

HOUSE BILL NO. 105

INTRODUCED BY F. GARNER

BY REQUEST OF THE BOARD OF PHYSICAL THERAPY EXAMINERS

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING AN INTERSTATE PHYSICAL THERAPY LICENSURE COMPACT, WHICH INCLUDES RULEMAKING PROVISIONS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF APPLICANTS; ~~LIMITING GOVERNMENTAL AND COMMISSION LIABILITY~~; AND AMENDING SECTION 37-11-307, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Physical therapy licensure compact enactment -- provisions.** The

Physical Therapy Licensure Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1 - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state in which the patient or client is located at the time of the patient or client encounter with a physical therapist or physical therapist assistant. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The compact is designed to achieve the following objectives:

- (1) increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
- (2) enhance the states' ability to protect the public's health and safety;
- (3) encourage the cooperation of member states in regulating multistate physical therapy practice;
- (4) support spouses of relocating military members;
- (5) enhance the exchange of licensure, investigative, and disciplinary information between member states; and
- (6) 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

2 As used in this compact, and except as otherwise provided, the following definitions apply:

3 (1) "Active duty military" means full-time duty status in the active uniformed service of the United States,  
4 including members of the National Guard and Reserve on active duty pursuant to 10 U.S.C. ~~Section~~ 1209 and  
5 1211 OR ON FULL-TIME NATIONAL GUARD DUTY PURSUANT TO 32 U.S.C 520(F).

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

8 (3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved  
9 by a physical therapy licensing board. This includes but is not limited to substance abuse issues.

10 (4) "Compact privilege" means the authorization granted by a remote state to allow a licensee from  
11 another member state to practice as a physical therapist or work as a physical therapist assistant in the remote  
12 state under its laws and rules. The practice of physical therapy occurs in the member state in which the patient  
13 or client is located at the time of the patient or client encounter with the physical therapist or physical therapist  
14 assistant.

15 (5) "Continuing competence" means a requirement, as a condition of license renewal, to provide  
16 evidence of participation in, or completion of, educational and professional activities relevant to practice or area  
17 of work.

18 (6) "Data system" means a repository of information about licensees, including examination, licensure,  
19 investigative information, compact privilege, and adverse action.

20 (7) "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

21 (8) "Executive board" means a group of directors elected or appointed to act on behalf of, and within the  
22 powers granted to them, by the commission.

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

24 (10) "Investigative information" means information, records, and documents received or generated by  
25 a physical therapy licensing board pursuant to an investigation.

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

28 (12) "Licensee" means an individual who currently holds an authorization from the state to practice as  
29 a physical therapist or to work as a physical therapist assistant.

30 (13) "Member state" means a state that has enacted the compact.

1 (14) "Party state" means any member state in which a licensee holds a current license or compact  
2 privilege or is applying for a license or compact privilege.

3 (15) "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

4 (16) "Physical therapist assistant" means an individual who is licensed or certified by a state and who  
5 assists the physical therapist in selected components of physical therapy.

6 (17) "Physical therapy", "physical therapy practice", and "the practice of physical therapy" means the care  
7 and services provided by or under the direction and supervision of a licensed physical therapist.

8 (18) "Physical therapy compact commission" or "commission" means the national administrative body  
9 whose membership consists of all states that have enacted the compact.

10 (19) "Physical therapy licensing board" or "licensing board" means the agency of a state that is  
11 responsible for the licensing and regulation of physical therapists and physical therapist assistants.

12 (20) "Remote state" means a member state other than the home state in which a licensee is exercising  
13 or seeking to exercise the compact privilege.

14 (21) "Rule" means a regulation, principle, or directive promulgated by the commission that has the force  
15 of law.

16 (22) "State" means any state, commonwealth, district, or territory of the United States that regulates the  
17 practice of physical therapy.

### 18 SECTION 3 - STATE PARTICIPATION IN THE COMPACT

19 (1) To participate in the compact, a state shall:

20 (a) participate fully in the commission's data system, including using the commission's unique identifier  
21 as defined in rules;

22 (b) have a mechanism in place for receiving and investigating complaints about licensees;

23 (c) notify the commission, in compliance with the terms of the compact and rules, of any adverse action  
24 or the availability of investigative information regarding a licensee;

25 (d) fully implement a criminal background check requirement, within a time frame established by rule, by:

26 (i) receiving the results of the federal bureau of investigation record search on criminal background  
27 checks; and

28 (ii) using the results in making licensure decisions in accordance with subsection (2);

29 (e) comply with the rules of the commission;

30 (f) use a recognized national examination as a requirement for licensure as provided by rules of the

1 commission; and

2 (g) have continuing competence requirements as a condition for license renewal.

3 (2) Upon adoption of this statute, the member state has the authority to obtain biometric-based  
4 information from each physical therapy licensure applicant and to submit this information to the federal bureau  
5 of investigation for a criminal background check in accordance with 28 U.S.C. 534 and 42 U.S.C. 14616.

6 (3) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license  
7 in another member state in accordance with the terms of the compact and rules.

8 (4) A member state may charge a fee for granting a compact privilege.

9 SECTION 4 - COMPACT PRIVILEGE

10 (1) To exercise the compact privilege under the terms and provisions of the compact, the licensee:

11 (a) must be licensed under Title 37, chapter 11, in the home state;

12 (b) may not have an encumbrance on any state license;

13 (c) must be eligible for a compact privilege in any member state in accordance with subsections (4), (7),  
14 and (8) of this section;

15 (d) may not have had any adverse action against any license or compact privilege within the previous  
16 2 years;

17 (e) shall notify the commission that the licensee is seeking the compact privilege within a remote state;

18 (f) shall pay any applicable fees, including any state fee, for the compact privilege;

19 (g) shall meet any jurisprudence requirements established by the remote state in which the licensee is  
20 seeking a compact privilege; and

21 (h) shall report to the commission adverse action taken by any nonmember state within 30 days from  
22 the date the adverse action is taken.

23 (2) The compact privilege is valid until the expiration date of the home license. The licensee shall comply  
24 with the requirements in subsection (1) to maintain the compact privilege in the remote state.

25 (3) A licensee providing physical therapy in a remote state under the compact privilege must function  
26 within the laws and regulations of the remote state.

27 (4) A licensee providing physical therapy in a remote state is subject to that state's regulatory authority.  
28 A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege  
29 in the remote state for a specified period of time, impose fines, or take any other necessary actions to protect the  
30 health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific

1 time for removal has passed and all fines are paid.

2 (5) If a home state license is encumbered, the licensee loses the compact privilege in any remote state  
3 until the following occur:

4 (a) the home state license is no longer encumbered; and

5 (b) 2 years have elapsed from the date of the adverse action.

6 (6) Once an encumbered license in the home state is restored to good standing, the licensee must meet  
7 the requirements in subsection (1) of this section to obtain a compact privilege in any remote state.

8 (7) If a licensee's compact privilege in any remote state is removed, the individual loses the compact  
9 privilege in any remote state until the following occur:

10 (a) the specific period has ended for which the compact privilege was removed;

11 (b) all fines have been paid; and

12 (c) 2 years have elapsed from the date of the adverse action.

13 (8) Once the requirements of subsection (7) have been met, the licensee must meet the requirements  
14 in subsection (1) to obtain a compact privilege in a remote state.

#### 15 SECTION 5 - ACTIVE DUTY MILITARY PERSONNEL OR SPOUSE OF MILITARY

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

18 (1) home of record;

19 (2) permanent change of station (PCS); or

20 (3) state of current residence if that state is different than the PCS state or home of record.

#### 21 SECTION 6 - ADVERSE ACTIONS

22 (1) A home state has exclusive power to impose adverse action against a license issued by the home  
23 state.

24 (2) A home state may take adverse action based on the investigative information of a remote state, as  
25 long as the home state follows its own procedures for imposing adverse action.

26 (3) Nothing in this compact may override a member state's decision that participation in an alternative  
27 program may be used in lieu of adverse action and that participation in an alternative program is to remain  
28 nonpublic if required by the member state's laws. Member states shall require licensees who enter any alternative  
29 program in lieu of discipline to agree not to practice in any other member state during the term of the alternative  
30 program without prior authorization from the other member state.

1 (4) Any member state may investigate actual or alleged violations of the statutes and rules authorizing  
2 the practice of physical therapy in any other member state in which a physical therapist or physical therapist  
3 assistant holds a license or compact privilege.

4 (5) A remote state has the authority to:

5 (a) take adverse actions as set forth in Section 4(4) against a licensee's compact privilege in the state;

6 (b) issue subpoenas for both hearings and investigations that require the attendance and testimony of  
7 witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party  
8 state for the attendance and testimony of witnesses, or the production of evidence from another party state must  
9 be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of  
10 that court applicable to subpoenas issued in proceedings pending before that court. The issuing authority shall  
11 pay any witness fees, travel, expenses, mileage, and other fees required by the service statutes of the state  
12 where the witness or evidence is located.

13 (c) recover from the licensee, if otherwise permitted by state law, the costs of investigations and  
14 disposition of cases resulting from any adverse action taken against that licensee.

15 (6) (a) In addition to the authority granted to a member state by its respective physical therapy practice  
16 act or other applicable state law, a member state may participate with other member states in joint investigations  
17 of licensees.

18 (b) Member states shall share any investigative information, litigation, or compliance materials in  
19 furtherance of any joint or individual investigation initiated under the compact.

#### 20 SECTION 7 - ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

21 (1) The compact member states hereby create and establish a joint public agency known as the physical  
22 therapy compact commission.

23 (a) The commission is an instrumentality of the compact states.

24 (b) Venue is proper and judicial proceedings by or against the commission must be brought solely and  
25 exclusively in a court of competent jurisdiction where the principal office of the commission is located. The  
26 commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in  
27 alternative dispute resolution proceedings.

28 ~~(c) Nothing in this compact may be construed to be a waiver of sovereign immunity.~~

29 (2) (a) Each member state has and is limited to one delegate selected by that member state's licensing  
30 board.

1 (b) The delegate must be a current member of the licensing board who is a physical therapist, a physical  
2 therapist assistant, a public member, or the board administrator.

3 (c) Any delegate may be removed or suspended from office as provided by the law of the state from  
4 which the delegate is appointed.

5 (d) The member state board shall fill any vacancy occurring in the commission.

6 (e) Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws  
7 and shall otherwise have an opportunity to participate in the business and affairs of the commission.

8 (f) A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide  
9 for delegates' participation in meetings by telephone or other means of communication.

10 (g) The commission shall meet at least once during each calendar year. Additional meetings must be  
11 held as set forth in the bylaws.

12 (3) The commission has the power and duty to:

13 (a) establish the fiscal year of the commission;

14 (b) establish bylaws;

15 (c) maintain its financial records in accordance with the bylaws;

16 (d) meet and take actions that are consistent with the provisions of this compact and the bylaws;

17 (e) promulgate uniform rules to facilitate and coordinate implementation and administration of this  
18 compact. The rules have the force and effect of law and are binding in all member states.

19 (f) bring and prosecute legal proceedings or actions in the name of the commission, provided that the  
20 standing of any state physical therapy licensing board to sue or be sued under applicable law is not affected;

21 (g) purchase and maintain insurance and bonds;

22 (h) borrow, accept, or contract for services of personnel, including but not limited to employees of a  
23 member state;

24 (i) hire employees, elect or appoint officers, fix compensation, define duties, grant the employees or  
25 officers the appropriate authority to carry out the purposes of the compact and to establish the commission's  
26 personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related  
27 personnel matters;

28 (j) accept any and all donations and grants of money, equipment, supplies, materials, and services and  
29 to receive, use, and dispose of the items and services listed under this subsection (3)(j) while at all times avoiding  
30 any appearance of impropriety or conflict of interest.

- 1 (k) lease on its own behalf, purchase, accept appropriate gifts or donations of, or otherwise own, hold,  
2 improve or use any property, real, personal, or mixed while at all times avoiding any appearance of impropriety;
- 3 (l) sell, convey, mortgage, pledge, lease to others, exchange, abandon, or otherwise dispose of any  
4 property, real, personal, or mixed;
- 5 (m) establish a budget and make expenditures;
- 6 (n) borrow money;
- 7 (o) appoint committees, including standing committees comprised of members, state regulators, state  
8 legislators or their representatives, and consumer representatives, and other interested persons who may be  
9 designated in this compact and the bylaws;
- 10 (p) provide and receive information from and cooperate with law enforcement agencies;
- 11 (q) establish and elect an executive board; and
- 12 (r) perform other functions necessary or appropriate to achieve the purposes of this compact consistent  
13 with the state regulation of physical therapy licensure and practice.
- 14 (4) The executive board has the power to act on behalf of the commission according to the terms of this  
15 compact.
- 16 (a) The executive board is composed of nine members, of which:
- 17 (i) seven voting members are to be elected by the commission from the current membership of the  
18 commission;
- 19 (ii) one ex-officio, nonvoting member must be from the recognized national physical therapy professional  
20 association; and
- 21 (iii) one ex-officio, nonvoting member must be from the recognized membership organization of the  
22 physical therapy licensing boards.
- 23 (b) The ex-officio members are to be selected by their respective organizations.
- 24 (c) The commission may remove any member of the executive board as provided in bylaws.
- 25 (d) The executive board shall meet at least annually.
- 26 (e) The executive board has the following duties and responsibilities:
- 27 (i) recommend to the entire commission changes to the rules or bylaws, changes to this compact  
28 legislation, fees paid by compact member states, including annual dues, and any commission compact fees  
29 charged to licensees for the compact privilege;
- 30 (ii) ensure compact administration services are appropriately provided, contractual or otherwise;



- 1 (iii) prepare and recommend the budget;
- 2 (iv) maintain financial records on behalf of the commission;
- 3 (v) monitor compact compliance of member states and provide compliance reports to the commission;
- 4 (vi) establish additional committees as necessary; and
- 5 (vii) perform other duties as provided in rules or bylaws.
- 6 (5) (a) All meetings of the commission must be open to the public, and public notice of meetings must
- 7 be given in the same manner as required under the rulemaking provisions in Section 9.
- 8 (b) The commission or the executive board or other committees of the commission may convene in a
- 9 closed, nonpublic meeting if the commission or executive board or other committees of the commission must
- 10 discuss:
- 11 (i) noncompliance of a member state with its obligations under the compact;
- 12 (ii) the employment, compensation, discipline, or other matters, practices, or procedures related to
- 13 specific employees or other matters related to the commission's internal personnel practices and procedures;
- 14 (iii) current, threatened, or reasonably anticipated litigation;
- 15 (iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- 16 (v) accusing any person of a crime or formally censuring any person;
- 17 (vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- 18 (vii) disclosure of information of a personal nature when disclosure would constitute a clearly unwarranted
- 19 invasion of personal privacy;
- 20 (viii) disclosure of investigative records compiled for law enforcement purposes;
- 21 (ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use
- 22 of the commission or other committee charged with responsibility of investigation or determination of compliance
- 23 issues pursuant to the compact; or
- 24 (x) matters specifically exempted from disclosure by federal or member state statute.
- 25 (c) If a meeting, or portion of a meeting, is closed pursuant to subsection (5)(b), the commission's legal
- 26 counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting
- 27 provision.
- 28 (d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting
- 29 and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a
- 30 description of the views expressed. All documents considered in connection with an action must be identified in

1 the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a  
2 majority vote of the commission or order of a court of competent jurisdiction.

3 (6) The commission:

4 (a) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization,  
5 and ongoing activities;

6 (b) may accept any and all appropriate revenue sources, donations, and grants of money, equipment,  
7 supplies, materials, and services;

8 (c) may levy on and collect an annual assessment from each member state or impose fees on other  
9 parties to cover the cost of operations and activities of the commission and its staff. The assessment or fees must  
10 be in a total amount sufficient to cover the commission's annual budget as approved each year for which revenue  
11 is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a  
12 formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

13 (d) may not incur obligations of any kind prior to securing the funds adequate to meet the obligations,  
14 and the commission may not pledge the credit of any of the member states, except by and with the authority of  
15 the member state;

16 (e) shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of  
17 the commission are subject to the audit and accounting procedures established under its bylaws. However, all  
18 receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed  
19 public accountant, and the report of the audit must be included in and become part of the annual report of the  
20 commission.

21 ~~(7)(a) The members, officers, executive director, employees, and representatives of the commission are~~  
22 ~~immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of~~  
23 ~~property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or~~  
24 ~~omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing~~  
25 ~~occurred within the scope of commission employment, duties, or responsibilities. However, nothing in this~~  
26 ~~subsection (7)(a) may be construed to protect any person from suit or liability for any damage, loss, injury, or~~  
27 ~~liability caused by the intentional or willful or wanton misconduct of that person.~~

28 ~~(b)(7)~~ (A) The commission shall defend any member, officer, executive director, employee, or  
29 representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged  
30 act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or

1 that the person against whom the claim is made had a reasonable basis for believing occurred within the scope  
2 of commission employment, duties, or responsibilities; provided that nothing in this subsection ~~(7)(b)~~ (7)(A) is to  
3 be construed as prohibiting that person from retaining his or her own counsel; and provided further, that the actual  
4 or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

5 ~~(e)~~(B) The commission shall indemnify and hold harmless any member, officer, executive director,  
6 employee, or representative of the commission for the amount of any settlement or judgment obtained against  
7 that person arising out of any actual or alleged act, error, or omission that occurred within the scope of  
8 commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing  
9 occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error,  
10 or omission did not result from the intentional or willful or wanton misconduct of that person.

#### 11 SECTION 8 - DATA SYSTEM

12 (1) The commission shall provide for the development, maintenance, and utilization of a coordinated  
13 database and reporting system containing licensure, adverse action, and investigative information on all licensed  
14 individuals in member states.

15 (2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a  
16 uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules  
17 of the commission, including:

- 18 (a) identifying information;
- 19 (b) licensure data;
- 20 (c) adverse actions against a license or compact privilege;
- 21 (d) nonconfidential information related to alternative program participation;
- 22 (e) any denial of application for licensure, and the reason for the denial; and
- 23 (f) other information that may facilitate the administration of this compact, as determined by the rules of  
24 the commission.

25 (3) Investigative information pertaining to a licensee in any member state is only available to other party  
26 states.

27 (4) The commission shall promptly notify all member states of any adverse action taken against a  
28 licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member  
29 state is available to any other member state.

30 (5) Member states contributing information to the data system may designate information that may not

1 be shared with the public without the express permission of the contributing state.

2 (6) Any information submitted to the data system that is subsequently required to be expunged by the  
3 laws of the member state contributing the information must be removed from the data system.

4 SECTION 9 - RULEMAKING

5 (1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section  
6 and the rules adopted under this section. Rules and amendments become binding as of the date specified in each  
7 rule or amendment.

8 (2) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or  
9 resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then  
10 that rule has no further force and effect in any member state.

11 (3) Rules or amendments to the rules must be adopted at a regular or special meeting of the  
12 commission.

13 (4) Prior to promulgation and adoption of a final rule by the commission, and at least 30 days in advance  
14 of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of  
15 proposed rulemaking:

16 (a) on the website of the commission or other publicly accessible platform; and

17 (b) on the website of each member state physical therapy licensing board or other publicly accessible  
18 platform or the publication in which each state would otherwise publish proposed rules.

19 (5) The notice of proposed rulemaking must include:

20 (a) the proposed time, date, and location of the meeting in which the rule is to be considered and voted  
21 upon;

22 (b) the text of the proposed rule or amendment and the reason for the proposed rule;

23 (c) a request for comments on the proposed rule from any interested person; and

24 (d) the manner in which interested persons may submit notice to the commission of their intention to  
25 attend the public hearing and any written comments.

26 (6) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts,  
27 opinions, and arguments, which must be made available to the public.

28 (7) The commission shall grant an opportunity for a public hearing before the commission adopts a rule  
29 or amendment if a hearing is requested by:

30 (a) at least 25 persons;

1 (b) a state or federal governmental subdivision or agency; or

2 (c) an association having at least 25 members.

3 (8) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time,  
4 and date of the scheduled public hearing. If the hearing is held by electronic means, the commission shall publish  
5 the mechanism for access to the electronic hearing.

6 (a) All persons wishing to be heard at the hearing shall notify the executive director of the commission  
7 or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business  
8 days before the scheduled date of the hearing.

9 (b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and  
10 reasonable opportunity to comment orally or in writing.

11 (c) All hearings must be recorded and copies of the recording are to be made available on request.

12 (d) This section may not be construed as requiring a separate hearing on each rule. Rules may be  
13 grouped for the convenience of the commission at hearings required by this section.

14 (9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if  
15 the hearing was not held, the commission shall consider all written and oral comments received.

16 (10) If no written notice of intent to attend the public hearing by an interested party is received, the  
17 commission may proceed with promulgation of the proposed rule without a public hearing.

18 (11) The commission shall, by majority vote of all members, take final action on the proposed rule and  
19 determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

20 (12) Upon determination that an emergency exists, the commission may consider and adopt an  
21 emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking  
22 procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably  
23 possible but not later than 90 days after the effective date of the rule. For the purposes of this provision, an  
24 emergency rule is one that must be adopted immediately in order to:

25 (a) meet an imminent threat to public health, safety, or welfare;

26 (b) prevent a loss of commission or member state funds;

27 (c) meet a deadline for the promulgation of an administrative rule that is established by federal law or  
28 rule; or

29 (d) protect public health and safety.

30 (13) The commission or an authorized committee of the commission may direct revisions to a previously

1 adopted rule or amendment for the purposes of correcting typographical errors, errors in format, errors in  
2 consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the  
3 commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision  
4 may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be  
5 made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge  
6 is made, the revision takes effect without further action. If the revision is challenged, the revision may not take  
7 effect without the approval of the commission.

8 SECTION 10 - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

9 (1) (a) The executive, legislative, and judicial branches of state government in each member state shall  
10 enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and  
11 intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory  
12 law.

13 (b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative  
14 proceeding in a member state pertaining to the subject matter of this compact which may affect the powers,  
15 responsibilities, or actions of the commission.

16 (c) The commission is entitled to receive service of process in any proceeding described in subsection  
17 (1)(b) of this section and has standing to intervene in that proceeding for all purposes. Failure to provide service  
18 of process to the commission renders a judgment or order void as to the commission, the compact, or  
19 promulgated rules.

20 (2) (a) If the commission determines that a member state has defaulted in the performance of its  
21 obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

22 (i) written notice to the defaulting state and other member states of the nature of the default, the  
23 proposed means of curing the default, or any other action to be taken by the commission; and

24 (ii) remedial training and specific technical assistance regarding the default.

25 (b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact  
26 upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by  
27 this compact may be terminated on the effective date of termination. A cure of the default does not relieve the  
28 offending state of obligations or liabilities incurred during the period of default.

29 (c) Termination of membership in the compact is to be imposed only after all other means of securing  
30 compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to

1 the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member  
2 states.

3 (d) A state that has been terminated is responsible for all assessments, obligations, and liabilities  
4 incurred through the effective date of termination, including obligations that extend beyond the effective date of  
5 termination.

6 (e) The commission shall not bear any costs related to a state that is found to be in default or that has  
7 been terminated from the compact, unless agreed upon in writing between the commission and the defaulting  
8 state.

9 (f) The defaulting state may appeal the action of the commission by petitioning the U.S. district court for  
10 the District of Columbia or the federal district where the commission has its principal offices. The prevailing  
11 member must be awarded all costs of the litigation, including reasonable attorney's fees.

12 (3) (a) Upon request by a member state, the commission shall attempt to resolve disputes related to the  
13 compact that arise among member states and between member and nonmember states.

14 (b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution  
15 for disputes as appropriate.

16 (4) (a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules  
17 of this compact.

18 (b) By majority vote, the commission may initiate legal action in the U.S. district court for the District of  
19 Columbia or the federal district where the commission has its principal offices against a member state in default  
20 to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought  
21 may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must  
22 be awarded all costs of the litigation, including reasonable attorney's fees.

23 (c) The remedies in this section are not to be the exclusive remedies of the commission. The commission  
24 may pursue any other remedies available under federal or state law.

25 SECTION 11 - DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL  
26 THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

27 (1) The compact is effective in this state on the date on which the compact statute is enacted into law  
28 in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted  
29 to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and  
30 exercise rulemaking powers necessary to the implementation and administration of the compact.

1 (2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject  
2 to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been  
3 previously adopted by the commission has the full force and effect of law on the day the compact becomes law  
4 in that state.

5 (3) Any member state may withdraw from this compact by enacting a statute repealing the compact.

6 (a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing  
7 statute.

8 (b) Withdrawal does not affect the continuing requirement of the withdrawing state's physical therapy  
9 licensing board to comply with the investigative and adverse action reporting requirements in [section 1] prior to  
10 the effective date of withdrawal.

11 (4) This compact may not be construed to invalidate or prevent any physical therapy licensure agreement  
12 or other cooperative arrangement between a member state and a nonmember state that does not conflict with  
13 the provisions of this compact.

14 (5) This compact may be amended by the member states. An amendment to this compact does not  
15 become effective and binding upon any member state until the amendment is enacted into the laws of all member  
16 states.

#### 17 SECTION 12 - CONSTRUCTION AND SEVERABILITY

18 This compact is to be liberally construed so as to effectuate the purposes of the compact. The provisions  
19 of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be  
20 contrary to the constitution of any party state or of the United States or the applicability of the compact to any  
21 government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and  
22 the applicability of this compact to any government, agency, person, or circumstance is not affected by the holding  
23 of invalidity. If this compact is held contrary to the constitution of any party state, the compact remains in full force  
24 and effect as to the remaining party states and in full force and effect as to the party state affected as to all  
25 severable matters.

26  
27 NEW SECTION. **Section 2. Criminal background check.** (1) As provided in 37-1-307, the board is  
28 authorized to require each applicant for licensure to submit a full set of the applicant's fingerprints to the board  
29 for the purpose of obtaining a state and federal criminal history background check.

30 (2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and



1 federal criminal history background check.

2 (3) The board may require licensees renewing their licenses to submit a full set of their fingerprints to  
3 the board for the purpose of obtaining a state and federal criminal history background check.

4 (4) The Montana department of justice may share the fingerprint data gathered under this section with  
5 the federal bureau of investigation.

6

7 **Section 3.** Section 37-11-307, MCA, is amended to read:

8 **"37-11-307. Applicants licensed in other states.** (1) The board is subject to the physical therapy  
9 compact described in [section 1] and shall extend compact privileges as described by [section 1].

10 (2) The board may, in its discretion, authorize the department to issue a physical therapist or physical  
11 therapist assistant license, without examination, on the payment of the required fee established by the board, to  
12 an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state  
13 or territory that is not part of the compact if the applicant has met the same requirements as applicants licensed  
14 by examination under this chapter. An applicant licensed in another state or territory that is not part of the  
15 compact, if licensed by examination other than the examination recognized under this chapter, may be considered  
16 for licensure by the board if the requirements for a physical therapy license or a physical therapist assistant  
17 license in the state or territory in which the applicant was tested were at least equal to those requirements in force  
18 in this state at that time. However, the board may require a written, oral, or practical examination and may require  
19 continued study or refresher courses."

20

21 ~~NEW SECTION. Section 4. Two-thirds vote required. Because [section 1] limits governmental liability,~~  
22 ~~including liability of the commission, Article II, section 18, of the Montana constitution requires a vote of two-thirds~~  
23 ~~of the members of each house of the legislature for passage.~~

24

25 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified  
26 as an integral part of Title 37, chapter 11, and the provisions of Title 37, chapter 11, apply to [sections 1 and 2].

27

- END -