

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 456

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MARONEY

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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 the 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:

4 “PHYSICAL THERAPY LICENSURE COMPACT

5 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. §§ 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 examination,
42 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 that
67 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 to 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. Nothing in this Compact shall be construed to be a waiver of sovereign immunity or the
183 state constitutional provisions for proper venue by the State of West Virginia.

184 B. Membership, Voting, and Meetings:

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

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

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

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

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

194 affairs of the Commission.

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

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

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

201 1. Establish the fiscal year of the Commission;

202 2. Establish bylaws;

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

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

206 5. Promulgate uniform rules to facilitate and coordinate implementation and administration
207 of this Compact. The rules shall have the force and effect of law and shall be binding in all member
208 states: *Provided*, That the West Virginia licensing authority shall first promulgate rules pursuant
209 to West Virginia Code;

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

213 7. Purchase and maintain insurance and bonds;

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

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

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

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

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

228 13. Establish a budget and make expenditures;

229 14. Borrow money;

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

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

234 17. Establish and elect an Executive Board; and

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

238 D. The Executive Board

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

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

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

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

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

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

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

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

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

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

256 b. Ensure Compact administration services are appropriately provided, contractual or
257 otherwise;

258 c. Prepare and recommend the budget;

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

260 e. Monitor Compact compliance of member states and provide compliance reports to the
261 Commission;

262 f. Establish additional committees as necessary; and

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

264 E. Meetings of the Commission:

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

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

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

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

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

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

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

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

278 f. Disclosure of trade secrets or commercial or financial information that is privileged or
279 confidential;

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

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

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

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

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

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

296 F. Financing of the Commission:

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

298 its establishment, organization, and ongoing activities.

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

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

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

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

316 G. Qualified Immunity, Defense, and Indemnification:

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

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

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

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

340 SECTION 8. DATA SYSTEM

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

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

347 1. Identifying information;

348 2. Licensure data;

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

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

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

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

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

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

364 SECTION 9. RULEMAKING

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

369 B. If a majority of the legislatures of the member states rejects a rule, by enactment of a
370 statute, resolution, or refusal to adopt the rules as promulgated by the state licensing authority, in
371 the same manner used to adopt the Compact, within four years of the date of adoption of the rule,
372 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 30 days in advance of the meeting at which the rule will be considered and voted upon, the

377 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 25 persons;

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

394 3. An association having at least 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 no fewer than five 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 90 days after the
419 effective date of the rule. For the purposes of this provision, an emergency rule is one that must
420 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 30 days after posting. The revision may be challenged only on grounds that
431 the revision results in a material change to a rule. A challenge shall be made in writing and
432 delivered to the chair of the Commission prior to the end of the notice period. If no challenge is
433 made, the revision will take effect without further action. If the revision is challenged, the revision
434 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 subject to the limitations set forth herein.

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

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

449 B. Default, Technical Assistance, and Termination:

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

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

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

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

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

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

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

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

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

476 C. Dispute Resolution:

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

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

482 D. Enforcement:

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

485 2. By majority vote, the Commission may initiate legal action against a member state, in
486 the state in which the state member is located, where a member state is found to be in default, in
487 order to enforce compliance with the provisions of the Compact, its promulgated rules, and
488 bylaws. The relief sought may include both injunctive relief and damages. In the event judicial
489 enforcement is necessary, the prevailing member shall be awarded all costs of such litigation,
490 including reasonable attorneys' fees.

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

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

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

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

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

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

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

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

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

517 **SECTION 12. CONSTRUCTION AND SEVERABILITY**

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

§30-41-3. Effective date.

1 This article shall be effective 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 compact with any one or more of the states of the United States. The bill provides that the Legislature signifies in advance its approval

and ratification of the compact enactment of this legislation; 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, and privileges of the act. The bill makes clear that any rules promulgated by the commission shall only be binding in the event that proper rule promulgation is followed in this Legislature. The bill establishes an effective date as immediately upon passage.

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