

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 681

Introduced by Blood, 3; Brewer, 43.

Read first time January 03, 2018

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to physical therapy; to amend sections 38-131
- 2 and 38-3208, Reissue Revised Statutes of Nebraska; to adopt the
- 3 Physical Therapy Licensure Compact; to require criminal background
- 4 checks; to authorize practice for purposes of the Respiratory Care
- 5 Practice Act; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-131, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 38-131 (1) An applicant for an initial license to practice as a
4 registered nurse, ~~or~~ a licensed practical nurse, a physical therapist, or
5 a physical therapy assistant or to practice a profession which is
6 authorized to prescribe controlled substances shall be subject to a
7 criminal background check. Except as provided in subsection (3) of this
8 section, the applicant shall submit with the application a full set of
9 fingerprints which shall be forwarded to the Nebraska State Patrol to be
10 submitted to the Federal Bureau of Investigation for a national criminal
11 history record information check. The applicant shall authorize release
12 of the results of the national criminal history record information check
13 to the department. The applicant shall pay the actual cost of the
14 fingerprinting and criminal background check.

15 (2) This section shall not apply to a dentist who is an applicant
16 for a dental locum tenens under section 38-1122, to a physician or
17 osteopathic physician who is an applicant for a physician locum tenens
18 under section 38-2036, or to a veterinarian who is an applicant for a
19 veterinarian locum tenens under section 38-3335.

20 (3) An applicant for a temporary educational permit as defined in
21 section 38-2019 shall have ninety days from the issuance of the permit to
22 comply with subsection (1) of this section and shall have his or her
23 permit suspended after such ninety-day period if the criminal background
24 check is not complete or revoked if the criminal background check reveals
25 that the applicant was not qualified for the permit.

26 Sec. 2. Section 38-3208, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 38-3208 The Respiratory Care Practice Act shall not prohibit:

29 (1) The practice of respiratory care which is an integral part of
30 the program of study by students enrolled in approved respiratory care
31 education programs;

1 (2) The gratuitous care, including the practice of respiratory care,
2 of the ill by a friend or member of the family or by a person who is not
3 licensed to practice respiratory care if such person does not represent
4 himself or herself as a respiratory care practitioner;

5 (3) The practice of respiratory care by nurses, physicians,
6 physician assistants, physical therapists, or any other professional
7 required to be licensed under the Uniform Credentialing Act when such
8 practice is within the scope of practice for which that person is
9 licensed to practice in this state;

10 (4) The practice of any respiratory care practitioner of this state
11 or any other state or territory while employed by the federal government
12 or any bureau or division thereof while in the discharge of his or her
13 official duties;

14 (5) Techniques defined as pulmonary function testing and the
15 administration of aerosol and inhalant medications to the
16 cardiorespiratory system as it relates to pulmonary function technology
17 administered by a registered pulmonary function technologist credentialed
18 by the National Board for Respiratory Care or a certified pulmonary
19 function technologist credentialed by the National Board for Respiratory
20 Care; or

21 (6) The performance of oxygen therapy or the initiation of
22 noninvasive positive pressure ventilation by a registered
23 polysomnographic technologist relating to the study of sleep disorders if
24 such procedures are performed or initiated under the supervision of a
25 licensed physician at a facility accredited by the American Academy of
26 Sleep Medicine.

27 Sec. 3. The State of Nebraska adopts the Physical Therapy Licensure
28 Compact in the form substantially as follows:

29 ARTICLE I

30 PURPOSE

31 a. The purpose of the Physical Therapy Licensure Compact is to

1 facilitate interstate practice of physical therapy with the goal of
2 improving public access to physical therapy services. The practice of
3 physical therapy occurs in the state where the patient or client is
4 located at the time of the patient or client encounter. The Compact
5 preserves the regulatory authority of states to protect public health and
6 safety through the current system of state licensure.

7 b. This Compact is designed to achieve the following objectives:

8 1. Increase public access to physical therapy services by providing
9 for the mutual recognition of other member state licenses;

10 2. Enhance the states' ability to protect the public's health and
11 safety;

12 3. Encourage the cooperation of member states in regulating
13 multistate physical therapy practice;

14 4. Support spouses of relocating military members;

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

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

20 ARTICLE II

21 DEFINITIONS

22 As used in the Physical Therapy Licensure Compact, and except as
23 otherwise provided, the following definitions shall apply:

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

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

31 3. Alternative program means a nondisciplinary monitoring or

1 practice remediation process approved by a physical therapy licensing
2 board. This includes, but is not limited to, substance abuse issues.

3 4. Commission means the Physical Therapy Compact Commission which is
4 the national administrative body whose membership consists of all states
5 that have enacted the Compact.

6 5. Compact privilege means the authorization granted by a remote
7 state to allow a licensee from another member state to practice as a
8 physical therapist or work as a physical therapist assistant in the
9 remote state under its laws and rules. The practice of physical therapy
10 occurs in the member state where the patient or client is located at the
11 time of the patient or client encounter.

12 6. Continuing competence means a requirement, as a condition of
13 license renewal, to provide evidence of participation in, or completion
14 of, educational and professional activities relevant to practice or area
15 of work.

16 7. Data system means a repository of information about licensees,
17 including examination, licensure, investigative, compact privilege, and
18 adverse action.

19 8. Encumbered license means a license that a physical therapy
20 licensing board has limited in any way.

21 9. Executive board means a group of directors elected or appointed
22 to act on behalf of, and within the powers granted to them by, the
23 Commission.

24 10. Home state means the member state that is the licensee's primary
25 state of residence.

26 11. Investigative information means information, records, and
27 documents received or generated by a physical therapy licensing board
28 pursuant to an investigation.

29 12. Jurisprudence requirement means the assessment of an
30 individual's knowledge of the laws and rules governing the practice of
31 physical therapy in a state.

1 13. Licensee means an individual who currently holds an
2 authorization from the state to practice as a physical therapist or to
3 work as a physical therapist assistant.

4 14. Member state means a state that has enacted the Compact.

5 15. Party state means any member state in which a licensee holds a
6 current license or compact privilege or is applying for a license or
7 compact privilege.

8 16. Physical therapist means an individual who is licensed by a
9 state to practice physical therapy.

10 17. Physical therapist assistant means an individual who is licensed
11 or certified by a state and who assists the physical therapist in
12 selected components of physical therapy.

13 18. Physical therapy, physical therapy practice, and the practice of
14 physical therapy mean the care and services provided by or under the
15 direction and supervision of a licensed physical therapist.

16 19. Physical therapy licensing board means the agency of a state
17 that is responsible for the licensing and regulation of physical
18 therapists and physical therapist assistants.

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

22 21. Rule means a regulation, principle, or directive promulgated by
23 the Commission that has the force of law.

24 22. State means any state, commonwealth, district, or territory of
25 the United States that regulates the practice of physical therapy.

26 ARTICLE III

27 STATE PARTICIPATION IN THE COMPACT

28 a. To participate in the Physical Therapy Licensure Compact, a state
29 must:

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

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

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

6 4. Fully implement a criminal background check requirement, within a
7 timeframe established by rule, by receiving the results of the Federal
8 Bureau of Investigation record search on criminal background checks and
9 use the results in making licensure decisions in accordance with this
10 Article;

11 5. Comply with the rules of the Commission;

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

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

16 b. Upon adoption of this statute, the member state shall have the
17 authority to obtain biometric-based information from each physical
18 therapy licensure applicant and submit this information to the Federal
19 Bureau of Investigation for a criminal background check in accordance
20 with 28 U.S.C. 534 and 34 U.S.C. 40316.

21 c. A member state shall grant the compact privilege to a licensee
22 holding a valid unencumbered license in another member state in
23 accordance with the terms of the Compact and rules.

24 d. Member states may charge a fee for granting a compact privilege.

25 ARTICLE IV

26 COMPACT PRIVILEGE

27 a. To exercise the compact privilege under the terms and provisions
28 of the Physical Therapy Licensure Compact, the licensee shall:

29 1. Hold a license in the home state;

30 2. Have no encumbrance on any state license;

31 3. Be eligible for a compact privilege in any member state in

1 accordance with paragraphs d, g, and h of this Article;

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

4 5. Notify the Commission that the licensee is seeking the compact
5 privilege within a remote state;

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

8 7. Meet any jurisprudence requirements established by the remote
9 state in which the licensee is seeking a compact privilege; and

10 8. Report to the Commission adverse action taken by any nonmember
11 state within thirty days from the date the adverse action is taken.

12 b. The compact privilege is valid until the expiration date of the
13 home license. The licensee must comply with the requirements of paragraph
14 a of this Article to maintain the compact privilege in the remote state.

15 c. A licensee providing physical therapy in a remote state under the
16 compact privilege shall function within the laws and regulations of the
17 remote state.

18 d. A licensee providing physical therapy in a remote state is
19 subject to that state's regulatory authority. A remote state may, in
20 accordance with due process and that state's laws, remove a licensee's
21 compact privilege in the remote state for a specific period of time,
22 impose fines, or take any other necessary actions to protect the health
23 and safety of its citizens. The licensee is not eligible for a compact
24 privilege in any state until the specific time for removal has passed and
25 all fines are paid.

26 e. If a home state license is encumbered, the licensee shall lose
27 the compact privilege in any remote state until the following occur:

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

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

30 f. Once an encumbered license in the home state is restored to good
31 standing, the licensee must meet the requirements of paragraph a of this

1 Article to obtain a compact privilege in any remote state.

2 g. If a licensee's compact privilege in any remote state is removed,
3 the individual shall lose the compact privilege in any remote state until
4 the following occur:

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

7 2. All fines have been paid; and

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

9 h. Once the requirements of paragraph g of this Article have been
10 met, the licensee must meet the requirements in paragraph a of this
11 Article to obtain a compact privilege in a remote state.

12 ARTICLE V

13 ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

17 a. Home of record;

18 b. Permanent change of station (PCS); or

19 c. State of current residence if it is different than the PCS state
20 or home of record.

21 ARTICLE VI

22 ADVERSE ACTIONS

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

25 b. A home state may take adverse action based on the investigative
26 information of a remote state, so long as the home state follows its own
27 procedures for imposing adverse action.

28 c. Nothing in the Physical Therapy Licensure Compact shall override
29 a member state's decision that participation in an alternative program
30 may be used in lieu of adverse action and that such participation shall
31 remain nonpublic if required by the member state's laws. Member states

1 must require licensees who enter any alternative programs in lieu of
2 discipline to agree not to practice in any other member state during the
3 term of the alternative program without prior authorization from such
4 other member state.

5 d. Any member state may investigate actual or alleged violations of
6 the statutes and rules authorizing the practice of physical therapy in
7 any other member state in which a physical therapist or physical
8 therapist assistant holds a license or compact privilege.

9 e. A remote state shall have the authority to:

10 1. Take adverse actions as set forth in paragraph d of Article IV
11 against a licensee's compact privilege in the state;

12 2. Issue subpoenas for both hearings and investigations that require
13 the attendance and testimony of witnesses, and the production of
14 evidence. Subpoenas issued by a physical therapy licensing board in a
15 party state for the attendance and testimony of witnesses, or the
16 production of evidence from another party state, shall be enforced in the
17 latter state by any court of competent jurisdiction, according to the
18 practice and procedure of that court applicable to subpoenas issued in
19 proceedings pending before it. The issuing authority shall pay any
20 witness fees, travel expenses, mileage, and other fees required by the
21 service statutes of the state where the witnesses or evidence are
22 located; and

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

26 f. Joint Investigations

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

31 2. Member states shall share any investigative, litigation, or

1 compliance materials in furtherance of any joint or individual
2 investigation initiated under the Compact.

3 ARTICLE VII

4 ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

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

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

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

14 3. Nothing in the Physical Therapy Licensure Compact shall be
15 construed to be a waiver of sovereign immunity.

16 b. Membership, Voting, and Meetings

17 1. Each member state shall have and be limited to one delegate
18 selected by that member state's physical therapy licensing board.

19 2. The delegate shall be a current member of the physical therapy
20 licensing board, who is a physical therapist, a physical therapist
21 assistant, a public member, or the administrator of the physical therapy
22 licensing board.

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

25 4. The member state physical therapy licensing board shall fill any
26 vacancy occurring in the Commission.

27 5. Each delegate shall be entitled to one vote with regard to the
28 promulgation of rules and creation of bylaws and shall otherwise have an
29 opportunity to participate in the business and affairs of the Commission.

30 6. A delegate shall vote in person or by such other means as
31 provided in the bylaws. The bylaws may provide for delegates'

1 participation in meetings by telephone or other means of communication.

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

4 c. The Commission shall have the following powers and duties:

5 1. Establish the fiscal year of the Commission;

6 2. Establish bylaws;

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

8 4. Meet and take such actions as are consistent with the Compact and
9 the bylaws;

10 5. Promulgate uniform rules to facilitate and coordinate
11 implementation and administration of the Compact. The rules shall have
12 the force and effect of law and shall be binding in all member states;

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

17 7. Purchase and maintain insurance and bonds;

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

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

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

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

1 appearance of impropriety;

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

4 13. Establish a budget and make expenditures;

5 14. Borrow money;

6 15. Appoint committees, including standing committees composed of
7 members, state regulators, state legislators or their representatives,
8 and consumer representatives, and such other interested persons as may be
9 designated in the Compact and the bylaws;

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

12 17. Establish and elect an executive board; and

13 18. Perform such other functions as may be necessary or appropriate
14 to achieve the purposes of the Compact consistent with the state
15 regulation of physical therapy licensure and practice.

16 d. The Executive Board

17 The executive board shall have the power to act on behalf of the
18 Commission according to the terms of the Compact.

19 1. The executive board shall be composed of nine members:

20 A. Seven voting members who are elected by the Commission from the
21 current membership of the Commission;

22 B. One ex officio, nonvoting member from the recognized national
23 physical therapy professional association; and

24 C. One ex officio, nonvoting member from the recognized membership
25 organization of the physical therapy licensing boards.

26 2. The ex officio members will be selected by their respective
27 organizations.

28 3. The Commission may remove any member of the executive board as
29 provided in bylaws.

30 4. The executive board shall meet at least annually.

31 5. The executive board shall have the following duties and

1 responsibilities:

2 A. Recommend to the entire Commission changes to the rules or
3 bylaws, changes to the Compact, fees paid by Compact member states such
4 as annual dues, and any commission Compact fee charged to licensees for
5 the compact privilege;

6 B. Ensure Compact administration services are appropriately
7 provided, contractual or otherwise;

8 C. Prepare and recommend the budget;

9 D. Maintain financial records on behalf of the Commission;

10 E. Monitor Compact compliance of member states and provide
11 compliance reports to the Commission;

12 F. Establish additional committees as necessary; and

13 G. Other duties as provided in rules or bylaws.

14 e. Meetings of the Commission

15 1. All meetings shall be open to the public, and public notice of
16 meetings shall be given in the same manner as required under the
17 rulemaking provisions in Article IX.

18 2. The Commission or the executive board or other committees of the
19 Commission may convene in a closed, nonpublic meeting if the Commission
20 or executive board or other committees of the Commission must discuss:

21 A. Noncompliance of a member state with its obligations under the
22 Compact;

23 B. The employment, compensation, discipline, or other matters,
24 practices or procedures related to specific employees or other matters
25 related to the Commission's internal personnel practices and procedures;

26 C. Current, threatened, or reasonably anticipated litigation;

27 D. Negotiation of contracts for the purchase, lease, or sale of
28 goods, services, or real estate;

29 E. Accusing any person of a crime or formally censuring any person;

30 F. Disclosure of trade secrets or commercial or financial
31 information that is privileged or confidential;

1 G. Disclosure of information of a personal nature where disclosure
2 would constitute a clearly unwarranted invasion of personal privacy;

3 H. Disclosure of investigative records compiled for law enforcement
4 purposes;

5 I. Disclosure of information related to any investigative reports
6 prepared by or on behalf of or for use of the Commission or other
7 committee charged with responsibility of investigation or determination
8 of compliance issues pursuant to the Compact; or

9 J. Matters specifically exempted from disclosure by federal or
10 member state statute.

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

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

23 f. Financing of the Commission

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

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

30 3. The Commission may levy on and collect an annual assessment from
31 each member state or impose fees on other parties to cover the cost of

1 the operations and activities of the Commission and its staff, which must
2 be in a total amount sufficient to cover its annual budget as approved
3 each year for which revenue is not provided by other sources. The
4 aggregate annual assessment amount shall be allocated based upon a
5 formula to be determined by the Commission, which shall promulgate a rule
6 binding upon all member states.

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

11 5. The Commission shall keep accurate accounts of all receipts and
12 disbursements. The receipts and disbursements of the Commission shall be
13 subject to the audit and accounting procedures established under its
14 bylaws. However, all receipts and disbursements of funds handled by the
15 Commission shall be audited yearly by a certified or licensed public
16 accountant, and the report of the audit shall be included in and become
17 part of the annual report of the Commission.

18 g. Qualified Immunity, Defense, and Indemnification

19 1. The members, officers, executive director, employees, and
20 representatives of the Commission shall be immune from suit and
21 liability, either personally or in their official capacity, for any claim
22 for damage to or loss of property or personal injury or other civil
23 liability caused by or arising out of any actual or alleged act, error,
24 or omission that occurred, or that the person against whom the claim is
25 made had a reasonable basis for believing occurred, within the scope of
26 Commission employment, duties, or responsibilities; provided that nothing
27 in this paragraph shall be construed to protect any such person from suit
28 or liability for any damage, loss, injury, or liability caused by the
29 intentional or willful or wanton misconduct of that person.

30 2. The Commission shall defend any member, officer, executive
31 director, employee, or representative of the Commission in any civil

1 action seeking to impose liability arising out of any actual or alleged
2 act, error, or omission that occurred within the scope of Commission
3 employment, duties, or responsibilities, or that the person against whom
4 the claim is made had a reasonable basis for believing occurred within
5 the scope of Commission employment, duties, or responsibilities; provided
6 that nothing in this paragraph shall be construed to prohibit that person
7 from retaining his or her own counsel; and provided further, that the
8 actual or alleged act, error, or omission did not result from that
9 person's intentional or willful or wanton misconduct.

10 3. The Commission shall indemnify and hold harmless any member,
11 officer, executive director, employee, or representative of the
12 Commission for the amount of any settlement or judgment obtained against
13 that person arising out of any actual or alleged act, error, or omission
14 that occurred within the scope of Commission employment, duties, or
15 responsibilities, or that such person had a reasonable basis for
16 believing occurred within the scope of Commission employment, duties, or
17 responsibilities, provided that the actual or alleged act, error, or
18 omission did not result from the intentional or willful or wanton
19 misconduct of that person.

20 ARTICLE VIII

21 DATA SYSTEM

22 a. The Commission shall provide for the development, maintenance,
23 and utilization of a coordinated data base and reporting system
24 containing licensure, adverse action, and investigative information on
25 all licensed individuals in member states.

26 b. Notwithstanding any other provision of state law to the contrary,
27 a member state shall submit a uniform data set to the data system on all
28 individuals to whom the Physical Therapy Licensure Compact is applicable
29 as required by the rules of the Commission, including:

30 1. Identifying information;

31 2. Licensure data;

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

2 4. Nonconfidential information related to alternative program
3 participation;

4 5. Any denial of application for licensure, and the reason for such
5 denial; and

6 6. Other information that may facilitate the administration of the
7 Compact, as determined by the rules of the Commission.

8 c. Investigative information pertaining to a licensee in any member
9 state will only be available to other party states.

10 d. The Commission shall promptly notify all member states of any
11 adverse action taken against a licensee or an individual applying for a
12 license. Adverse action information pertaining to a licensee in any
13 member state will be available to any other member state.

14 e. Member states contributing information to the data system may
15 designate information that may not be shared with the public without the
16 express permission of the contributing state.

17 f. Any information submitted to the data system that is subsequently
18 required to be expunged by the laws of the member state contributing the
19 information shall be removed from the data system.

20 ARTICLE IX

21 RULEMAKING

22 a. The Commission shall exercise its rulemaking powers pursuant to
23 the criteria set forth in this Article and the rules adopted thereunder.
24 Rules and amendments shall become binding as of the date specified in
25 each rule or amendment.

26 b. If a majority of the legislatures of the member states rejects a
27 rule, by enactment of a statute or resolution in the same manner used to
28 adopt the Physical Therapy Licensure Compact within four years of the
29 date of adoption of the rule, then such rule shall have no further force
30 and effect in any member state.

31 c. Rules or amendments to the rules shall be adopted at a regular or

1 special meeting of the Commission.

2 d. Prior to promulgation and adoption of a final rule or rules by
3 the Commission, and at least thirty days in advance of the meeting at
4 which the rule will be considered and voted upon, the Commission shall
5 file a notice of proposed rulemaking:

6 1. On the web site of the Commission or other publicly accessible
7 platform; and

8 2. On the web site of each member state physical therapy licensing
9 board or other publicly accessible platform or the publication in which
10 each state would otherwise publish proposed rules.

11 e. The notice of proposed rulemaking shall include:

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

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

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

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

21 f. Prior to adoption of a proposed rule, the Commission shall allow
22 persons to submit written data, facts, opinions, and arguments, which
23 shall be made available to the public.

24 g. The Commission shall grant an opportunity for a public hearing
25 before it adopts a rule or amendment if a hearing is requested by:

26 1. At least twenty-five persons;

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

28 3. An association having at least twenty-five members.

29 h. If a hearing is held on the proposed rule or amendment, the
30 Commission shall publish the place, time, and date of the scheduled
31 public hearing. If the hearing is held via electronic means, the

1 Commission shall publish the mechanism for access to the electronic
2 hearing.

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

7 2. Hearings shall be conducted in a manner providing each person who
8 wishes to comment a fair and reasonable opportunity to comment orally or
9 in writing.

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

12 4. Nothing in this section shall be construed as requiring a
13 separate hearing on each rule. Rules may be grouped for the convenience
14 of the Commission at hearings required by this Article.

15 i. Following the scheduled hearing date, or by the close of business
16 on the scheduled hearing date if the hearing was not held, the Commission
17 shall consider all written and oral comments received.

18 j. If no written notice of intent to attend the public hearing by
19 interested parties is received, the Commission may proceed with
20 promulgation of the proposed rule without a public hearing.

21 k. The Commission shall, by majority vote of all members, take final
22 action on the proposed rule and shall determine the effective date of the
23 rule, if any, based on the rulemaking record and the full text of the
24 rule.

25 l. Upon determination that an emergency exists, the Commission may
26 consider and adopt an emergency rule without prior notice, opportunity
27 for comment, or hearing, provided that the usual rulemaking procedures
28 provided in the Compact and in this section shall be retroactively
29 applied to the rule as soon as reasonably possible, in no event later
30 than ninety days after the effective date of the rule. For the purposes
31 of this paragraph, an emergency rule is one that must be adopted

1 immediately in order to:

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

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

4 3. Meet a deadline for the promulgation of an administrative rule

5 that is established by federal law or rule; or

6 4. Protect public health and safety.

7 m. The Commission or an authorized committee of the Commission may
8 direct revisions to a previously adopted rule or amendment for purposes
9 of correcting typographical errors, errors in format, errors in
10 consistency, or grammatical errors. Public notice of any revisions shall
11 be posted on the web site of the Commission. The revision shall be
12 subject to challenge by any person for a period of thirty days after
13 posting. The revision may be challenged only on grounds that the revision
14 results in a material change to a rule. A challenge shall be made in
15 writing, and delivered to the chair of the Commission prior to the end of
16 the notice period. If no challenge is made, the revision will take effect
17 without further action. If the revision is challenged, the revision may
18 not take effect without the approval of the Commission.

19 ARTICLE X

20 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

21 a. Oversight

22 1. The executive, legislative, and judicial branches of state
23 government in each member state shall enforce the Physical Therapy
24 Licensure Compact and take all actions necessary and appropriate to
25 effectuate the Compact's purposes and intent. The provisions of the
26 Compact and the rules promulgated under the Compact shall have standing
27 as statutory law.

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

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

6 b. Default, Technical Assistance, and Termination

7 1. If the Commission determines that a member state has defaulted in
8 the performance of its obligations or responsibilities under the Compact
9 or the promulgated rules, the Commission shall:

10 A. Provide written notice to the defaulting state and other member
11 states of the nature of the default, the proposed means of curing the
12 default, or any other action to be taken by the Commission; and

13 B. Provide remedial training and specific technical assistance
14 regarding the default.

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

21 3. Termination of membership in the Compact shall be imposed only
22 after all other means of securing compliance have been exhausted. Notice
23 of intent to suspend or terminate shall be given by the Commission to the
24 governor, the majority and minority leaders of the defaulting state's
25 legislature or the Speaker if no such leaders exist, and each of the
26 member states.

27 4. A state that has been terminated is responsible for all
28 assessments, obligations, and liabilities incurred through the effective
29 date of termination, including obligations that extend beyond the
30 effective date of termination.

31 5. The Commission shall not bear any costs related to a state that

1 is found to be in default or that has been terminated from the Compact,
2 unless agreed upon in writing between the Commission and the defaulting
3 state.

4 6. The defaulting state may appeal the action of the Commission by
5 petitioning the United States District Court for the District of Columbia
6 or the federal district where the Commission has its principal offices.
7 The prevailing member shall be awarded all costs of such litigation,
8 including reasonable attorney's fees.

9 c. Dispute Resolution

10 1. Upon request by a member state, the Commission shall attempt to
11 resolve disputes related to the Compact that arise among member states
12 and between member and nonmember states.

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

15 d. Enforcement

16 1. The Commission, in the reasonable exercise of its discretion,
17 shall enforce the provisions and rules of the Compact.

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

26 3. The remedies in this Article shall not be the exclusive remedies
27 of the Commission. The Commission may pursue any other remedies available
28 under federal or state law.

29 ARTICLE XI

30 DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL
31 THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

1 a. The Physical Therapy Licensure Compact shall come into effect on
2 the date on which the Compact is enacted into law in the tenth member
3 state. The provisions, which become effective at that time, shall be
4 limited to the powers granted to the Commission relating to assembly and
5 the promulgation of rules. Thereafter, the Commission shall meet and
6 exercise rulemaking powers necessary to the implementation and
7 administration of the Compact.

8 b. Any state that joins the Compact subsequent to the Commission's
9 initial adoption of the rules shall be subject to the rules as they exist
10 on the date on which the Compact becomes law in that state. Any rule that
11 has been previously adopted by the Commission shall have the full force
12 and effect of law on the day the Compact becomes law in that state.

13 c. Any member state may withdraw from the Compact by enacting a
14 statute repealing the same.

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

17 2. Withdrawal shall not affect the continuing requirement of the
18 withdrawing state's physical therapy licensing board to comply with the
19 investigative and adverse action reporting requirements of the Compact
20 prior to the effective date of withdrawal.

21 d. Nothing contained in the Compact shall be construed to invalidate
22 or prevent any physical therapy licensure agreement or other cooperative
23 arrangement between a member state and a nonmember state that does not
24 conflict with the Compact.

25 e. The Compact may be amended by the member states. No amendment to
26 the Compact shall become effective and binding upon any member state
27 until it is enacted into the laws of all member states.

28 ARTICLE XII

29 CONSTRUCTION AND SEVERABILITY

30 The Physical Therapy Licensure Compact shall be liberally construed
31 so as to effectuate the purposes of the Compact. The provisions of the

1 Compact shall be severable and if any phrase, clause, sentence, or
2 provision of the Compact is declared to be contrary to the constitution
3 of any party state or of the United States or the applicability thereof
4 to any government, agency, person, or circumstance is held invalid, the
5 validity of the remainder of the Compact and the applicability thereof to
6 any government, agency, person, or circumstance shall not be affected
7 thereby. If the Compact shall be held contrary to the constitution of any
8 party state, the Compact shall remain in full force and effect as to the
9 remaining party states and in full force and effect as to the party state
10 affected as to all severable matters.

11 Sec. 4. Original sections 38-131 and 38-3208, Reissue Revised
12 Statutes of Nebraska, are repealed.