

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 456

BY SENATORS GAUNCH, TAKUBO, FERNS, BOSO, AND

MARONEY

[Introduced February 1, 2018; Referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §30-41-1, §30-41-2, and §30-41-3, all relating to creating the Physical Therapy
 3 Licensure Compact Act; authorizing the Governor to execute the act with any one or more
 4 of the states of the United States; providing that Legislature signifies in advance its
 5 approval and ratification of the compact; providing that the purpose of this compact is to
 6 facilitate interstate practice of physical therapy with the goal of improving public access to
 7 physical therapy services; setting forth the substance, requirements, and privileges of the
 8 act; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. PHYSICAL THERAPY LICENSURE COMPACT ACT.

§30-41-1. Short title.

1 This act shall be known and may be cited as the Physical Therapy Licensure Compact
 2 Act.

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

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

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

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

11 This Compact is designed to achieve the following objectives:

- 12 1. Increase public access to physical therapy services by providing for the mutual
13 recognition of other member state licenses;
- 14 2. Enhance the states' ability to protect the public's health and safety;
- 15 3. Encourage the cooperation of member states in regulating multi-state physical therapy
16 practice;
- 17 4. Support spouses of relocating military members;
- 18 5. Enhance the exchange of licensure, investigative, and disciplinary information between
19 member states; and
- 20 6. Allow a remote state to hold a provider of services with a compact privilege in that state
21 accountable to that state's practice standards.

22 SECTION 2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

54 13. "Member state" means a state that has enacted the Compact.

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

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

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

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

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

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

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

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

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

75 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

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

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

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

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

86 5. Comply with the rules of the Commission;

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

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

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

94 C. A member state shall grant the compact privilege to a licensee holding a valid
95 unencumbered license in another member state in accordance with the terms of the Compact and
96 rules.

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

98 SECTION 4. COMPACT PRIVILEGE

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

101 1. Hold a license in the home state;

102 2. Have no encumbrance on any state license;

103 3. Be eligible for a compact privilege in any member state in accordance with Section 4D,

104 G and H;

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

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

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

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

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

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

116 state.

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

119 D. A licensee providing physical therapy in a remote state is subject to that state's
120 regulatory authority. A remote state may, in accordance with due process and that state's laws,
121 remove a licensee's compact privilege in the remote state for a specific period of time, impose
122 finances, and/or take any other necessary actions to protect the health and safety of its citizens. The
123 licensee is not eligible for a compact privilege in any state until the specific time for removal has
124 passed and all fines are paid.

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

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

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

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

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

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

135 2. All fines have been paid; and

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

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

139 SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

- 142 A. Home of record;
143 B. Permanent Change of Station (PCS); or
144 C. State of current residence if it is different than the PCS state or home of record.

145 SECTION 6. ADVERSE ACTIONS

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

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

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

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

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

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

162 2. Issue subpoenas for both hearings and investigations that require the attendance and
163 testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy
164 licensing board in a party state for the attendance and testimony of witnesses, and/or the
165 production of evidence from another party state, shall be enforced in the latter state by any court
166 of competent jurisdiction, according to the practice and procedure of that court applicable to
167 subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness

168 fees, travel expenses, mileage, and other fees required by the service statutes of the state where
169 the witnesses and/or evidence are located; and

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

172 F. Joint Investigations

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

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

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

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

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

182 2. Venue is proper and judicial proceedings by or against the Commission shall be brought
183 solely and exclusively in a court of competent jurisdiction where the principal office of the
184 Commission is located. The Commission may waive venue and jurisdictional defenses to the
185 extent it adopts or consents to participate in alternative dispute resolution proceedings.

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

187 B. Membership, Voting, and Meetings

188 1. Each member state shall have and be limited to one (1) delegate selected by that
189 member state's licensing board.

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

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

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

195 5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules
196 and creation of bylaws and shall otherwise have an opportunity to participate in the business and
197 affairs of the Commission.

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

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

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

204 1. Establish the fiscal year of the Commission;

205 2. Establish bylaws;

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

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

209 5. Promulgate uniform rules to facilitate and coordinate implementation and administration
210 of this Compact. The rules shall have the force and effect of law and shall be binding in all member
211 states;

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

215 7. Purchase and maintain insurance and bonds;

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

218 9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
219 individuals appropriate authority to carry out the purposes of the Compact, and to establish the

220 Commission's personnel policies and programs relating to conflicts of interest, qualifications of
221 personnel, and other related personnel matters;

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

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

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

230 13. Establish a budget and make expenditures;

231 14. Borrow money;

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

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

236 17. Establish and elect an Executive Board; and

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

240 D. The Executive Board

241 The Executive Board shall have the power to act on behalf of the Commission according
242 to the terms of this Compact

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

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

246 b. One ex-officio, nonvoting member from the recognized national physical therapy
247 professional association; and

248 c. One ex-officio, nonvoting member from the recognized membership organization of the
249 physical therapy licensing boards.

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

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

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

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

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

258 b. Ensure Compact administration services are appropriately provided, contractual or
259 otherwise;

260 c. Prepare and recommend the budget;

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

262 e. Monitor Compact compliance of member states and provide compliance reports to the
263 Commission;

264 f. Establish additional committees as necessary; and

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

266 E. Meetings of the Commission

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

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

- 272 a. Non-compliance of a member state with its obligations under the Compact;
273 b. The employment, compensation, discipline or other matters, practices or procedures
274 related to specific employees or other matters related to the Commission's internal personnel
275 practices and procedures;
276 c. Current, threatened, or reasonably anticipated litigation;
277 d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
278 estate;
279 e. Accusing any person of a crime or formally censuring any person;
280 f. Disclosure of trade secrets or commercial or financial information that is privileged or
281 confidential;
282 g. Disclosure of information of a personal nature where disclosure would constitute a
283 clearly unwarranted invasion of personal privacy;
284 h. Disclosure of investigative records compiled for law enforcement purposes;
285 i. Disclosure of information related to any investigative reports prepared by or on behalf of
286 or for use of the Commission or other committee charged with responsibility of investigation or
287 determination of compliance issues pursuant to the Compact; or
288 j. Matters specifically exempted from disclosure by federal or member state statute.
289 3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
290 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
291 reference each relevant exempting provision.
292 4. The Commission shall keep minutes that fully and clearly describe all matters discussed
293 in a meeting and shall provide a full and accurate summary of actions taken, and the reasons
294 therefore, including a description of the views expressed. All documents considered in connection
295 with an action shall be identified in such minutes. All minutes and documents of a closed meeting
296 shall remain under seal, subject to release by a majority vote of the Commission or order of a
297 court of competent jurisdiction.

298 F. Financing of the Commission

299 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of
300 its establishment, organization, and ongoing activities.

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

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

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

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

318 G. Qualified Immunity, Defense, and Indemnification

319 1. The members, officers, executive director, employees and representatives of the
320 Commission shall be immune from suit and liability, either personally or in their official capacity,
321 for any claim for damage to or loss of property or personal injury or other civil liability caused by
322 or arising out of any actual or alleged act, error or omission that occurred, or that the person
323 against whom the claim is made had a reasonable basis for believing occurred within the scope

324 of Commission employment, duties or responsibilities; provided that nothing in this paragraph
325 shall be construed to protect any such person from suit and/or liability for any damage, loss, injury,
326 or liability caused by the intentional or willful or wanton misconduct of that person.

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

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

342 SECTION 8. DATA SYSTEM

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

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

349 1. Identifying information;

350 2. Licensure data;
351 3. Adverse actions against a license or compact privilege;
352 4. Non-confidential information related to alternative program participation;
353 5. Any denial of application for licensure, and the reason(s) for such denial; and
354 6. Other information that may facilitate the administration of this Compact, as determined
355 by the rules of the Commission.

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

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

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

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

366 SECTION 9. RULEMAKING

367 A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth
368 in this Section and the rules adopted thereunder. Rules and amendments shall become binding
369 as of the date specified in each rule or amendment.

370 B. If a majority of the legislatures of the member states rejects a rule, by enactment of a
371 statute or resolution in the same manner used to adopt the Compact within 4 years of the date of
372 adoption of the rule, then such rule shall have no further force and effect in any member state.

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

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

376 least thirty (30) days in advance of the meeting at which the rule will be considered and voted
377 upon, the Commission shall file a Notice of Proposed Rulemaking:

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

381 E. The Notice of Proposed Rulemaking shall include:

382 1. The proposed time, date, and location of the meeting in which the rule will be considered
383 and voted upon;

384 2. The text of the proposed rule or amendment and the reason for the proposed rule;

385 3. A request for comments on the proposed rule from any interested person; and

386 4. The manner in which interested persons may submit notice to the Commission of their
387 intention to attend the public hearing and any written comments.

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

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

392 1. At least twenty-five (25) persons;

393 2. A state or federal governmental subdivision or agency; or

394 3. An association having at least twenty-five (25) members.

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

398 1. All persons wishing to be heard at the hearing shall notify the executive director of the
399 Commission or other designated member in writing of their desire to appear and testify at the
400 hearing not less than five (5) business days before the scheduled date of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

425 4. Protect public health and safety.

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

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

435 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

436 A. Oversight

437 1. The executive, legislative, and judicial branches of state government in each member
438 state shall enforce this Compact and take all actions necessary and appropriate to effectuate the
439 Compact's purposes and intent. The provisions of this Compact and the rules promulgated
440 hereunder shall have standing as statutory law.

441 2. All courts shall take judicial notice of the Compact and the rules in any judicial or
442 administrative proceeding in a member state pertaining to the subject matter of this Compact
443 which may affect the powers, responsibilities or actions of the Commission.

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

448 B. Default, Technical Assistance, and Termination

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

452 a. Provide written notice to the defaulting state and other member states of the nature of
453 the default, the proposed means of curing the default and/or any other action to be taken by the

454 Commission; and

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

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

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

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

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

471 6. The defaulting state may appeal the action of the Commission by petitioning the U.S.
472 District Court for the District of Columbia or the federal district where the Commission has its
473 principal offices. The prevailing member shall be awarded all costs of such litigation, including
474 reasonable attorney's fees.

475 C. Dispute Resolution

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

479 2. The Commission shall promulgate a rule providing for both mediation and binding

480 dispute resolution for disputes as appropriate.

481 D. Enforcement

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

484 2. By majority vote, the Commission may initiate legal action in the United States District
485 Court for the District of Columbia or the federal district where the Commission has its principal
486 offices against a member state in default to enforce compliance with the provisions of the Compact
487 and its promulgated rules and bylaws. The relief sought may include both injunctive relief and
488 damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded
489 all costs of such litigation, including reasonable attorney's fees.

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

492 Section 11. Date of Implementation of the Interstate Commission for Physical Therapy Practice
493 and Associated Rules, Withdrawal, and Amendment

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

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

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

505 1. A member state's withdrawal shall not take effect until six (6) months after enactment

506 of the repealing statute.

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

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

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

516 SECTION 12. CONSTRUCTION AND SEVERABILITY

517 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
 518 provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of
 519 this Compact is declared to be contrary to the constitution of any party state or of the United
 520 States or the applicability thereof to any government, agency, person or circumstance is held
 521 invalid, the validity of the remainder of this Compact and the applicability thereof to any
 522 government, agency, person or circumstance shall not be affected thereby. If this Compact shall
 523 be held contrary to the constitution of any party state, the Compact shall remain in full force and
 524 effect as to the remaining party states and in full force and effect as to the party state affected as
 525 to all severable matters.

§30-41-3. Effective date.

1 This article takes effect immediately upon passage.

NOTE: The purpose of this bill is to create the Physical Therapy Licensure Compact Act. The bill authorizes the Governor to execute the Act with any one or more of the states of the United States. The bill provides that Legislature signifies in advance its approval and ratification of the compact; providing that the purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The bill sets forth the substance, requirements, privileges of the Act. The bill establishes an effective date.

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