

Psychology Interjurisdictional Compact; Physical Therapy Licensure Compact; SB 170

SB 170 enacts the Psychology Interjurisdictional Compact (PSYPACT), and provides for the interjurisdictional authorization of psychologists across state boundaries to practice telepsychology using telecommunication technologies and provide temporary in-person, face-to-face psychology services.

The bill also enacts the Physical Therapy Licensure Compact (PT Compact) and amends the Physical Therapy Practice Act. The PT Compact provides interstate practice authority for physical therapists (PTs) in compact states. The PT Compact also provides for the creation of a Physical Therapy Compact Commission, with each member state represented by one delegate, and outlines the voting and meeting requirements.

The bill adds a 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 amends the Act to clarify the Board may take disciplinary action regarding compact privilege, requires PTs licensed in a home state and practicing in Kansas under the PT Compact to maintain professional liability insurance coverage, and requires the Board to include PTs licensed in a home state and practicing in Kansas under the PT Compact in the rules and regulations that establish the minimum education and training requirements for the practice of dry needling.

Psychology Interjurisdictional Compact

Licensure or Renewal Fees

The Behavioral Sciences Regulatory Board (BSRB) is permitted to assess a fee, not to exceed \$25, at the time of licensure or license renewal for any person seeking compact privilege to practice under the PSYPACT whose home state is Kansas, in addition to any other fees authorized by law for licensure. The BSRB is required to adopt rules and regulations to establish the amount of the fee.

Enactment Date

The bill declares this compact is to be cited as the Psychology Interjurisdictional Compact (PSYPACT). The PSYPACT is in effect on and after January 1, 2022.

Purpose

The bill specifies the purpose of the PSYPACT is to regulate the day-to-day practice of telepsychology, the provision of psychological services using telecommunication technologies; to regulate the temporary (30 days within a calendar year) in-person, face-to-face practice of telepsychology by psychologists across state boundaries in performing their psychological practice as assigned by an appropriate authority; and to authorize state psychology regulatory

authorities to legally recognize, in a manner consistent with the terms of the PSYPACT, psychologists licensed in another state.

The PSYPACT does not apply to a psychologist licensed in both the home and receiving states and to the permanent, in-person, face-to-face practice of psychology.

The bill states the PSYPACT's design is to achieve the following purposes and objectives:

- Increase public access to professional psychological services by allowing telepsychological practice across state lines and temporary in-person, face-to-face services into a state in which the psychologist is not licensed to practice psychology;
- Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
- Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
- Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history;
- Promote compliance with the laws governing psychological practice in each compact state; and
- Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

Definitions

The PSYPACT defines applicable terms, including the following:

- "Association of State and Provincial Psychology Boards" (Association) means the recognized membership organization composed of state and provincial psychology regulatory authorities responsible for the licensure of psychologists throughout the United States and Canada;
- "Authority to practice interjurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under the PSYPACT, in another compact state;
- "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to Article X;

- “Compact state” means a state, the District of Columbia, or a U.S. territory that has enacted PSYPACT legislation and has not withdrawn pursuant to Article XIII(c) or been terminated pursuant to Article XII(b);
- “Coordinated licensure information system” or “coordinated database” means an integrated process for collecting, storing, and sharing information on psychologists’ licensure and enforcement activities related to psychology licensure laws, administered by the recognized membership organization composed of state and provincial psychology regulatory authorities;
- “Distant state” means the compact state where a psychologist is physically present, not through the use of telecommunications technologies, to provide temporary in-person, face-to-face psychological services;
- “E.Passport” means a certificate issued by the Association that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines;
- “Home state” means the compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing interjurisdictional psychology, the home state is the compact state where the psychologist is physically present when the services are delivered. If the psychologist is licensed in more than one compact state under a temporary authorization to practice, the home state is any compact state where the psychologist is licensed;
- “Interjurisdictional practice certificate” means a certificate issued by the Association that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily and verification of one’s qualifications for such practice;
- “Psychology Interjurisdictional Compact Commission” (Commission) means the national administration of which all compact states are members;
- “Receiving state” means a compact state where the client/patient is physically located when the telepsychological services are delivered; and
- “Rule” means a written statement by the Commission promulgated pursuant to Article XI that meets the four requirements set out, including having the force and effect of statutory law in a compact state.

Home State Licensure

Under the PSYPACT, a home state’s license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

- Currently requires the psychologist to hold an active E.Passport;
- Has a mechanism in place for receiving and investigating complaints about licensed individuals;
- Notifies the Commission, in compliance with the terms of the PSYPACT, of any adverse action or significant investigatory information regarding a licensed individual;
- Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, not later than ten years after activation of the PSYPACT; and
- Complies with the bylaws and rules of the Commission.

Under the PSYPACT, a home state's license grants temporary authorization to practice to a psychologist in a distant state only if the same five conditions noted above required for authorization to practice interjurisdictional psychology are met.

PSYPACT Privilege to Practice Telepsychology

The PSYPACT requires compact states to recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice telepsychology in other compact states, or receiving states, in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the PSYPACT.

The PSYPACT establishes specific requirements for a psychologist licensed to practice in a compact state to exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of the PSYPACT.

The PSYPACT provides the home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology is subject to the receiving state's scope of practice.

The PSYPACT authorizes a receiving state, in accordance with the state's due process laws, to limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and to take any other necessary actions under that state's applicable law to protect the health and safety of the receiving state's citizens. The PSYPACT requires a state taking such disciplinary action to notify the home state and the Commission.

The PSYPACT requires the E.Passport to be revoked and a psychologist no longer be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology if the psychologist's license in any home state or another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended, or otherwise limited.

PSYPACT Temporary Authorization to Practice

The PSYPACT requires compact states to also recognize the right of a psychologist licensed in a compact state in conformance with Article III to practice temporarily in other compact states, or distant states, in which the psychologist is not licensed, as provided in the PSYPACT.

The PSYPACT establishes specific requirements for a psychologist licensed to practice in a compact state to exercise the temporary authorization to practice under the terms and provisions of the PSYPACT. These requirements are the same as those for PSYPACT privilege to practice telepsychology.

With regard to a psychologist practicing into a distant state under the temporary authorization to practice, the PSYPACT requires the psychologist to:

- Practice within the scope of practice authorized by the distant state; and
- Be subject to the distant state's authority and law.

The distant state's authority to limit or revoke a psychologist's temporary authorization to practice in the distant state and its requirement to promptly notify the home state and the Commission of such disciplinary actions is the same as that of a receiving state with regard to a psychologist's authority to practice interjurisdictional authority in a receiving state.

The PSYPACT requires the revocation of an interjurisdictional practice certificate under the same conditions that require the revocation of an E.Passport.

Conditions of Telepsychology Practice in a Receiving State

The PSYPACT authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the Commission, and under the following circumstances:

- The psychologist initiates a client/patient contact in a home state *via* telecommunications technologies with a client/patient in a receiving state; and
- Other conditions regarding telepsychology as determined by rules promulgated by the Commission.

Adverse Actions

The PSYPACT establishes the following with regard to adverse actions against a psychologist:

- A home state has the power to impose adverse action against a psychologist's license issued by the home state. A distant state has the power to take adverse

action on a psychologist's temporary authorization to practice within the distant state;

- A receiving state is authorized to take action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state is allowed to take adverse action based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice;
- If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport revoked. The psychologist's temporary authorization to practice is terminated and the interjurisdictional practice certificate is revoked. The PSYPACT requires all home state disciplinary orders that impose adverse action and adverse actions by compact states to be reported to the Commission, in accordance with the rules of the Commission;
- A home state's psychology regulatory authority is required to investigate and take appropriate disciplinary action with regard to reported inappropriate conduct that occurred in a receiving state as if such conduct had occurred within the home state. In these cases, the home state's law controls the determination of any adverse action against a psychologist's license. In like manner, a distant state is required to investigate and take appropriate action against a psychologist practicing under a temporary authorization for reported inappropriate conduct that occurred in the distant state, as if such conduct had occurred within the home state. The distant state's law controls in determining any adverse action against a psychologist's temporary authorization to practice;
- The PSYPACT does not override a compact state's decision that a psychologist's participation in an alternative program be used in lieu of adverse action and that participation remain nonpublic if required by the compact state's law. During the term of the alternative program, compact states are prohibited from allowing psychologists in an alternative program to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state; and
- No other judicial or administrative remedies are available to a psychologist in the event a compact state imposes an adverse action that results in the revocation of an E.Passport or an interjurisdictional practice certificate.

Additional Authorities Invested in a PSYPACT State's Psychology Regulatory Authority

In addition to powers granted under state law, the PSYPACT provides a compact state's psychology regulatory authority with additional authorities, including:

- Issuing subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence; and

- Issuing cease and desist or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology or temporary authorization to practice.

Coordinated Licensure Information System

The PSYPACT provides for the development and maintenance of a coordinated licensure information system and reporting system containing licensure and disciplinary action information on all individuals to whom the PSYPACT is applicable in all compact states.

Notwithstanding any other provision of state law to the contrary, a compact state is required to submit a specified uniform data set to the coordinated database on all licensees as required by the rules of the Commission. The PSYPACT requires the coordinated database administrator to promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state. PSYPACT states are allowed to designate information reported to the coordinated database that is not to be shared with the public without the express permission of the compact state reporting the information. Information submitted to the coordinated database subsequently required to be expunged by state law of the compact state reporting the information will be removed from the coordinated database.

Establishment of the Commission

Creation of Commission. The PSYPACT requires compact states to create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission. The Commission is a body politic and an instrumentality of the compact states. Venue is proper, and judicial proceedings by or against the Commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. To the extent the Commission adopts or consents to participate in alternative dispute resolution, the Commission may waive venue and jurisdictional defenses. Nothing in the PSYPACT is to be construed as a waiver of sovereign immunity.

Membership, voting, and meetings. The Commission consists of one voting representative appointed by each compact state who serves as that state's commissioner. The state psychology regulatory authority appoints its delegate, who is empowered to act on behalf of the compact state. Limitations on who may be appointed as a delegate are outlined in the PSYPACT.

The PSYPACT allows any commissioner to be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the Commission is filled according to the laws of the compact state in which the vacancy exists.

The PSYPACT provides for the voting procedure for commissioners and establishes the meeting requirements, including requiring meetings be open to the public and public notice of the meetings. The PSYPACT allows closed, nonpublic meetings to be convened if the Commission is required to discuss specific matters as outlined in the PSYPACT and requires specific procedures be followed when such meetings are held.

Bylaws and rules. The PSYPACT requires the Commission, by a majority vote of the commissioners, to prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the PSYPACT. The PSYPACT describes the nature of such bylaws and rules.

Powers of the Commission. The PSYPACT grants the following powers to the Commission:

- Promulgating uniform rules to facilitate and coordinate implementation and administration of the PSYPACT, which have the force and effect of law and are binding in all compact states;
- Bringing and prosecuting legal proceedings or actions in the name of the Commission, provided the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law is not affected;
- Purchasing and maintaining insurance and bonds;
- Borrowing, accepting, or contracting for services of personnel, including, but not limited to, employees of a compact state;
- Hiring employees, electing or appointing officers, fixing compensation, defining duties, granting such individuals appropriate authority to carry out the purposes of the PSYPACT, and establishing the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- Accepting any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receiving, utilizing, and disposing of the same, provided that at all times the Commission strives to avoid any appearance of impropriety or conflict of interest;
- Leasing, purchasing, accepting appropriate gifts or donations of, or otherwise owning, holding, improving, or using, any real or personal property, or mixed, provided the Commission at all times strives to avoid the appearance of impropriety;
- Selling, conveying, mortgaging, pledging, leasing, exchanging, abandoning, or otherwise disposing of any real or personal, or mixed, property;
- Establishing a budget and making expenditures;
- Borrowing money;
- Appointing committees, including advisory committees, with membership as described;

- Providing and receiving information from, and cooperating with, law enforcement agencies;
- Adopting and using an official seal; and
- Performing such other functions as may be necessary or appropriate to achieve the purpose of the PSYPACT consistent with the state regulation of psychology licensure, temporary in-person, face-to-face, and telepsychology practice.

Executive Board. The PSYPACT provides the elected officers serve as the Executive Board. The Executive Board has the power to act on behalf of the Commission according to the terms of the PSYPACT. The PSYPACT designates the composition of the six-member Executive Board, including one ex officio member from the recognized membership organization composed of state and provincial psychology regulatory authorities; allows for removal of an Executive Board member as provided in the bylaws; sets the frequency of the Executive Board meetings; and establishes the duties and responsibilities of the Executive Board.

Financing of the Commission. The PSYPACT requires the Commission to pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities. The Commission is:

- Allowed to accept any and all appropriate revenue resources, donations and grants of money, equipment, supplies, material, and resources;
- Allowed to levy on and collect an annual assessment from each compact 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 an amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment is allocated based on a formula determined by the Commission, and the Commission is required to promulgate a rule binding upon all compact states;
- Prohibited from incurring obligations of any kind prior to securing the funds adequate to meet the same or from pledging the credit of any of the compact states, except by and with the authority of the compact state; and
- Required to keep accurate accounts of all receipts and disbursements. Such receipts and disbursements are subject to the audit and accounting procedures established under the Commission's bylaws. Additionally, the PSYPACT requires all receipts and disbursements of funds handled by the Commission to be audited yearly by a certified or licensed public accountant and the report of the audit be included in and become part of the annual report of the Commission.

Qualified immunity, defense, and indemnification. The PSYPACT provides the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the

claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, provided that no such person is protected from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of such person.

The PSYPACT requires the Commission to defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. Such person is not prohibited from retaining his or her own counsel. The actual or alleged act, error, or omission cannot have resulted from such person's intentional, willful, or wanton misconduct.

The PSYPACT requires the Commission indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission 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 within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided the act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

Rulemaking

The PSYPACT requires the Commission to exercise its rulemaking power according to this Article and the rules adopted thereunder. Additional rulemaking provisions include the following:

- Rules and amendments are binding as of the date specified in each rule or amendment;
- If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the PSYPACT, then such rule has no further force and effect in any compact state;
- Rules or amendments to the rules are to be adopted at a regular or special meeting of the Commission;
- The Commission is required to file a notice of proposed rulemaking prior to the promulgation and adoption of a final rule or rules by the Commission at least 60 days in advance of the meeting at which the rule is to be considered and voted upon;
- The notice of proposed rulemaking must contain certain specific items, as outlined in the bill;

- Prior to the adoption of a proposed rule, the Commission must allow persons to submit written data, facts, opinions, and arguments, which are to be made available to the public;
- The Commission is required to grant an opportunity for a public hearing before the adoption of a rule or amendment if a hearing is requested by at least 25 persons who submit comments independently of each another, a governmental subdivision or agency, or a duly appointed person in an association that has at least 25 members;
- If a hearing is held on the proposed rule or amendment, the Commission is required to publish the place, time, and date of the scheduled public hearing. The PSYPACT provides for written notification by persons wishing to provide public comment, the manner of conduct of the meeting to allow for such public comment, and provisions for transcripts and recordings of the hearing, and allows for rules grouped for hearings for the convenience of the Commission;
- Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing is not held, the Commission is required to consider all written and oral comments received;
- The Commission takes final action on the proposed rule by a majority vote of all members and determines the effective date of the rule, if any, based on the rulemaking record and the full text of the rule;
- The Commission is allowed to proceed with the promulgation of the proposed rule without a public hearing if no written notice of intent to attend the public hearing by interested parties is received;
- Upon determination that an emergency exists, the Commission is authorized to consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided for in the PSYPACT and in this Article are retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. The PSYPACT defines an emergency rule; and
- The Commission or an authorized committee of the Commission is allowed to direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. The method of public notice and challenges to such revisions is outlined in the bill.

Oversight, Dispute Resolution, and Enforcement

Oversight. The PSYPACT provides for the following oversight:

- Executive, legislative, and judicial branches of state government in each compact state are required to enforce the PSYPACT and take all actions necessary and appropriate to effectuate the PSYPACT's purposes and intent. The provisions of the PSYPACT and the rules promulgated thereunder have standing as statutory law;
- All courts are required to take judicial notice of the PSYPACT and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the PSYPACT that may affect the powers, responsibilities, or actions of the Commission; and
- The Commission is entitled to receive service of process and has standing to intervene in such proceedings for all purposes. Failure to provide service of process to the Commission renders the judgment or order void as to the Commission, the PSYPACT, or promulgated rules.

Default, technical assistance, and termination. The PSYPACT requires the Commission, upon determination that a compact state has defaulted in the performance of its obligations or responsibilities under the PSYPACT or promulgated rules, to provide written notice to the defaulting state and other compact states of the default, the proposed means of remedying 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 compact state in default fails to remedy the default, the PSYPACT provides, upon an affirmative vote of a majority of the compact states, the defaulting state may be terminated from the PSYPACT, and all rights, privileges, and benefits conferred by the PSYPACT are terminated on the effective date of the termination. A remedy of the default does not relieve the offending state of obligations and liabilities incurred during the period of default.

Termination of membership in the PSYPACT is imposed only after all other means of securing compliance have been exhausted. The PSYPACT requires the Commission to provide written notice of the intent to suspend or terminate to the governor and the majority and minority leaders of the defaulting state's legislature and each of the compact states.

The PSYPACT requires a compact state that has been terminated to be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination.

Unless agreed upon in writing between the Commission and the defaulting state, the PSYPACT prohibits the Commission from bearing the costs incurred by the state found to be in default or that has been terminated from the PSYPACT.

The PSYPACT allows a defaulting state to appeal the action of the Commission by petitioning the U.S. District Court for the State of Georgia or the federal district where the PSYPACT has its principal offices. The prevailing state is awarded all costs of such litigation, including reasonable attorney fees.

Dispute resolution. Upon request by a compact state, the Commission is required to attempt to resolve disputes related to the PSYPACT that arise among compact states and between compact and non-compact states. The PSYPACT requires the Commission to

promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

Enforcement. The PSYPACT requires the Commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of the PSYPACT. By majority vote, the Commission is authorized to initiate legal action in the U.S. District Court for the State of Georgia, or the federal district court where the PSYPACT has its principal offices, against a compact state in default to enforce compliance with the provisions of the PSYPACT and its promulgated rules and bylaws. The PSYPACT provides that both injunctive relief and damages may be sought. If judicial enforcement is necessary, the prevailing member is awarded all costs of such litigation, including reasonable attorney fees. The PSYPACT provides the remedies in this Article are not the exclusive remedies of the Commission, and the Commission is authorized to pursue other remedies available under federal or state law.

Date of Implementation of the Commission and Associated Rules, Withdrawal, and Amendments

Effective date. The PSYPACT comes into effect on the date on which it is enacted into law in the seventh compact state. The provisions that come into effect at that time are limited to the powers granted to the Commission related to assembly and promulgation of rules. The Commission meets and exercises rulemaking powers necessary to implement and administer the PSYPACT. [*Note:* The seventh state enacted the PSYPACT in April 2019.]

The PSYPACT requires any state joining the PSYPACT after the Commission's initial adoption of rules to be subject to the rules as they exist on the date on which the PSYPACT becomes law in such state and has the full force and effect of law.

A compact state is allowed to withdraw from the PSYPACT by enacting a statute repealing the same. The PSYPACT provides that a compact state's withdrawal does not take effect until six months after enactment of the repealing statute and does not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of the PSYPACT prior to the effective date of withdrawal.

The PSYPACT does not invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a non-compact state that does not conflict with the provisions of the PSYPACT.

The compact states are authorized to amend the PSYPACT. No amendment to the PSYPACT will become effective and binding upon any compact state until it is enacted into the law of all compact states.

Construction and Severability

The bill states the PSYPACT is liberally construed to effectuate its purposes. If the PSYPACT is held to be contrary to the constitution of any state member, the PSYPACT remains in full force and effect in the remaining compact states.

Physical Therapy Licensure Compact

The PT Compact is a part of and supplemental to the Physical Therapy Practice Act (Act).

Purpose

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

The PT Compact states 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.

Definitions

The PT Compact defines applicable terms, including these key terms:

- "Compact privilege" means 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" means 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" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action;
- "Home state" means the member state that is the licensee's primary state of residence;

- “Jurisprudence requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state;
- “Member state” means a state that has enacted the PT Compact;
- “Party state” means 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” (PT Commission) means the national administrative body whose membership consists of all states that have enacted the PT Compact; and
- “Remote state” means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

State Participation in the PT Compact

To participate in the PT Compact, each state is required to:

- Participate fully in the PT Commission’s data system;
- Have a mechanism in place to receive and investigate complaints about licensees;
- Notify the PT 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 FBI record search on criminal background checks and using the results to make licensure decisions in accordance with the PT Compact;
- Comply with the rules of the PT Commission;
- Utilize a recognized national examination as a requirement for licensure, pursuant to the rules of the PT Commission; and
- Have continuing competence requirements as a condition of licensure renewal.

The PT Compact provides that, upon adoption of the PT Compact, a member state is 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 PT Compact requires 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 PT

Compact and rules. The PT Compact authorizes a member state to charge a fee for granting a compact privilege.

PT Compact Privilege

To exercise the compact privilege, a licensee is 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 PT Compact;
- Have not had any adverse action against any license or compact privilege within the previous two years;
- Notify the PT 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 PT Commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

The PT Compact provides that the compact privilege is valid until the expiration date of the home license.

The PT Compact requires 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 PT Compact allows 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 will 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 PT Compact requires 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 PT Compact requires 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 PT Compact requires the individual to lose the compact privilege in any remote state until certain requirements are met. The PT Compact then requires the individual to meet the conditions for compact privilege cited in Section 4 of the PT Compact to obtain a compact privilege in a remote state.

Active Duty Military Personnel or Their Spouses

The PT Compact allows 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.

Adverse Actions

The PT Compact provides 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 PT Compact overrides 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 PT Compact specifies 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 PT Compact also outlines 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 PT Compact allows a member state to participate with other member states in joint investigations of licensees and requires member states to share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the PT Compact.

Establishment of the Physical Therapy Compact Commission

The PT Compact directs compact member states to create a joint public agency known as the Physical Therapy Compact Commission, which is an instrumentality of the compact states.

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

Membership, voting, and meetings. The PT Compact specifies that each member state will have one delegate selected by that member state's licensing board as a member of the PT Commission. The PT Compact provides for the qualifications for PT Commission

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

The PT Compact specifies the various powers and duties of the PT Commission, including establishing and electing an Executive Board that has the power to act on behalf of the PT Commission according to the terms of the PT Compact. PT Commission meetings are open to the public, and public notice of meetings is required.

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

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

Financing the Commission. The PT Compact provides that the PT 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 PT 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 assessments are allocated based upon a formula to be determined by the PT Commission, which must 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 are subject to the audit and accounting procedures established under its bylaws. The PT Compact requires annual audits by a certified or licensed public accountant and including the audit report in the PT 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 PT Commission, the PT Compact provides 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 PT 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 PT Commission employment, duties, or responsibilities. The PT Compact states it is not to 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 PT Commission employment, duties, or responsibilities.

Data System

The PT Compact requires the PT 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 PT Compact requires a member state to submit a uniform data set to the data system on all individuals to whom the PT Compact is applicable as required by the rules of the PT Commission.

The PT Compact requires 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 PT Compact, as determined by rules of the PT Commission.

The PT Compact provides for the following with regard to information in the coordinated database and reporting system:

- Investigative information pertaining to a licensee in any member state is available only to other party states;
- The PT Commission is 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 is available to any other member state;
- Member states are 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 must be removed from the data system.

Rulemaking

The PT Compact requires the PT Commission to exercise its rulemaking powers according to the criteria set forth and adopted under the provisions of this section of the PT Compact. The PT Compact provides that 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 PT Compact within four years of the date of adoption of the rule, the rule has no further force and effect on any member state.

The PT Compact provides the process for promulgating and adopting rules, filing the notice of proposed rulemaking and the required content of the notice, submitting information that is to 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 are recorded, with a copy of the recording available upon request. The PT Compact does not require a separate hearing on each rule; rather, rules may be grouped for the convenience of the PT Commission in any required hearing.

The PT Compact establishes 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 PT Compact provides for the PT Commission to consider and adopt an emergency rule without prior notice, comment, or hearing. The rulemaking procedures are retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the rule. The PT Compact establishes the conditions under which an emergency order is indicated.

The PT Compact establishes the procedure for technical revisions of previously adopted rules or amendments.

Oversight, Dispute Resolution, and Enforcement

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

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

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

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

The PT Compact specifies termination of PT Compact membership is to be imposed only after all other means of securing compliance have been exhausted. The PT Commission is 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 PT Compact, the terminated state is 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 PT Commission and the defaulting state, the PT Commission is prohibited from bearing any costs related to the state found to be in default or that has been terminated from the PT Compact. The PT Compact provides the defaulting state with the opportunity to appeal the PT Commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district court where the PT Commission has its principal offices. The PT Compact requires all costs of such litigation, including reasonable attorney fees, to be awarded to the prevailing member state.

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

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

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

The PT Compact specifies it becomes effective on the date on which the PT Compact statute is enacted into law in the tenth member state. [Note: The PT Compact became effective on April 25, 2017.] The PT Compact provides the provisions effective upon enactment of the PT Compact in the tenth state are the powers granted to the PT Commission relating to assembly and the promulgation of rules, with the PT Commission meeting thereafter to exercise rulemaking powers necessary to the implementation and administration of the PT Compact. States joining the PT Compact after the initial adoption of the rules are subject to the rules as they exist on the date on which the PT Compact becomes law in that state, and such rules have the full force and effect of law upon the PT Compact becoming law in the state.

The PT Compact allows a member state to withdraw from the PT Compact by enacting a statute repealing the same, and such withdrawal is to take effect six months after enactment of the repealing statute. The PT Compact requires 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 PT Compact does 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 PT Compact.

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

Construction and Severability

The bill states the PT Compact is to be liberally construed to effectuate its purposes. The provisions of the PT Compact are severable, allowing for the remainder of the PT Compact to remain valid if any portion of the PT Compact is held to be invalid. If the PT Compact is held contrary to the constitution of any party state, the PT Compact remains 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

The bill adds a section to the Act regarding criminal history record checks and amends sections regarding disciplinary action, professional liability insurance, and rules and regulations.

Criminal History Record Checks

The bill amends the Act to add 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;
- An original application for reinstatement of a license or certificate; or
- Any investigation of any holder of a license or certificate.

The bill authorizes the Board to submit fingerprints to the Kansas Bureau of Investigation and the FBI. The bill allows 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 requires 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 allows 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, and it requires any funds collected to be deposited in the State Treasury to the credit of the Healing Arts Fee Fund.

Disciplinary Action on PT Compact Privilege

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

Professional Liability Insurance Coverage

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

Rules and Regulations

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