §§ 1209 and 1211.

29 2. 'Adverse action' means disciplinary action taken by a physical therapy licensing board
30 based upon misconduct, unacceptable performance, or a combination of both.

31 3. 'Alternative program' means a non-disciplinary monitoring or practice remediation
32 process approved by a physical therapy licensing board. This includes, but is not limited to,
33 substance abuse issues.

34 4. 'Compact privilege' means the authorization granted by a remote state to allow a
35 licensee from another member state to practice as a physical therapist or work as a physical
36 therapist assistant in the remote state under its laws and rules. The practice of physical therapy
37 occurs in the member state where the patient/client is located at the time of the patient/client
38 encounter.

39 5. 'Continuing competence' means a requirement, as a condition of license renewal, to
40 provide evidence of participation in, and/or completion of, educational and professional activities
41 relevant to practice or area of work.

42 6. 'Data system' means a repository of information about licensees, including examination,
43 licensure, investigative, compact privilege, and adverse action.

44 7. 'Encumbered license' means a license that a physical therapy licensing board has
45 limited in any way.

46 8. 'Executive Board' means a group of directors elected or appointed to act on behalf of,
47 and within the powers granted to them by, the Commission.

48 9. 'Home state' means the member state that is the licensee's primary state of residence.

49 10. 'Investigative information' means information, records, and documents received or
50 generated by a physical therapy licensing board pursuant to an investigation.

51 11. 'Jurisprudence requirement' means the assessment of an individual's knowledge of
52 the laws and rules governing the practice of physical therapy in a state.

53 12. 'Licensee' means an individual who currently holds an authorization from the state to
54 practice as a physical therapist or to work as a physical therapist assistant.

55 13. 'Member state' means a state that has enacted the Compact.

56 14. 'Party state' means any member state in which a licensee holds a current license or
57 compact privilege or is applying for a license or compact privilege.

58 15. 'Physical therapist' means an individual who is licensed by a state to practice physical
59 therapy.

60 16. 'Physical therapist assistant' means an individual who is licensed/certified by a state
61 and who assists the physical therapist in selected components of physical therapy.

62 17. 'Physical therapy,' 'physical therapy practice,' and 'the practice of physical therapy'
63 mean the care and services provided by or under the direction and supervision of a licensed
64 physical therapist.

65 18. 'Physical Therapy Compact Commission' or 'Commission' means the national
66 administrative body whose membership consists of all states that have enacted the Compact.

67 19. 'Physical therapy licensing board' or 'licensing board' means the agency of a state that
68 is responsible for the licensing and regulation of physical therapists and physical therapist
69 assistants.

70 20. 'Remote state' means a member state other than the home state, where a licensee is
71 exercising or seeking to exercise the compact privilege.

72 21. 'Rule' means a regulation, principle, or directive promulgated by the Commission that
73 has the force of law.

74 22. 'State' means any state, commonwealth, district, or territory of the United States of
75 America that regulates the practice of physical therapy.

76 SECTION 3. STATE PARTICIPATION IN THE COMPACT

77 A. To participate in the Compact, a state must:

78 1. Participate fully in the Commission's data system, including using the Commission's
79 unique identifier as defined in rules;

80 2. Have a mechanism in place for receiving and investigating complaints about licensees;

81 3. Notify the Commission, in compliance with the terms of the Compact and rules, of any
82 adverse action or the availability of investigative information regarding a licensee;

83 4. Fully implement a criminal background check requirement, within a time frame
84 established by rule, by receiving the results of the Federal Bureau of Investigation record search
85 on criminal background checks and use the results in making licensure decisions in accordance
86 with Section 3B;

87 5. Comply with the rules of the Commission;

88 6. Utilize a recognized national examination as a requirement for licensure pursuant to the
89 rules of the Commission; and

90 7. Have continuing competence requirements as a condition for license renewal.

91 B. Upon adoption of this statute, the member state shall have the authority to obtain
92 biometric-based information from each physical therapy licensure applicant and to submit this
93 information to the Federal Bureau of Investigation for a criminal background check in accordance
94 with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

95 C. A member state shall grant the compact privilege to a licensee holding a valid

96 unencumbered license in another member state in accordance with the terms of the Compact and
97 rules.

98 D. Member states may charge a fee for granting a compact privilege.

99 SECTION 4. COMPACT PRIVILEGE

100 A. To exercise the compact privilege under the terms and provisions of the Compact, the
101 licensee shall:

102 1. Hold a license in the home state;

103 2. Have no encumbrance on any state license;

104 3. Be eligible for a compact privilege in any member state in accordance with Section 4D,
105 G and H;

106 4. Have not had any adverse action against any license or compact privilege within the
107 previous 2 years;

108 5. Notify the Commission that the licensee is seeking the compact privilege within a remote
109 state(s);

110 6. Pay any applicable fees, including any state fee, for the compact privilege;

111 7. Meet any jurisprudence requirements established by the remote state(s) in which the
112 licensee is seeking a compact privilege; and

113 8. Report to the Commission adverse action taken by any non-member state within 30
114 days from the date the adverse action is taken.

115 B. The compact privilege is valid until the expiration date of the home license. The licensee
116 must comply with the requirements of Section 4A to maintain the compact privilege in the remote
117 state.

118 C. A licensee providing physical therapy in a remote state under the compact privilege
119 shall function within the laws and regulations of the remote state.

120 D. A licensee providing physical therapy in a remote state is subject to that state's
121 regulatory authority. A remote state may, in accordance with due process and that state's laws,

122 remove a licensee's compact privilege in the remote state for a specific period of time, impose
123 fines, and/or take any other necessary actions to protect the health and safety of its citizens. The
124 licensee is not eligible for a compact privilege in any state until the specific time for removal has
125 passed and all fines are paid.

126 E. If a home-state license is encumbered, the licensee shall lose the compact privilege in
127 any remote state until the following occur:

128 1. The home state license is no longer encumbered; and

129 2. Two years have elapsed from the date of the adverse action.

130 F. Once an encumbered license in the home state is restored to good standing, the
131 licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote
132 state.

133 G. If a licensee's compact privilege in any remote state is removed, the individual shall
134 lose the compact privilege in any remote state until the following occur:

135 1. The specific period of time for which the compact privilege was removed has ended;

136 2. All fines have been paid; and

137 3. Two years have elapsed from the date of the adverse action.

138 H. Once the requirements of Section 4G have been met, the license must meet the
139 requirements in Section 4A to obtain a compact privilege in a remote state.

140 SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

141 A licensee who is active duty military or is the spouse of an individual who is active duty
142 military may designate one of the following as the home state:

143 A. Home of record;

144 B. Permanent Change of Station (PCS); or

145 C. State of current residence if it is different than the PCS state or home of record.

146 SECTION 6. ADVERSE ACTIONS

147 A. A home state shall have exclusive power to impose adverse action against a license

148 issued by the home state.

149 B. A home state may take adverse action based on the investigative information of a
150 remote state, so long as the home state follows its own procedures for imposing adverse action.

151 C. Nothing in this Compact shall override a member state's decision that participation in
152 an alternative program may be used in lieu of adverse action and that such participation shall
153 remain non-public if required by the member state's laws. Member states must require licensees
154 who enter any alternative programs in lieu of discipline to agree not to practice in any other
155 member state during the term of the alternative program without prior authorization from such
156 other member state.

157 D. Any member state may investigate actual or alleged violations of the statutes and rules
158 authorizing the practice of physical therapy in any other member state in which a physical therapist
159 or physical therapist assistant holds a license or compact privilege.

160 E. A remote state shall have the authority to:

161 1. Take adverse actions as set forth in Section 4D against a licensee's compact privilege
162 in the state;

163 2. Issue subpoenas for both hearings and investigations that require the attendance and
164 testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy
165 licensing board in a party state for the attendance and testimony of witnesses, and/or the
166 production of evidence from another party state, shall be enforced in the latter state by any court
167 of competent jurisdiction, according to the practice and procedure of that court applicable to
168 subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness
169 fees, travel expenses, mileage, and other fees required by the service statutes of the state where
170 the witnesses and/or evidence are located; and

171 3. If otherwise permitted by state law, recover from the licensee the costs of investigations
172 and disposition of cases resulting from any adverse action taken against that licensee.

173 F. Joint Investigations:

174 1. In addition to the authority granted to a member state by its respective physical therapy
175 practice act or other applicable state law, a member state may participate with other member
176 states in joint investigations of licensees.

177 2. Member states shall share any investigative, litigation, or compliance materials in
178 furtherance of any joint or individual investigation initiated under the Compact.

179 SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION.

180 A. The Compact member states hereby create and establish a joint public agency known
181 as the Physical Therapy Compact Commission:

182 1. The Commission is an instrumentality of the Compact states.

183 2. ~~Nothing in this Compact shall be construed to be a waiver of sovereign immunity or the~~
184 ~~state constitutional provisions for proper venue by the State of West Virginia. Venue is proper and~~
185 judicial proceedings by or against the Commission shall be brought solely and exclusively in a
186 court of competent jurisdiction where the principal office of the Commission is located. The
187 Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to
188 participate in alternative dispute resolution proceedings.

189 3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

190 B. Membership, Voting, and Meetings:

191 1. Each member state shall have and be limited to one delegate selected by that member
192 state's licensing board.

193 2. The delegate shall be a current member of the licensing board, who is a physical
194 therapist, physical therapist assistant, public member, or the board administrator.

195 3. Any delegate may be removed or suspended from office as provided by the law of the
196 state from which the delegate is appointed.

197 4. The member state board shall fill any vacancy occurring in the Commission.

198 5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and
199 creation of bylaws and shall otherwise have an opportunity to participate in the business and

200 affairs of the Commission.

201 6. A delegate shall vote in person or by such other means as provided in the bylaws. The
202 bylaws may provide for delegates' participation in meetings by telephone or other means of
203 communication.

204 7. The Commission shall meet at least once during each calendar year. Additional
205 meetings shall be held as set forth in the bylaws.

206 C. The Commission shall have the following powers and duties:

207 1. Establish the fiscal year of the Commission;

208 2. Establish bylaws;

209 3. Maintain its financial records in accordance with the bylaws;

210 4. Meet and take such actions as are consistent with the provisions of this Compact and
211 the bylaws;

212 5. Promulgate uniform rules to facilitate and coordinate implementation and administration
213 of this Compact. The rules shall have the force and effect of law and shall be binding in all member
214 states; ~~Provided, That the West Virginia licensing authority shall first promulgate rules pursuant~~
215 ~~to West Virginia Code~~

216 6. Bring and prosecute legal proceedings or actions in the name of the Commission,
217 provided that the standing of any state physical therapy licensing board to sue or be sued under
218 applicable law shall not be affected;

219 7. Purchase and maintain insurance and bonds;

220 8. Borrow, accept, or contract for services of personnel, including, but not limited to,
221 employees of a member state;

222 9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
223 individuals appropriate authority to carry out the purposes of the Compact and to establish the
224 Commission's personnel policies and programs relating to conflicts of interest, qualifications of
225 personnel, and other related personnel matters;

226 10. Accept any and all appropriate donations and grants of money, equipment, supplies,
227 materials, and services, and to receive, utilize, and dispose of the same; provided that at all times
228 the Commission shall avoid any appearance of impropriety and/or conflict of interest;

229 11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,
230 improve or use any property, real, personal or mixed; provided that at all times the Commission
231 shall avoid any appearance of impropriety;

232 12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
233 any property real, personal, or mixed;

234 13. Establish a budget and make expenditures;

235 14. Borrow money;

236 15. Appoint committees, including standing committees comprising of members, state
237 regulators, state legislators or their representatives, and consumer representatives, and such
238 other interested persons as may be designated in this Compact and the bylaws;

239 16. Provide and receive information from, and cooperate with, law- enforcement agencies;

240 17. Establish and elect an Executive Board; and

241 18. Perform such other functions as may be necessary or appropriate to achieve the
242 purposes of this Compact consistent with the state regulation of physical therapy licensure and
243 practice.

244 D. The Executive Board

245 The Executive Board shall have the power to act on behalf of the Commission according
246 to the terms of this Compact:

247 1. The Executive Board shall be comprised of nine members:

248 a. Seven voting members who are elected by the Commission from the current
249 membership of the Commission;

250 b. One ex-officio, nonvoting member from a recognized national physical therapy
251 professional association; and

252 c. One ex-officio, nonvoting member from a recognized membership organization of the
253 physical therapy licensing boards.

254 2. The ex-officio members will be selected by their respective organizations.

255 3. The Commission may remove any member of the Executive Board as provided in
256 bylaws.

257 4. The Executive Board shall meet at least annually.

258 5. The Executive Board shall have the following duties and responsibilities:

259 a. Recommend to the entire Commission changes to the rules or bylaws, changes to this
260 Compact legislation, fees paid by Compact member states such as annual dues, and any
261 commission Compact fee charged to licensees for the compact privilege;

262 b. Ensure Compact administration services are appropriately provided, contractual or
263 otherwise;

264 c. Prepare and recommend the budget;

265 d. Maintain financial records on behalf of the Commission;

266 e. Monitor Compact compliance of member states and provide compliance reports to the
267 Commission;

268 f. Establish additional committees as necessary; and

269 g. Other duties as provided in rules or bylaws.

270 E. Meetings of the Commission:

271 1. All meetings shall be open to the public, and public notice of meetings shall be given in
272 the same manner as required under the rulemaking provisions in Section 9.

273 2. The Commission or the Executive Board or other committees of the Commission may
274 convene in a closed, non-public meeting if the Commission or Executive Board or other
275 committees of the Commission must discuss:

276 a. Non-compliance of a member state with its obligations under the Compact;

277 b. The employment, compensation, discipline or other matters, practices or procedures

278 related to specific employees, or other matters related to the Commission's internal personnel
279 practices and procedures;

280 c. Current, threatened, or reasonably anticipated litigation;

281 d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
282 estate;

283 e. Accusing any person of a crime or formally censuring any person;

284 f. Disclosure of trade secrets or commercial or financial information that is privileged or
285 confidential;

286 g. Disclosure of information of a personal nature where disclosure would constitute a
287 clearly unwarranted invasion of personal privacy;

288 h. Disclosure of investigative records compiled for law- enforcement purposes;

289 i. Disclosure of information related to any investigative reports prepared by or on behalf of
290 or for use of the Commission or other committee charged with responsibility of investigation or
291 determination of compliance issues pursuant to the Compact; or

292 j. Matters specifically exempted from disclosure by federal or member state statute.

293 3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
294 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
295 reference each relevant exempting provision.

296 4. The Commission shall keep minutes that fully and clearly describe all matters discussed
297 in a meeting and shall provide a full and accurate summary of actions taken and the reasons
298 therefore, including a description of the views expressed. All documents considered in connection
299 with an action shall be identified in such minutes. All minutes and documents of a closed meeting
300 shall remain under seal, subject to release by a majority vote of the Commission or order of a
301 court of competent jurisdiction.

302 F. Financing of the Commission:

303 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of

304 its establishment, organization, and ongoing activities.

305 2. The Commission may accept any and all appropriate revenue sources, donations, and
306 grants of money, equipment, supplies, materials, and services.

307 3. The Commission may levy on and collect an annual assessment from each member
308 state or impose fees on other parties to cover the cost of the operations and activities of the
309 Commission and its staff, which must be in a total amount sufficient to cover its annual budget as
310 approved each year for which revenue is not provided by other sources. The aggregate annual
311 assessment amount shall be allocated based upon a formula to be determined by the
312 Commission, which shall promulgate a rule binding upon all member states.

313 4. The Commission shall not incur obligations of any kind prior to securing the funds
314 adequate to meet the same; nor shall the Commission pledge the credit of any of the member
315 states, except by and with the authority of the member state.

316 5. The Commission shall keep accurate accounts of all receipts and disbursements. The
317 receipts and disbursements of the Commission shall be subject to the audit and accounting
318 procedures established under its bylaws. However, all receipts and disbursements of funds
319 handled by the Commission shall be audited yearly by a certified or licensed public accountant,
320 and the report of the audit shall be included in and become part of the annual report of the
321 Commission.

322 G. Qualified Immunity, Defense, and Indemnification:

323 1. The members, officers, executive director, employees, and representatives of the
324 Commission shall be immune from suit and liability, either personally or in their official capacity,
325 for any claim for damage to or loss of property or personal injury or other civil liability caused by
326 or arising out of any actual or alleged act, error, or omission that occurred, or that the person
327 against whom the claim is made had a reasonable basis for believing occurred within the scope
328 of Commission employment, duties, or responsibilities; provided that nothing in this paragraph
329 shall be construed to protect any such person from suit and/or liability for any damage, loss, injury,

330 or liability caused by the intentional or willful or wanton misconduct of that person.

331 2. The Commission shall defend any member, officer, executive director, employee, or
332 representative of the Commission in any civil action seeking to impose liability arising out of any
333 actual or alleged act, error, or omission that occurred within the scope of Commission
334 employment, duties, or responsibilities, or that the person against whom the claim is made had a
335 reasonable basis for believing occurred within the scope of Commission employment, duties, or
336 responsibilities; provided that nothing herein shall be construed to prohibit that person from
337 retaining his or her own counsel; and provided further, that the actual or alleged act, error, or
338 omission did not result from that person's intentional or willful or wanton misconduct.

339 3. The Commission shall indemnify and hold harmless any member, officer, executive
340 director, employee, or representative of the Commission for the amount of any settlement or
341 judgment obtained against that person arising out of any actual or alleged act, error, or omission
342 that occurred within the scope of Commission employment, duties, or responsibilities, or that such
343 person had a reasonable basis for believing occurred within the scope of Commission
344 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
345 did not result from the intentional or willful or wanton misconduct of that person.

346 SECTION 8. DATA SYSTEM

347 A. The Commission shall provide for the development, maintenance, and utilization of a
348 coordinated database and reporting system containing licensure, adverse action, and
349 investigative information on all licensed individuals in member states.

350 B. Notwithstanding any other provision of state law to the contrary, a member state shall
351 submit a uniform data set to the data system on all individuals to whom this Compact is applicable
352 as required by the rules of the Commission, including:

353 1. Identifying information;

354 2. Licensure data;

355 3. Adverse actions against a license or compact privilege;

- 356 4. Non-confidential information related to alternative program participation;
357 5. Any denial of application for licensure, and the reason(s) for such denial; and
358 6. Other information that may facilitate the administration of this Compact, as determined
359 by the rules of the Commission.

360 C. Investigative information pertaining to a licensee in any member state will only be
361 available to other party states.

362 D. The Commission shall promptly notify all member states of any adverse action taken
363 against a licensee or an individual applying for a license. Adverse action information pertaining to
364 a licensee in any member state will be available to any other member state.

365 E. Member states contributing information to the data system may designate information
366 that may not be shared with the public without the express permission of the contributing state.

367 F. Any information submitted to the data system that is subsequently required to be
368 expunged by the laws of the member state contributing the information shall be removed from the
369 data system.

370 SECTION 9. RULEMAKING

371 A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth
372 in this section and the rules adopted thereunder. Rules and amendments shall become binding
373 as of the date specified in each rule or amendment. ~~subject to the limitations set forth in C(5) of~~
374 ~~Section 7 of this Compact~~

375 B. If a majority of the legislatures of the member states rejects a rule, by enactment of a
376 statute, resolution, or refusal to adopt the rules as promulgated by the state licensing authority, in
377 the same manner used to adopt the Compact, within four years of the date of adoption of the rule,
378 then such rule shall have no further force and effect in any member state.

379 C. Rules or amendments to the rules shall be adopted at a regular or special meeting of
380 the Commission.

381 D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at

382 least 30 days in advance of the meeting at which the rule will be considered and voted upon, the
383 Commission shall file a Notice of Proposed Rulemaking:

- 384 1. On the website of the Commission or other publicly accessible platform; and
385 2. On the website of each member state physical therapy licensing board or other publicly
386 accessible platform or the publication in which each state would otherwise publish proposed rules.

387 E. The Notice of Proposed Rulemaking shall include:

- 388 1. The proposed time, date, and location of the meeting in which the rule will be considered
389 and voted upon;
390 2. The text of the proposed rule or amendment and the reason for the proposed rule;
391 3. A request for comments on the proposed rule from any interested person; and
392 4. The manner in which interested persons may submit notice to the Commission of their
393 intention to attend the public hearing and any written comments.

394 F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit
395 written data, facts, opinions, and arguments, which shall be made available to the public.

396 G. The Commission shall grant an opportunity for a public hearing before it adopts a rule
397 or amendment if a hearing is requested by:

- 398 1. At least 25 persons;
399 2. A state or federal governmental subdivision or agency; or
400 3. An association having at least 25 members.

401 H. If a hearing is held on the proposed rule or amendment, the Commission shall publish
402 the place, time, and date of the scheduled public hearing. If the hearing is held via electronic
403 means, the Commission shall publish the mechanism for access to the electronic hearing:

404 1. All persons wishing to be heard at the hearing shall notify the executive director of the
405 Commission or other designated member in writing of their desire to appear and testify at the
406 hearing no fewer than five business days before the scheduled date of the hearing.

407 2. Hearings shall be conducted in a manner providing each person who wishes to

408 comment a fair and reasonable opportunity to comment orally or in writing.

409 3. All hearings will be recorded. A copy of the recording will be made available on request.

410 4. Nothing in this section shall be construed as requiring a separate hearing on each rule.

411 Rules may be grouped for the convenience of the Commission at hearings required by this
412 section.

413 I. Following the scheduled hearing date, or by the close of business on the scheduled
414 hearing date if the hearing was not held, the Commission shall consider all written and oral
415 comments received.

416 J. If no written notice of intent to attend the public hearing by interested parties is received,
417 the Commission may proceed with promulgation of the proposed rule without a public hearing.

418 K. The Commission shall, by majority vote of all members, take final action on the
419 proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking
420 record and the full text of the rule.

421 L. Upon determination that an emergency exists, the Commission may consider and adopt
422 an emergency rule without prior notice, opportunity for comment or hearing, provided that the
423 usual rulemaking procedures provided in the Compact and in this section shall be retroactively
424 applied to the rule as soon as reasonably possible, in no event later than 90 days after the
425 effective date of the rule. For the purposes of this provision, an emergency rule is one that must
426 be adopted immediately in order to:

427 1. Meet an imminent threat to public health, safety, or welfare;

428 2. Prevent a loss of Commission or member state funds;

429 3. Meet a deadline for the promulgation of an administrative rule that is established by
430 federal law or rule; or

431 4. Protect public health and safety.

432 M. The Commission or an authorized committee of the Commission may direct revisions
433 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors

434 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be
435 posted on the website of the Commission. The revision shall be subject to challenge by any
436 person for a period of 30 days after posting. The revision may be challenged only on grounds that
437 the revision results in a material change to a rule. A challenge shall be made in writing and
438 delivered to the chair of the Commission prior to the end of the notice period. If no challenge is
439 made, the revision will take effect without further action. If the revision is challenged, the revision
440 may not take effect without the approval of the Commission.

441 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

442 A. Oversight:

443 1. The executive, legislative, and judicial branches of state government in each member
444 state shall enforce this Compact and take all actions necessary and appropriate to effectuate the
445 Compact's purposes and intent. The provisions of this Compact and the rules promulgated
446 hereunder shall have standing as statutory law subject to the limitations set forth herein.

447 2. All courts shall take judicial notice of the Compact and the rules, if approved by the
448 Legislature, in any judicial or administrative proceeding in a member state pertaining to the subject
449 matter of this Compact which may affect the powers, responsibilities, or actions of the
450 Commission.

451 3. The Commission shall be entitled to receive service of process in any such proceeding,
452 and shall have standing to intervene in such a proceeding for all purposes. Failure to provide
453 service of process to the Commission shall render a judgment or order void as to the Commission,
454 this Compact, or promulgated rules.

455 B. Default, Technical Assistance, and Termination:

456 1. If the Commission determines that a member state has defaulted in the performance of
457 its obligations or responsibilities under this Compact or the promulgated rules, the Commission
458 shall:

459 a. Provide written notice to the defaulting state and other member states of the nature of

460 the default, the proposed means of curing the default and/or any other action to be taken by the
461 Commission; and

462 b. Provide remedial training and specific technical assistance regarding the default.

463 2. If a state in default fails to cure the default, the defaulting state may be terminated from,
464 the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges
465 and benefits conferred by this Compact may be terminated on the effective date of termination. A
466 cure of the default does not relieve the offending state of obligations or liabilities incurred during
467 the period of default.

468 3. Termination of membership in the Compact shall be imposed only after all other means
469 of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be
470 given by the Commission to the governor, the majority and minority leaders of the defaulting
471 state's legislature, and each of the member states.

472 4. A state that has been terminated is responsible for all assessments, obligations, and
473 liabilities incurred through the effective date of termination, including obligations that extend
474 beyond the effective date of termination.

475 5. The Commission shall not bear any costs related to a state that is found to be in default
476 or that has been terminated from the Compact, unless agreed upon in writing between the
477 Commission and the defaulting state.

478 6. The defaulting state may appeal the action of the Commission by petitioning the U.S.
479 District Court for the District of Columbia or the federal district where the Commission has its
480 principal offices. The prevailing member shall be awarded all costs of such litigation, including
481 reasonable attorneys' fees.

482 C. Dispute Resolution:

483 1. Upon request by a member state, the Commission shall attempt to resolve disputes
484 related to the Compact that arise among member states and between member and non-member
485 states.

486 2. The Commission shall promulgate a rule providing for both mediation and binding
487 dispute resolution for disputes as appropriate.

488 D. Enforcement:

489 1. The Commission, in the reasonable exercise of its discretion, shall enforce the
490 provisions and rules of this Compact.

491 2. By majority vote, the Commission may initiate legal action in the United States District
492 Court for the District of Columbia or the federal district where the Commission has its principal
493 offices against a member state ~~in the state in which the state member is located, where a member~~
494 ~~state is found to be~~ in default, in order to enforce compliance with the provisions of the Compact,
495 its promulgated rules, and bylaws. The relief sought may include both injunctive relief and
496 damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded
497 all costs of such litigation, including reasonable attorneys' fees.

498 3. The remedies herein shall not be the exclusive remedies of the Commission. The
499 Commission may pursue any other remedies available under federal or state law.

500 SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR
501 PHYSICAL THERAPY PRACTICE; ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

502 A. The Compact shall come into effect on the date on which the Compact statute is
503 enacted into law in the tenth member state. The provisions, which become effective at that time,
504 shall be limited to the powers granted to the Commission relating to assembly and the
505 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers
506 necessary to the implementation and administration of the Compact.

507 B. Any state that joins the Compact subsequent to the Commission's initial adoption of the
508 rules shall be subject to the rules as they exist on the date on which the Compact becomes law
509 in that state. Any rule that has been previously adopted by the Commission shall have the full
510 force and effect of law on the day the Compact becomes law in that state.

511 C. Any member state may withdraw from this Compact by enacting a statute repealing the

512 same:

513 1. A member state's withdrawal shall not take effect until six months after enactment of
514 the repealing statute.

515 2. Withdrawal shall not affect the continuing requirement of the withdrawing state's
516 physical therapy licensing board to comply with the investigative and adverse action reporting
517 requirements of this act prior to the effective date of withdrawal.

518 D. Nothing contained in this Compact shall be construed to invalidate or prevent any
519 physical therapy licensure agreement or other cooperative arrangement between a member state
520 and a non-member state that does not conflict with the provisions of this Compact.

521 E. This Compact may be amended by the member states. No amendment to this Compact
522 shall become effective and binding upon any member state until it is enacted into the laws of all
523 member states.

524 SECTION 12. CONSTRUCTION AND SEVERABILITY

525 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
526 provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of
527 this Compact is declared to be contrary to the constitution of any party state or of the United
528 States or the applicability thereof to any government, agency, person, or circumstance is held
529 invalid, the validity of the remainder of this Compact and the applicability thereof to any
530 government, agency, person, or circumstance shall not be affected thereby. If this Compact shall
531 be held contrary to the constitution of any party state, the Compact shall remain in full force and
532 effect as to the remaining party states and in full force and effect as to the party state affected as
533 to all severable matters.”

NOTE: The purpose of this bill is to amend the venue, enforcement and rulemaking sections of the Physical Therapy Licensure Compact Act (Enrolled Committee Substitute for SB 456) to conform with the provisions of the model act provided by the Physical Therapy Compact Commission to allow West Virginia to become a participating member. Otherwise, West Virginia cannot participate in the multi-state licensure compact.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.