

# State of Wisconsin



2019 Senate Bill 390

Date of enactment: **February 5, 2020**

Date of publication\*: **February 6, 2020**

## 2019 WISCONSIN ACT 100

AN ACT *to amend* 49.45 (9r) (a) 7. b., 146.81 (1) (dg), 146.997 (1) (d) 4., 154.01 (3), 155.01 (7), 252.14 (1) (ar) 4e., 440.03 (9) (a) (intro.), 440.03 (9) (a) 2., 440.03 (13) (b) (intro.), 440.03 (13) (c), 440.15, 446.01 (1v) (d), 448.50 (3) and (3m), 448.51, 448.56 (2), 448.565, 448.57 (2) (intro.), (c), (d) and (e), (4) and (5), 448.956 (1m) and (4), 450.10 (3) (a) 5., 451.02 (1) and 462.04; *to repeal and recreate* 440.03 (13) (b) (intro.) and 440.15; and *to create* 14.88, 440.03 (11m) (c) 2m., 448.50 (1n) and (1o), subchapter IX of chapter 448 [precedes 448.985] and 448.986 of the statutes; **relating to**: ratification of the Physical Therapy Licensure Compact, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 14.88 of the statutes is created to read:

**14.88 Physical therapy licensure compact.** There is created a physical therapy compact commission as specified in s. 448.985. The administrator of the commission representing this state shall be an individual described in s. 448.985 (7) (b) 2. The commission has the powers and duties granted and imposed under s. 448.985.

**SECTION 2.** 49.45 (9r) (a) 7. b. of the statutes is amended to read:

49.45 (9r) (a) 7. b. A physical therapist who is licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

**SECTION 3.** 146.81 (1) (dg) of the statutes is amended to read:

146.81 (1) (dg) A physical therapist or physical therapist assistant who is licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

**SECTION 4.** 146.997 (1) (d) 4. of the statutes is amended to read:

146.997 (1) (d) 4. A physician, podiatrist, or perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448 or a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448.

**SECTION 5.** 154.01 (3) of the statutes is amended to read:

154.01 (3) "Health care professional" means a person who is licensed, certified or registered under ch. 441, 448, or 455 or who holds a compact privilege under subch. IX of ch. 448.

**SECTION 6.** 155.01 (7) of the statutes is amended to read:

155.01 (7) "Health care provider" means a nurse licensed or permitted under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupa-

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

tional therapist, or occupational therapy assistant licensed under ch. 448, a person practicing Christian Science treatment, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility, or a home health agency, as defined in s. 50.49 (1) (a).

**SECTION 7.** 252.14 (1) (ar) 4e. of the statutes is amended to read:

252.14 (1) (ar) 4e. A physical therapist or physical therapist assistant who is licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

**SECTION 8.** 440.03 (9) (a) (intro.) of the statutes is amended to read:

440.03 (9) (a) (intro.) Subject to pars. (b) and (c) and s. 458.33 (2) (b) and (5), the department shall, biennially, determine each fee for an initial credential for which no examination is required, for a reciprocal credential, and for a credential renewal and any fee imposed under s. 448.986 (2) by doing all of the following:

**SECTION 9.** 440.03 (9) (a) 2. of the statutes is amended to read:

440.03 (9) (a) 2. Not later than January 31 of each odd-numbered year, adjusting for the succeeding fiscal biennium each fee for an initial credential for which an examination is not required, for a reciprocal credential, and, subject to s. 440.08 (2) (a), for a credential renewal, and any fee imposed under s. 448.986 (2), if an adjustment is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential ~~or~~ credential renewal, or compact privilege is in effect and, for purposes of each fee for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) during the fiscal biennium in progress at the time of the deadline for an adjustment under this subdivision or during the fiscal biennium beginning on the July 1 immediately following the deadline for an adjustment under this subdivision.

**SECTION 10.** 440.03 (11m) (c) 2m. of the statutes is created to read:

440.03 (11m) (c) 2m. The coordinated database and reporting system under s. 448.985 (8), if such disclosure is required under the physical therapy licensure compact under s. 448.985.

**SECTION 11.** 440.03 (13) (b) (intro.) of the statutes is amended to read:

440.03 (13) (b) (intro.) The department may investigate whether an applicant for or holder of any of the following credentials has been charged with or convicted of a crime only pursuant to rules promulgated by the department under this paragraph, including rules that establish the criteria that the department will use to determine whether an investigation under this paragraph is necessary, except as provided in par. (c) and ss. 441.51 (5) (a) 5. and, 448.980 (5) (b) 3., and 448.985 (3) (a) 4.:

**SECTION 12.** 440.03 (13) (b) (intro.) of the statutes, as affected by 2017 Wisconsin Act 135, section 14, and 2019 Wisconsin Act .... (this act), is repealed and recreated to read:

440.03 (13) (b) (intro.) The department may investigate whether an applicant for or holder of any of the following credentials has been charged with or convicted of a crime only pursuant to rules promulgated by the department under this paragraph, including rules that establish the criteria that the department will use to determine whether an investigation under this paragraph is necessary, except as provided in par. (c) and ss. 441.51 (5) (a) 5. and 448.985 (3) (a) 4.:

**SECTION 12g.** 440.03 (13) (c) of the statutes is amended to read:

440.03 (13) (c) The department shall require an applicant for a private detective license or a private security permit under s. 440.26, an applicant for a juvenile martial arts instructor permit under sub. (17), an applicant for a real estate appraiser certification under s. 458.06 or license under s. 458.08, an applicant for a multistate license under s. 441.06 (1c) or 441.10 (1c), an applicant for a compact license under s. 448.05 (2) (f), an applicant for a physical therapist license under s. 448.53 or physical therapist assistant license under s. 448.535, and a person for whom the department conducts an investigation under par. (b), to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may submit the fingerprint cards, and the department of justice shall submit the fingerprint cards of all applicants for a real estate appraiser certification under s. 458.06 or license under s. 458.08, of all applicants for a multistate license under s. 441.06 (1c) or 441.10 (1c), of all applicants for a compact license under s. 448.05 (2) (f), and of all applicants for a physical therapist license under s. 448.53 or a physical therapist assistant license under s. 448.535, to the federal bureau of investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions. Information obtained from the federal bureau of investigation may be shared with the department or the appropriate credentialing board, but shall

otherwise be kept confidential and is not subject to disclosure under s. 19.35.

**SECTION 12r.** 440.03 (13) (c) of the statutes, as affected by 2019 Wisconsin Act .... (this act), is amended to read:

440.03 (13) (c) The department shall require an applicant for a private detective license or a private security permit under s. 440.26, an applicant for a juvenile martial arts instructor permit under sub. (17), an applicant for a real estate appraiser certification under s. 458.06 or license under s. 458.08, an applicant for a multistate license under s. 441.06 (1c) or 441.10 (1c), ~~an applicant for a compact license under s. 448.05 (2) (f), an applicant for a physical therapist license under s. 448.53 or physical therapist assistant license under s. 448.535, and a person for whom the department conducts an investigation under par. (b), to be photographed and fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may submit the fingerprint cards, and the department of justice shall submit the fingerprint cards of all applicants for a real estate appraiser certification under s. 458.06 or license under s. 458.08, of all applicants for a multistate license under s. 441.06 (1c) or 441.10 (1c), ~~of all applicants for a compact license under s. 448.05 (2) (f), and of all applicants for a physical therapist license under s. 448.53 or a physical therapist assistant license under s. 448.535, to the federal bureau of investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions. Information obtained from the federal bureau of investigation may be shared with the department or the appropriate credentialing board, but shall otherwise be kept confidential and is not subject to disclosure under s. 19.35.~~~~

**SECTION 13.** 440.15 of the statutes is amended to read:

**440.15 No fingerprinting.** Except as provided under ss. 440.03 (13) (c), 441.51 (5) (a) 5., ~~and 448.980 (5) (b) 3., and 448.985 (3) (a) 4.,~~ the department or a credentialing board may not require that an applicant for a credential or a credential holder be fingerprinted or submit fingerprints in connection with the department's or the credentialing board's credentialing.

**SECTION 14.** 440.15 of the statutes, as affected by 2017 Wisconsin Act 135, section 17, and 2019 Wisconsin Act .... (this act), is repealed and recreated to read:

**440.15 No fingerprinting.** Except as provided under ss. 440.03 (13) (c), 441.51 (5) (a) 5., and 448.985 (3) (a) 4., the department or a credentialing board may not require that an applicant for a credential or a credential holder be fingerprinted or submit fingerprints in connection with the department's or the credentialing board's credentialing.

**SECTION 15.** 446.01 (1v) (d) of the statutes is amended to read:

446.01 (1v) (d) Physical therapy examining board under subch. III of ch. 448. "Health care professional" also includes an individual who holds a compact privilege under subch. IX of ch. 448.

**SECTION 16.** 448.50 (1n) and (1o) of the statutes are created to read:

448.50 (1n) "Compact" means the physical therapy licensure compact under s. 448.985.

(1o) "Compact privilege" means a compact privilege, as defined in s. 448.985 (2) (d), that is granted under the compact to an individual to practice in this state.

**SECTION 17.** 448.50 (3) and (3m) of the statutes are amended to read:

448.50 (3) "Physical therapist" means an individual who has been graduated from a school of physical therapy and holds a license to practice physical therapy granted by the examining board or who holds a physical therapist compact privilege.

(3m) "Physical therapist assistant" means an individual who holds a license as a physical therapist assistant granted by the examining board or who holds a physical therapist assistant compact privilege.

**SECTION 18.** 448.51 of the statutes is amended to read:

**448.51 License required. (1)** Except as provided in s. 448.52, no person may practice physical therapy unless the person is licensed as a physical therapist under this subchapter or holds a valid physical therapist compact privilege.

(1e) No person may designate himself or herself as a physical therapist or use or assume the title "physical therapist," "physiotherapist," "physical therapy technician," "licensed physical therapist," "registered physical therapist," "master of physical therapy," "master of science in physical therapy," or "doctorate in physical therapy," or append to the person's name the letters "P.T.," "P.T.T.," "L.P.T.," "R.P.T.," "M.P.T.," "M.S.P.T.," or "D.P.T.," or any other title, letters, or designation that represents or may tend to represent the person as a physical therapist, unless the person is licensed as a physical therapist under this subchapter or holds a valid physical therapist compact privilege.

(1s) No person may designate himself or herself as a physical therapist assistant, use or assume the title "physical therapist assistant," or append to the person's name the letters "P.T.A." or any other title, letters, or designation that represents or may tend to represent the person as a physical therapist assistant unless the person is licensed as a physical therapist assistant under this subchapter or holds a valid physical therapist assistant compact privilege.

(2) Except as provided in s. 448.52 (2m), no person may claim to render physical therapy or physiotherapy services unless the person is licensed as a physical therapist under this subchapter or holds a valid physical therapist compact privilege.

**SECTION 19.** 448.56 (2) of the statutes is amended to read:

448.56 (2) **FEE SPLITTING.** No licensee or compact privilege holder may give or receive, directly or indirectly, to or from any other person any fee, commission, rebate, or other form of compensation or anything of value for sending, referring, or otherwise inducing a person to communicate with a licensee or compact privilege holder in a professional capacity, or for any professional services not actually rendered personally by the licensee or compact privilege holder or at the licensee's or compact privilege holder's direction.

**SECTION 20.** 448.565 of the statutes is amended to read:

**448.565 Complaints.** The examining board shall promulgate rules establishing procedures and requirements for filing complaints against licensees and compact holders and shall publicize the procedures and requirements.

**SECTION 21.** 448.57 (2) (intro.), (c), (d) and (e), (4) and (5) of the statutes are amended to read:

448.57 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the examining board may reprimand a licensee or compact privilege holder or may deny, limit, suspend, or revoke a license granted under this subchapter or a compact privilege if it finds that the applicant ~~or~~ licensee, or compact privilege holder has done any of the following:

(c) Advertised in a manner that is false, deceptive, or misleading.

(d) Advertised, practiced, or attempted to practice under another's name.

(e) Subject to ss. 111.321, 111.322, and 111.34, practiced or assisted in the practice of physical therapy while the applicant's ~~or~~ licensee's, or compact privilege holder's ability to practice or assist was impaired by alcohol or other drugs.

(4) The examining board shall prepare and disseminate to the public an annual report that describes final disciplinary action taken against licensees and compact privilege holders during the preceding year.

(5) The examining board may report final disciplinary action taken against a licensee or compact privilege holder to any national database that includes information about disciplinary action taken against health care professionals.

**SECTION 22.** 448.956 (1m) and (4) of the statutes are amended to read:

448.956 (1m) Subject to sub. (1) (a), a licensee may provide athletic training to an individual without a referral, except that a licensee may not provide athletic training as described under s. 448.95 (5) (d) or (e) in an outpatient rehabilitation setting unless the licensee has obtained a written referral for the individual from a practitioner licensed or certified under subch. II, III, IV, V, or VII of this chapter; under ch. 446; or under s. 441.16 (2)

or from a practitioner who holds a compact privilege under subch. IX of ch. 448.

(4) If a licensee or the consulting physician of the licensee determines that a patient's medical condition is beyond the scope of practice of the licensee, the licensee shall, in accordance with the protocol established under sub. (1) (a), refer the patient to a health care practitioner who is licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448; or who holds a compact privilege under subch. IX of ch. 448 and who can provide appropriate treatment to the patient.

**SECTION 23.** Subchapter IX of chapter 448 [precedes 448.985] of the statutes is created to read:

#### **CHAPTER 448**

##### **SUBCHAPTER IX**

##### **PHYSICAL THERAPY**

##### **LICENSURE COMPACT**

#### **448.985 Physical therapy licensure compact. (1)**

**PURPOSE.** (a) 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 where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

(b) This compact is designed to achieve all of 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.

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.

(2) **DEFINITIONS.** As used in this compact, and except as otherwise provided, the following definitions shall apply:

(a) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 USC 1209 and 1211.

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

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

(d) “Compact privilege” means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(e) “Continuing competence” means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

(f) “Data system” means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

(g) “Encumbered license” means a license that a physical therapy licensing board has limited in any way.

(h) “Executive board” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(i) “Home state” means the member state that is the licensee’s primary state of residence.

(j) “Investigative information” means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(k) “Jurisprudence requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state.

(L) “Licensee” means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(m) “Member state” means a state that has enacted the compact.

(n) “Party state” means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(o) “Physical therapist” means an individual who is licensed by a state to practice physical therapy.

(p) “Physical therapist assistant” means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

(q) “Physical therapy,” “physical therapy practice,” and “the practice of physical therapy” mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

(r) “Physical therapy compact commission” or “commission” means the national administrative body whose membership consists of all states that have enacted the compact.

(s) “Physical therapy licensing board” or “licensing board” means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(t) “Remote state” means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(u) “Rule” means a regulation, principle, or directive promulgated by the commission that has the force of law.

(v) “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

**(3) STATE PARTICIPATION IN THE COMPACT.** (a) To participate in the compact, a state must do all of the following:

1. Participate fully in the commission’s data system, including using the commission’s unique identifier as defined in rules.

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

3. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions in accordance with par. (b).

5. Comply with the rules of the commission.

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission.

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

(b) Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 USC 534 and 42 USC 14616.

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

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

**(4) COMPACT PRIVILEGE.** (a) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall satisfy all of the following:

1. Hold a license in the home state.

2. Have no encumbrance on any state license.

3. Be eligible for a compact privilege in any member state in accordance with pars. (d), (g), and (h).

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

5. Notify the commission that the licensee is seeking the compact privilege within a remote state(s).

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

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege.

8. Report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(b) The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of par. (a) to maintain the compact privilege in the remote state.

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

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

(e) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until all of the following occur:

1. The home state license is no longer encumbered.
2. Two years have elapsed from the date of the adverse action.

(f) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of par. (a) to obtain a compact privilege in any remote state.

(g) If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until all of the following occur:

1. The specific period of time for which the compact privilege was removed has ended.
2. All fines have been paid.
3. Two years have elapsed from the date of the adverse action.

(h) Once the requirements of par. (g) have been met, the license must meet the requirements in par. (a) to obtain a compact privilege in a remote state.

(5) ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES. A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

- (a) Home of record.
- (b) Permanent change of station (PCS).
- (c) State of current residence if it is different than the PCS state or home of record.

(6) ADVERSE ACTIONS. (a) A home state shall have exclusive power to impose adverse action against a license issued by the home state.

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

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

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

(e) A remote state shall have the authority to do all of the following:

1. Take adverse actions as set forth in sub. (4) (d) against a licensee's compact privilege in the state.

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

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

(f) Joint investigations:

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

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(7) ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION. (a) The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission:

1. The commission is an instrumentality of the compact states.

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

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, voting, and meetings:

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

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

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

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

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

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

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

(c) The commission shall have all of the following powers and duties:

1. Establish the fiscal year of the commission.

2. Establish bylaws.

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

4. Meet and take such actions as are consistent with the provisions of this compact and the bylaws.

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states.

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

7. Purchase and maintain insurance and bonds.

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

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropri-

ate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

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

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

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

13. Establish a budget and make expenditures.

14. Borrow money.

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws.

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

17. Establish and elect an executive board.

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

(d) The executive board:

1. The executive board shall have the power to act on behalf of the commission according to the terms of this compact.

2. The executive board shall be composed of nine members:

a. Seven voting members who are elected by the commission from the current membership of the commission.

b. One ex-officio, nonvoting member from the recognized national physical therapy professional association.

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

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

4. The commission may remove any member of the executive board as provided in bylaws.

5. The executive board shall meet at least annually.

6. The executive board shall have all of the following duties and responsibilities:

a. Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues,

and any commission compact fee charged to licensees for the compact privilege.

b. Ensure compact administration services are appropriately provided, contractual or otherwise.

c. Prepare and recommend the budget.

d. Maintain financial records on behalf of the commission.

e. Monitor compact compliance of member states and provide compliance reports to the commission.

f. Establish additional committees as necessary.

g. Other duties as provided in rules or bylaws.

(e) Meetings of the commission:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in sub. (9).

2. The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss any of the following:

a. Noncompliance of a member state with its obligations under the compact.

b. The employment, compensation, discipline or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

c. Current, threatened, or reasonably anticipated litigation.

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

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

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

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

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

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.

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

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

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such min-

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

(f) Financing of the commission:

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

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

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

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

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

(g) Qualified immunity, defense, and indemnification:

1. The members, officers, executive director, employees, and representatives of the commission shall be 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 nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall 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 employ-



ment, 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; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall 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 that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

(8) DATA SYSTEM. (a) The commission shall 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.

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

1. Identifying information.
2. Licensure data.
3. Adverse actions against a license or compact privilege.
4. Nonconfidential information related to alternative program participation.
5. Any denial of application for licensure, and the reason(s) for such denial.
6. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

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

(d) The commission shall promptly 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 will be available to any other member state.

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

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of

the member state contributing the information shall be removed from the data system.

(9) RULE MAKING. (a) The commission shall exercise its rule-making powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(d) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rule making at all of the following:

1. On the website of the commission or other publicly accessible platform.
2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(e) The notice of proposed rule making shall include all of the following:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.
2. The text of the proposed rule or amendment and the reason for the proposed rule.
3. A request for comments on the proposed rule from any interested person.
4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

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

(g) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following:

1. At least 25 persons.
2. A state or federal governmental subdivision or agency.
3. An association having at least 25 members.

(h) 1. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

2. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear

and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

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

4. All hearings will be recorded. A copy of the recording will be made available on request.

5. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

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

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

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

(L) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to do any of the following:

1. Meet an imminent threat to public health, safety, or welfare.
2. Prevent a loss of commission or member state funds.
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.
4. Protect public health and safety.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

(10) OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT. (a) *Oversight*. 1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

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

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

(b) *Default, technical assistance, and termination*.

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall do all of the following:

a. 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/or any other action to be taken by the commission.

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

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

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

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

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

6. The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the

District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(c) *Dispute resolution.* 1. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

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

(d) *Enforcement.* 1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

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

(11) **DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS.** (a) The compact shall come into effect on the date on which the compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rule-making powers necessary to the implementation and administration of the compact.

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

(c) 1. Any member state may withdraw from this compact by enacting a statute repealing the same.

2. A member state's withdrawal shall not take effect until 6 months after enactment of the repealing statute.

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

(d) Nothing contained in this compact shall be construed to 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 this compact.

(e) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

(12) **CONSTRUCTION AND SEVERABILITY.** This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

**SECTION 24.** 448.986 of the statutes is created to read:  
**448.986 Implementation of the physical therapy licensure compact.** (1) In this section:

(a) "Compact" means the physical therapy licensure compact under s. 448.985.

(b) "Compact privilege" means a compact privilege, as defined in s. 448.985 (2) (d), that is granted under the compact to an individual to practice in this state.

(c) "Examining board" means the physical therapy examining board.

(2) The department may impose a fee for an individual to receive a compact privilege as provided in s. 448.985 (3) (d).

(3) The examining board may, by rule, require an individual seeking a compact privilege to meet a jurisprudence requirement in accordance with s. 448.985 (4) (a) 7., if such a requirement is imposed by the examining board under s. 448.54 in order to obtain a license under s. 448.53 or 448.535.

(4) (a) An individual who holds a compact privilege shall comply with s. 440.03 (13) (am).

(b) Subject to s. 448.985 and any rules promulgated thereunder, ss. 440.20 to 440.22 and the rules promulgated under s. 440.03 (1) shall apply to an individual who holds a compact privilege in the same manner that they apply to holders of licenses issued under subch. III.

**SECTION 25.** 450.10 (3) (a) 5. of the statutes is amended to read:

450.10 (3) (a) 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant

licensed under ch. 448 or a physical therapist or physical therapist assistant who holds a compact privilege under subch. IX of ch. 448.

**SECTION 26.** 451.02 (1) of the statutes is amended to read:

451.02 (1) An individual holding a license, permit or certificate under ch. 441, 446, 447, 448, or 449 or a compact privilege under subch. IX of ch. 448 who engages in a practice of acupuncture that is also included within the scope of his or her license, permit or certificate.

**SECTION 27.** 462.04 of the statutes is amended to read:

**462.04 Prescription or order required.** A person who holds a license or limited X-ray machine operator permit under this chapter may not use diagnostic X-ray equipment on humans for diagnostic purposes unless authorized to do so by prescription or order of a physician licensed under s. 448.04 (1) (a), a dentist licensed under s. 447.04 (1), a podiatrist licensed under s. 448.63, a chiropractor licensed under s. 446.02, an advanced practice nurse certified under s. 441.16 (2), a physician assistant licensed under s. 448.04 (1) (f), or, subject to s. 448.56 (7) (a), a physical therapist who is licensed under s. 448.53 or who holds a compact privilege under subch. IX of ch. 448.

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**SECTION 28. Nonstatutory provisions.**

(1) The physical therapy examining board and the department of safety and professional services may promulgate emergency rules under s. 227.24 necessary to implement this act. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until May 1, 2021, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), neither the board nor the department is required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare or provide a finding of emergency for a rule promulgated under this subsection.

**SECTION 29. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of s. 440.03 (13) (c) (by SECTION 12r) and the repeal and recreation of ss. 440.03 (13) (b) (intro.) and 440.15 take effect on December 16, 2019, or on the day after publication, whichever occurs later, except that if either 2019 Assembly Bill 70 or 2019 Senate Bill 74 is enacted into law, the treatment of s. 440.03 (13) (c) (by SECTION 12r) and the repeal and recreation of ss. 440.03 (13) (b) (intro.) and 440.15 are void.