

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2279

As Amended by House Committee of the Whole

Brief*

HB 2279, as amended, would enact the Physical Therapy Licensure Compact (Compact) and amend the Physical Therapy Practice Act (Act). The Compact would provide interstate practice authority for physical therapists (PTs) in compact states. The Compact would provide for the creation of a Physical Therapy Compact Commission, with each member state represented by one delegate, and would outline the voting and meeting requirements.

The bill would add a new provision to the Act to authorize the State Board of Healing Arts (Board) to require fingerprinting and state and federal criminal history record checks under specific circumstances. The bill would also amend the Act to clarify the Board could take disciplinary action regarding compact privilege, require PTs licensed in a home state and practicing in Kansas under the Compact to maintain professional liability insurance coverage, and require the Board to include PTs licensed in a home state and practicing in Kansas under the Compact in the rules and regulations that establish the minimum education and training requirements for the practice of dry needling.

Physical Therapy Licensure Compact (New Section 1)

The Compact would be a part of and supplemental to the Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Section 1—Purpose

The Compact would designate its purpose as facilitating the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The Compact would preserve the regulatory authority of states to protect public health and safety through the current system of state licensure.

The Compact would state it is designed to:

- Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
- Support spouses of relocating military members;
- Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
- Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

Section 2—Definitions

The Compact would define applicable terms, including these key terms:

- “Compact privilege” would mean the authorization granted by a remote state to allow a licensee from another member state to practice as a PT or work as a PT assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter;

- “Continuing competence” would mean a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, or both, educational and professional activities relevant to practice or the area of work;
- “Data system” would mean a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action;
- “Home state” would mean the member state that is the licensee’s primary state of residence;
- “Jurisprudence requirement” would mean the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state;
- “Member state” would mean a state that has enacted the Compact;
- “Party state” would mean any member state in which a licensee holds a current license or compact privilege or is applying for a license or a compact privilege;
- “Physical Therapy Compact Commission” or “Commission” would mean the national administrative body whose membership consists of all states that have enacted the Compact; and
- “Remote state” would mean a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

Section 3—State Participation in the Compact

To participate in the Compact, each state would be required to:

- Participate fully in the Commission's data system;
- Have a mechanism in place to receive and investigate complaints about licensees;
- Notify the Commission of any adverse action or the availability of investigative information regarding a licensee;
- Fully implement a criminal background check requirement by receiving the results of the Federal Bureau of Investigation (FBI) record search on criminal background checks and using the results to make licensure decisions in accordance with the Compact;
- Comply with the rules of the Commission;
- Utilize a recognized national examination as a requirement for licensure, pursuant to the rules of the Commission; and
- Have continuing competence requirements as a condition of licensure renewal.

The Compact would provide that, upon adoption of the Compact, a member state would be authorized to obtain biometric-based information from each PT licensure applicant and to submit the information to the FBI for a criminal background check in accordance with the cited federal law.

The Compact would require a member state to grant the compact privilege to a licensee holding a valid unencumbered license in another member state according to the terms of the Compact and rules. The Compact would authorize a member state to charge a fee for granting a compact privilege.

Section 4—Compact Privilege

To exercise the compact privilege, a licensee would be required to:

- Hold a license in the home state;
- Have no encumbrance on any state license;
- Be eligible for compact privilege in any member state in accordance with the provisions of the Compact;
- Have not had any adverse action against any license or compact privilege within the previous two years;
- Notify the Commission that the licensee is seeking the compact privilege within a remote state;
- Pay any applicable fees, including any state fee, for the compact privilege;
- Meet any jurisprudence requirements established by the remote state in which the licensee is seeking compact privilege; and
- Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

The Compact would provide that the compact privilege is valid until the expiration date of the home license.

The Compact would require a licensee providing therapy in a remote state to function within the laws and regulations of the remote state and be subject to that state's regulatory authority.

The Compact would allow a remote state to remove a licensee's compact privilege in the remote state for a specific

period of time or impose fines, or both, and take any other action necessary to protect the health and safety of its citizens. The licensee would not be eligible for compact privilege in any state until the specific time for removal has passed and all fines are paid. If a home state license is encumbered, the Compact would require the licensee to lose the compact privilege in any remote state until certain conditions are met. Once an encumbered license in the home state is restored to good standing, the Compact would require the licensee to meet the conditions for compact privilege to again obtain a compact privilege in any remote state.

If a licensee's compact privilege in any remote state is removed, the Compact would require the individual lose the compact privilege in any remote state until certain requirements are met. The Compact would then require the individual meet the conditions for compact privilege cited in Section 4 of the Compact to obtain a compact privilege in a remote state.

Section 5—Active Duty Military Personnel or Their Spouses

The Compact would allow a licensee who is active duty military or is the spouse of such a licensee to select the licensee's home state as allowed in the bill.

Section 6—Adverse Actions

The Compact would provide that a home state has exclusive power to impose adverse action against a license issued by the home state and may take such action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action. Nothing in the Compact would override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such investigation remain nonpublic if required by the member state's laws.

The Compact would specify the conditions placed on member states when dealing with a licensee in an alternative program and the authority of member states to investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a PT or PT assistant holds a license or compact privilege.

The Compact would also outline the authority of the remote state to take adverse action against a licensee's compact privilege in the state and issue subpoenas for hearings and investigations. The Compact would allow a member state to participate with other member states in joint investigations of licensees and require member states to share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

Section 7—Establishment of the Physical Therapy Compact Commission

The Compact would direct compact member states to create a joint public agency known as the Physical Therapy Compact Commission, which would be an instrumentality of the compact states.

The Compact would clarify venue is in a court of competent jurisdiction where the principal office of the Commission is located and would provide for the waiving of venue and jurisdictional defenses to the extent the Commission adopts or consents to participate in alternative dispute resolution proceedings. The Compact would not waive sovereign immunity.

Membership, voting, and meetings. The Compact would specify that each member state would have one delegate selected by that member state's licensing board as a member of the Commission. The Compact would provide for the qualifications for Commission delegates, the process

for a delegate's removal or suspension from office, the voting requirements, and the frequency of Commission meetings.

The Compact would specify the various powers and duties of the Commission, including establishing and electing an Executive Board that would have the power to act on behalf of the Commission according to the terms of the Compact. Commission meetings would be open to the public, and public notice of meetings would be required.

The Compact would describe the Executive Board membership, the Commission's authority to remove Executive Board members, the frequency of meetings, and the duties and responsibilities of the Executive Board.

The Compact would authorize the Commission, Executive Board, or other committees of the Commission to convene closed, nonpublic meetings to discuss specific topics delineated in the Compact. The Compact would require the Commission keep detailed minutes of meetings, but minutes of closed meetings would remain under seal, subject to specific conditions for release.

Financing the Commission. The Compact would provide that the Commission:

- Must pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities;
- May accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;
- May levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which

revenue is not being provided by other sources. The annual assessment would be allocated based upon a formula to be determined by the Commission, which would be required to promulgate a rule binding upon all member states;

- May not incur obligations of any kind prior to securing the funds adequate to meet the same nor pledge the credit of any member states, except by and with the authority of the member state; and
- Must keep accurate accounts of all receipts and disbursements, which would be subject to the audit and accounting procedures established under its bylaws. The Compact would require annual audits by a certified or licensed public accountant and such audit report be included in the Commission's annual report.

Qualified immunity, defense, and indemnification.

Except when the actual or alleged act, error, or omission resulted from the intentional, willful, or wanton acts of members, officers, executive directors, employees, or representatives of the Commission, the Compact would provide these individuals with the following protections:

- Immunity from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of Commission employment, duties, or responsibilities;
- Defense in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of Commission employment, duties, or

responsibilities. The Compact would not be construed to prohibit these persons from retaining their own counsel; and

- Indemnification and being held harmless for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of Commission employment, duties, or responsibilities.

Section 8—Data System

The Compact would require the Commission to provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states. Notwithstanding any state law to the contrary, the Compact would require a member state to submit a uniform data set to the data system on all individuals to whom the Compact is applicable as required by the rules of the Commission.

The Compact would require the uniform data set to include identifying information, licensure data, adverse actions against a license or compact privilege, nonconfidential information related to alternative program participation, any denial of application for licensure and the reason for the denial, and other information that may facilitate the administration of the Compact, as determined by rules of the Commission.

The Compact would also provide for the following with regard to information in the coordinated database and reporting system:

- Investigative information pertaining to a licensee in any member state would be available to other party states;

- The Commission would be required to notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state would be available to any other member state;
- Member states would be allowed to designate information contributed to the data system that may not be shared with the public without express permission from the contributing state; and
- Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information would be required to be removed from the data system.

Section 9—Rulemaking

The Compact would require the Commission to exercise its rulemaking powers according to the criteria set forth and adopted under the provisions of Section 9 of the Compact. The Compact would provide if a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, the rule would have no further force and effect on any member state.

The Compact would provide the process for promulgating and adopting rules, filing the notice of proposed rulemaking and the required content of the notice, submitting information that would be available to the public prior to adoption of a rule, requesting a public hearing on a rule and notification of such hearing, and testifying at a public hearing. The hearings would be recorded, with a copy of the recording available upon request. The Compact would not require a separate hearing on each rule; rather, rules could be grouped for the convenience of the Commission in any required hearing.

The Compact would establish the process to be followed after any required public hearing, or in the absence of a public hearing, to take final action on the proposed rule. If an emergency exists, the Compact would provide for the Commission to consider and adopt an emergency rule without prior notice, comment, or hearing. The rulemaking procedures would be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the rule. The Compact would establish the conditions under which an emergency order would be indicated.

The Compact would establish the procedure for technical revisions of previously adopted rules or amendments.

Section 10—Oversight, Dispute Resolution, and Enforcement

Oversight. The Compact would specify the executive, legislative, and judicial branches of state government in each member state would be required to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules promulgated thereunder would have standing as statutory law.

The Compact would require all courts take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact that may affect the powers, responsibilities, or actions of the Commission. The Commission would be entitled to receive service of process in any such proceeding and have standing to intervene. The Compact would specify failure to provide service of process to the Commission would render a judgment or order void as to the Commission, the Compact, or promulgated rules.

Default, technical assistance, and termination. The Compact would provide, if the Commission determines a

member state has defaulted in the performance of its obligations or responsibilities under the Compact or its promulgated rules, the Commission would be required to provide written notice to the defaulting state and other members states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission and provide remedial training and specific technical assistance regarding the default.

If a state fails to cure the default, the Compact would allow the defaulting state to be terminated from the Compact upon an affirmative vote of the majority of the member states. The Compact would authorize all rights, privileges, and benefits conferred by the Compact to be terminated on the effective date of termination. The Compact would provide that the cure of the default by an offending state would not relieve the offending state of obligations or liabilities incurred during the period of default.

The Compact would specify termination of Compact membership would be imposed only after all other means of securing compliance have been exhausted. The Commission would be required to provide notice of intent to suspend or terminate membership to the defaulting state's governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

Under the Compact, the terminated state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of the termination, including obligations that extend beyond the effective date of the termination. Unless agreed upon in writing between the Commission and the defaulting state, the Commission would be prohibited from bearing any costs related to the state found to be in default or that has been terminated from the Compact. The Compact would provide the defaulting state with the opportunity to appeal the Commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district court where the Commission has its principal offices. The Compact would require all costs of such

litigation, including reasonable attorney fees, be awarded to the prevailing member state.

Dispute resolution. The Compact would require the Commission attempt to resolve disputes related to the Compact that arise among member states and between member states and nonmember states at the request of a member state. The Compact would require the Commission promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

Enforcement. The Compact would require the Commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of the Compact. The Compact would authorize the Commission, by majority vote, to initiate legal action against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. If judicial enforcement is necessary, the Compact would require the prevailing member be awarded all costs of such litigation, including reasonable attorney fees. The Compact would authorize the Commission to pursue any other remedies available under federal or state law.

*Section 11—Date of Implementation of the Interstate
Commission for Physical Therapy Practice and Associated
Rules, Withdrawal, and Amendment*

The Compact would specify it would come into effect on the date on which the Compact statute is enacted into law in the tenth member state. [Note: The Compact became effective on April 25, 2017.] The Compact would provide the provisions effective upon enactment of the Compact in the tenth state would be the powers granted to the Commission relating to assembly and the promulgation of rules, with the Commission meeting thereafter to exercise rulemaking powers necessary to the implementation and administration of the Compact. States joining the Compact after the initial adoption of the rules would be subject to the rules as they

exist on the date on which the Compact becomes law in that state, and such rules would have the full force and effect of law upon the Compact becoming law in the state.

The Compact would allow a member state to withdraw from the Compact by enacting a statute repealing the same, and such withdrawal would take effect six months after enactment of the repealing statute. The Compact would require the withdrawing state's physical therapy licensing board comply with the investigative and adverse action reporting requirements until the effective date of the withdrawal.

The Compact would not invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of the Compact.

The Compact would be open to amendment by the member states, but no amendment would become effective and binding on any member state until it is enacted into the laws of all members states.

Section 12—Construction and Severability

The Compact would be liberally construed to effectuate its purposes. The provisions of the Compact would be severable, allowing for the remainder of the Compact to remain valid if any portion of the Compact is held to be invalid. If the Compact is held contrary to the constitution of any party state, the Compact would remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable provisions.

Physical Therapy Practice Act (Sections 2 - 5)

The following sections of the bill pertaining to the Act would be part of and supplemental to the Act.

Criminal History Record Checks (New Section 2)

The bill would amend the Act by adding a new section to authorize the State Board of Healing Arts (Board) to require a person to be fingerprinted and submit to a state and national criminal history check as part of:

- An original application for a license as a PT or a certificate as a PT assistant; or
- An original application for reinstatement of a license or certificate.

The bill would authorize the Board to submit fingerprints to the Kansas Bureau of Investigation and the FBI. The bill would allow the Board to use the information obtained from fingerprinting and the criminal history to verify the identity of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license or certificate. The bill would require local and state law enforcement officers to assist the Board in taking and processing the fingerprints of applicants for and holders of any license or certificate and to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the Board.

The bill would allow the Board to fix and set a fee as may be required by the Board in an amount necessary to reimburse the Board for the cost of fingerprinting and the criminal history record check, with any funds collected required to be deposited in the State Treasury to the credit of the Healing Arts Fee Fund.

Disciplinary Action on Compact Privilege (Section 3)

The bill would amend the Act to clarify the Board would be authorized to take disciplinary action regarding the compact privilege of PTs and PT assistants.

Professional Liability Insurance Coverage (Section 4)

The bill would amend the Act to require PTs licensed in a home state and practicing in Kansas under the Compact to maintain professional liability insurance coverage. Under continuing law, the Board would be required to fix by rules and regulations the minimum level of coverage for such professional liability insurance.

Rules and Regulations (Section 5)

The bill would require the Board to include PTs licensed in a home state and practicing in Kansas under the Compact in the rules and regulations that establish the minimum education and training requirements for the practice of dry needling.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative Bergquist on behalf of the American Physical Therapy Association (APTA).

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by representatives of APTA, the Rooks County Health Center, and the University of Kansas Medical Center (KUMC) Physical Therapy and Rehabilitation Science Program. The **proponents** generally stated the bill would

help address the challenges of licensure portability for PTs and PT assistants and improve patient access to physical therapy services in Kansas by giving eligible licensees in compact states an easier and faster alternative to traditional licensure, while retaining safeguards to protect the public.

The APTA representative noted 30 states have enacted legislation to participate in the Compact, and 20 of those have already begun issuing compact privileges, including all states surrounding Kansas. The Rooks County Health Center representative noted the particular benefit of Compact membership in addressing workforce shortages in rural areas of Kansas. The KUMC representative stated the Compact would provide opportunities for physical therapy graduates to obtain licensure, which would allow them to practice across state lines in other compact states. Written-only **proponent** testimony was provided by representatives of APTA and the Federation of State Boards of Physical Therapy.

Neutral testimony was provided by a representative of the Board.

No **opponent** testimony was provided.

The House Committee amended the bill by adding language authorizing the Board to require fingerprinting for the purpose of state and national criminal history record checks as part of an application by a licensed PT in a home state for compact privilege to practice in Kansas under the Compact. The House Committee also amended the bill to clarify the Board's authority to take disciplinary action with regard to compact privilege and made technical amendments.

House Committee of the Whole

The House Committee of the Whole amended the bill to remove the fingerprinting and state and national criminal history record check requirement for a PT applying for compact privilege to practice in Kansas under the Compact in

connection with any investigation of any holder of a license or certificate.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board states enactment of the bill would have no substantial fiscal effect on the agency for FY 2022. However, future expenditures for member states for the development and maintenance of the database and reporting system could be required. The agency states increased revenue could occur if additional PTs apply for licensure in Kansas as a result of the bill, but an estimate of the possible new revenue source cannot be made.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Physical therapy; Physical Therapy Licensure Compact; interstate practice authority; criminal history record check; disciplinary action; Physical Therapy Practice Act