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FIRST SPECIAL SESSION-2023

Legislative Document

No. 1749

S.P. 694

In Senate, April 20, 2023

An Act to Establish the Physical Therapy Licensure Compact

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRENNER of Cumberland.
Cosponsored by Representative MATHIESON of Kittery and
Senators: BENNETT of Oxford, HICKMAN of Kennebec, STEWART of Aroostook,
Representatives: ARFORD of Brunswick, GATTINE of Westbrook, GRAHAM of North
Yarmouth, MASTRACCIO of Sanford, MURPHY of Scarborough.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 32 MRSA c. 149** is enacted to read:

4 **CHAPTER 149**

5 **PHYSICAL THERAPY LICENSURE COMPACT**

6 **§18701. Short title**

7 This chapter may be known and cited as "the Physical Therapy Licensure Compact,"
8 referred to in this chapter as "the compact."

9 **§18702. Purpose**

10 The purpose of this compact is to facilitate interstate practice of physical therapy with
11 the goal of improving public access to physical therapy services. The practice of physical
12 therapy occurs in the state where the patient is located at the time of the physical therapy
13 services. The compact preserves the regulatory authority of states to protect public health
14 and safety through the current system of state licensure.

15 This compact is designed to achieve the following objectives:

16 1. **License recognition.** Increase public access to physical therapy services by
17 providing for the mutual recognition of other member state licenses;

18 2. **State powers.** Enhance the states' ability to protect the public's health and safety;

19 3. **Multistate practice.** Encourage the cooperation of member states in regulating
20 multistate physical therapy practice;

21 4. **Military spouses.** Support spouses of relocating active duty military personnel;

22 5. **Information exchange.** Enhance the exchange of licensure, investigative and
23 disciplinary information among member states; and

24 6. **Compact privilege.** Allow a remote state to hold a provider of services with a
25 compact privilege in that state accountable to that state's practice standards.

26 **§18703. Definitions**

27 As used in this chapter, unless the context otherwise indicates, the following terms
28 have the following meanings.

29 1. **Active duty military.** "Active duty military" means full-time duty status in the
30 active uniformed service of the United States, including members of the National Guard
31 and Reserves of the United States Armed Forces on active duty orders pursuant to 10
32 United States Code, Chapters 1209 and 1211.

33 2. **Adverse action.** "Adverse action" means disciplinary action taken by a physical
34 therapy licensing board based upon misconduct, unacceptable performance or a
35 combination of both.

1 **3. Alternative program.** "Alternative program" means a nondisciplinary monitoring
2 or practice remediation process approved by a physical therapy licensing board, including,
3 but not limited to, addressing substance use disorder issues.

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

9 **5. Continuing competence.** "Continuing competence" means a requirement, as a
10 condition of license renewal, to provide evidence of participation in, or completion of,
11 educational and professional activities relevant to practice or area of work.

12 **6. Data system.** "Data system" means a repository of information about licensees,
13 including examination, licensure, investigative, compact privilege and adverse action
14 information.

15 **7. Encumbered license.** "Encumbered license" means a license that a physical
16 therapy licensing board has limited in any way.

17 **8. Executive board.** "Executive board" means a group of directors elected or
18 appointed to act on behalf of, and within the powers granted to them by, the commission.

19 **9. Home state.** "Home state" means the member state that is the licensee's primary
20 state of residence.

21 **10. Investigative information.** "Investigative information" means information,
22 records and documents received or generated by a physical therapy licensing board
23 pursuant to an investigation.

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

27 **12. Licensee.** "Licensee" means an individual who currently holds an authorization
28 from a state to practice as a physical therapist or to work as a physical therapist assistant.

29 **13. Member state.** "Member state" means a state that has enacted the compact.

30 **14. Party state.** "Party state" means any member state in which a licensee holds a
31 current license or compact privilege or is applying for a license or compact privilege.

32 **15. Physical therapist.** "Physical therapist" means an individual who is licensed by
33 a state to practice physical therapy.

34 **16. Physical therapist assistant.** "Physical therapist assistant" means an individual
35 who is licensed or certified by a state and who assists a physical therapist in selected
36 components of physical therapy.

37 **17. Physical therapy, physical therapy practice or the practice of physical**
38 **therapy.** "Physical therapy," "physical therapy practice" or "the practice of physical
39 therapy" means the care and services provided by or under the direction and supervision of
40 a licensed physical therapist.

1 **18. Physical therapy compact commission or commission.** "Physical therapy
2 compact commission" or "commission" means the national administrative body whose
3 membership consists of all states that have enacted the compact pursuant to section 18708.

4 **19. Physical therapy licensing board or licensing board.** "Physical therapy
5 licensing board" or "licensing board" means the agency of a state that is responsible for the
6 licensing and regulation of physical therapists and physical therapist assistants.

7 **20. Remote state.** "Remote state" means a member state other than the home state
8 where a licensee is exercising or seeking to exercise the compact privilege.

9 **21. Rule.** "Rule" means a regulation, principle or directive promulgated by the
10 commission that has the force of law.

11 **22. State.** "State" means any state, commonwealth, district or territory of the United
12 States that regulates the practice of physical therapy.

13 **§18704. State participation in the compact**

14 **1. Participation requirements.** To participate in the compact, a state must:

15 **A. Participate fully in the commission's data system, including using the commission's**
16 **unique identifier as defined in rules;**

17 **B. Have a mechanism in place for receiving and investigating complaints about**
18 **licensees;**

19 **C. Notify the commission, in compliance with the terms of the compact and rules, of**
20 **any adverse action or the availability of investigative information regarding a licensee;**

21 **D. Fully implement a criminal background check requirement, within a time frame**
22 **established by rule, by receiving the results of the Federal Bureau of Investigation**
23 **record search on criminal background checks and use the results in making licensure**
24 **decisions in accordance with subsection 2;**

25 **E. Comply with the rules of the commission;**

26 **F. Utilize a recognized national examination as a requirement for licensure pursuant**
27 **to the rules of the commission; and**

28 **G. Have continuing competence requirements as a condition for license renewal.**

29 **2. Biometric-based information.** Upon adoption of this compact, the member state
30 has the authority to obtain biometric-based information from each physical therapy
31 licensure applicant and submit this information to the Federal Bureau of Investigation for
32 a criminal background check in accordance with 28 United States Code, Section 534 and
33 42 United States Code, Section 14616.

34 **3. Compact privilege.** A member state shall grant the compact privilege to a licensee
35 holding a valid unencumbered license in another member state in accordance with the terms
36 of the compact and rules.

37 **4. Fees.** Member states may charge a fee for granting a compact privilege.

38 **§18705. Compact privilege**

39 **1. Compact privilege.** To exercise the compact privilege under the terms and
40 provisions of the compact, the licensee:

- 1 A. Must hold a license in the home state;
2 B. May not have an encumbrance on any state license;
3 C. Must be eligible for a compact privilege in any member state in accordance with
4 subsections 4, 7 and 8;
5 D. May not have an adverse action against any license or compact privilege within the
6 previous 2 years;
7 E. Must notify the commission that the licensee is seeking the compact privilege within
8 a remote state;
9 F. Must pay any applicable fees, including any state fee, for the compact privilege;
10 G. Must meet any jurisprudence requirements established by the remote state in which
11 the licensee is seeking a compact privilege; and
12 H. Must report to the commission adverse action taken by any nonmember state within
13 30 days from the date the adverse action is taken.
- 14 **2. Validity.** The compact privilege is valid until the expiration date of the home state
15 license. The licensee must comply with the requirements of subsection 1 to maintain the
16 compact privilege in the remote state.
- 17 **3. Laws and regulations.** A licensee providing physical therapy in a remote state
18 under the compact privilege shall function within the laws and regulations of the remote
19 state.
- 20 **4. Regulation.** A licensee providing physical therapy in a remote state is subject to
21 that state's regulatory authority. A remote state may, in accordance with due process and
22 that state's laws, remove a licensee's compact privilege in the remote state for a specific
23 period of time, impose fines or take any other necessary actions to protect the health and
24 safety of its citizens. The licensee is not eligible for a compact privilege in any member
25 state until the specific time for removal has passed and all fines are paid.
- 26 **5. Encumbrance.** If a home state license is encumbered, the licensee must lose the
27 compact privilege in any remote state until the following occur:
- 28 A. The home state license is no longer encumbered; and
29 B. Two years have elapsed from the date of the adverse action.
- 30 **6. Restoration after encumbrance.** Once an encumbered license in the home state
31 is restored to good standing, the licensee must meet the requirements of subsection 1 to
32 obtain a compact privilege in any remote state.
- 33 **7. Removal.** If a licensee's compact privilege in any remote state is removed, the
34 individual must lose the compact privilege in any remote state until the following occur:
- 35 A. The specific period of time for which the compact privilege was removed has
36 ended;
37 B. All fines have been paid; and
38 C. Two years have elapsed from the date of the adverse action.

1 **8. Restoration after removal.** Once the requirements of subsection 7 have been met,
2 the licensee must meet the requirements in subsection 1 to obtain a compact privilege in a
3 remote state.

4 **§18706. Active duty military personnel or their spouses**

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

7 **1. Home of record.** Home of record;

8 **2. Permanent change of station.** Permanent change of station; or

9 **3. Current residence.** State of current residence if it is different than the permanent
10 change of station state or home of record.

11 **§18707. Adverse actions**

12 **1. Adverse action authority.** A home state has exclusive power to take adverse action
13 against a license issued by the home state.

14 **2. Remote state investigative information.** A home state may take adverse action
15 based on the investigative information of a remote state, as long as the home state follows
16 the home state's procedures for taking adverse action.

17 **3. Alternative program.** Nothing in this compact overrides a member state's decision
18 that participation in an alternative program may be used in lieu of adverse action and that
19 such participation remains nonpublic if required by the member state's laws. Member states
20 must require licensees who enter any alternative programs in lieu of discipline to agree not
21 to practice in any other member state during the term of the alternative program without
22 prior authorization from such other member state.

23 **4. Member state authority.** Any member state may investigate actual or alleged
24 violations of the laws and rules authorizing the practice of physical therapy in any other
25 member state in which a physical therapist or physical therapist assistant holds a license or
26 compact privilege.

27 **5. Remote state authority.** A remote state has the authority to:

28 A. Take adverse actions as set forth in section 18705, subsection 4 against a licensee's
29 compact privilege in the state;

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

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

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

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

6 **§18708. Establishment of physical therapy compact commission**

7 **1. Commission established.** The member states hereby create and establish a joint
8 public agency known as the physical therapy compact commission.

9 A. The commission is an instrumentality of the compact states.

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

15 C. Nothing in this compact may be construed to be a waiver of sovereign immunity.

16 **2. Membership; voting; meetings.** Membership, voting and meetings are governed
17 by this subsection.

18 A. Each member state has and is limited to one delegate selected by that member state's
19 licensing board.

20 B. The delegate must be either:

21 (1) A current member of the licensing board, who is a physical therapist, physical
22 therapist assistant or public member; or

23 (2) An administrator of the licensing board.

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

26 D. The member state licensing board shall fill any vacancy occurring on the
27 commission.

28 E. Each delegate is entitled to one vote with regard to the promulgation of rules and
29 creation of bylaws and must otherwise have an opportunity to participate in the
30 business and affairs of the commission.

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

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

36 **3. Powers and duties.** The commission has the following powers and duties:

37 A. Establish the fiscal year of the commission;

38 B. Establish bylaws;

39 C. Maintain its financial records in accordance with the bylaws;

- 1 D. Meet and take such actions as are consistent with the provisions of this compact
2 and the bylaws;
- 3 E. Promulgate uniform rules to facilitate and coordinate implementation and
4 administration of this compact. The rules have the force and effect of law and are
5 binding in all member states;
- 6 F. Bring and prosecute legal proceedings or actions in the name of the commission, as
7 long as the standing of any state physical therapy licensing board to sue or be sued
8 under applicable law is not affected;
- 9 G. Purchase and maintain insurance and bonds;
- 10 H. Borrow, accept or contract for services of personnel, including, but not limited to,
11 employees of a member state;
- 12 I. Hire employees, elect or appoint officers, fix compensation, define duties and grant
13 such individuals appropriate authority to carry out the purposes of the compact and
14 establish the commission's personnel policies and programs relating to conflicts of
15 interest, qualifications of personnel and other related personnel matters;
- 16 J. Accept appropriate donations and grants of money, equipment, supplies, materials
17 and services and receive, utilize and dispose of the same, as long as at all times the
18 commission avoids any appearance of impropriety or conflict of interest;
- 19 K. Lease, purchase, accept appropriate gifts or donations of or otherwise own, hold,
20 improve or use any property, real, personal or mixed, as long as at all times the
21 commission avoids any appearance of impropriety;
- 22 L. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
23 any property, real, personal or mixed;
- 24 M. Establish a budget and make expenditures;
- 25 N. Borrow money;
- 26 O. Appoint committees, including standing committees composed of members, state
27 regulators, state legislators or their representatives and consumer representatives and
28 such other interested persons as may be designated in this compact and the bylaws;
- 29 P. Provide and receive information from, and cooperate with, law enforcement
30 agencies;
- 31 Q. Establish and elect an executive board; and
- 32 R. Perform such other functions as may be necessary or appropriate to achieve the
33 purposes of this compact consistent with the state regulation of physical therapy
34 licensure and practice.
- 35 **4. Executive board.** The establishment of an executive board is governed by this
36 subsection.
- 37 A. The executive board has the power to act on behalf of the commission according to
38 the terms of this compact.
- 39 B. The executive board is composed of 9 members;

- 1 (1) Seven voting members who are elected by the commission from the current
2 membership of the commission;
- 3 (2) One ex officio, nonvoting member from a recognized national physical therapy
4 professional association; and
- 5 (3) One ex officio, nonvoting member from a recognized membership
6 organization of physical therapy licensing boards.
- 7 C. The ex officio members are selected by their respective organizations.
- 8 D. The commission may remove any member of the executive board as provided in
9 the bylaws.
- 10 E. The executive board shall meet at least annually.
- 11 F. The executive board has the following duties and responsibilities:
- 12 (1) Recommend to the entire commission changes to the rules or bylaws, changes
13 to this compact legislation, fees paid by compact member states such as annual
14 dues and any commission compact fee charged to licensees for the compact
15 privilege;
- 16 (2) Ensure compact administration services are appropriately provided,
17 contractual or otherwise;
- 18 (3) Prepare and recommend the budget;
- 19 (4) Maintain financial records on behalf of the commission;
- 20 (5) Monitor compact compliance of member states and provide compliance reports
21 to the commission;
- 22 (6) Establish additional committees as necessary; and
- 23 (7) Other duties as provided in rules or the bylaws.
- 24 **5. Meetings of the commission.** Meetings of the commission are governed by this
25 subsection.
- 26 A. All meetings must be open to the public and public notice of meetings must be
27 given in the same manner as required under the rule-making provisions in section
28 18710.
- 29 B. The commission or the executive board or other committees of the commission may
30 convene in a closed, nonpublic meeting if the commission or executive board or other
31 committees of the commission must discuss:
- 32 (1) Noncompliance of a member state with its obligations under the compact;
- 33 (2) The employment, compensation, discipline or other matters, practices or
34 procedures related to specific employees or other matters related to the
35 commission's internal personnel practices and procedures;
- 36 (3) Current, threatened or reasonably anticipated litigation;
- 37 (4) Negotiation of contracts for the purchase, lease or sale of goods, services or
38 real estate;
- 39 (5) Accusing any person of a crime or formally censuring any person;

1 (6) Disclosure of trade secrets or commercial or financial information that is
2 privileged or confidential;

3 (7) Disclosure of information of a personal nature where disclosure would
4 constitute a clearly unwarranted invasion of personal privacy;

5 (8) Disclosure of investigative records compiled for law enforcement purposes;

6 (9) Disclosure of information related to any investigative reports prepared by or
7 on behalf of or for use of the commission or other committee charged with
8 responsibility of investigation or determination of compliance issues pursuant to
9 the compact; or

10 (10) Matters specifically exempted from disclosure by federal or member state
11 law.

12 C. If a meeting, or portion of a meeting, is closed pursuant to paragraph B, the
13 commission's legal counsel or designee shall certify that the meeting may be closed
14 and shall reference each relevant exempting provision.

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

22 **6. Financing of the commission.** Financing of the commission is governed by this
23 subsection.

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

26 B. The commission may accept any appropriate revenue sources, donations and grants
27 of money, equipment, supplies, materials and services.

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

35 D. The commission may not incur obligations of any kind prior to securing the funds
36 adequate to meet the same, and the commission may not pledge the credit of any of the
37 member states, except by and with the authority of the member state.

38 E. The commission shall keep accurate accounts of all receipts and disbursements.
39 The receipts and disbursements of the commission are subject to the audit and
40 accounting procedures established under its bylaws; however, all receipts and
41 disbursements of funds handled by the commission must be audited yearly by a
42 certified or licensed public accountant, and the report of the audit must be included in
43 and become part of the annual report of the commission.

1 **7. Qualified immunity; defense; indemnification.** Qualified immunity, defense and
2 indemnification are governed by this subsection.

3 A. The members, officers, executive director, employees and representatives of the
4 commission are immune from suit and liability, either personally or in their official
5 capacity, for any claim for damage to or loss of property or personal injury or other
6 civil liability caused by or arising out of any actual or alleged act, error or omission
7 that occurred, or that the person against whom the claim is made had a reasonable basis
8 for believing occurred, within the scope of commission employment, duties or
9 responsibilities, except that nothing in this paragraph may be construed to protect any
10 such person from suit or liability for any damage, loss, injury or liability caused by the
11 intentional or willful or wanton misconduct of that person.

12 B. The commission shall defend any member, officer, executive director, employee or
13 representative of the commission in any civil action seeking to impose liability arising
14 out of any actual or alleged act, error or omission that occurred within the scope of
15 commission employment, duties or responsibilities, or that the person against whom
16 the claim is made had a reasonable basis for believing occurred within the scope of
17 commission employment, duties or responsibilities, except that nothing in this
18 paragraph may be construed to prohibit that person from retaining that person's own
19 counsel, as long as the actual or alleged act, error or omission did not result from that
20 person's intentional or willful or wanton misconduct.

21 C. The commission shall indemnify and hold harmless any member, officer, executive
22 director, employee or representative of the commission for the amount of any
23 settlement or judgment obtained against that person arising out of any actual or alleged
24 act, error or omission that occurred within the scope of commission employment, duties
25 or responsibilities, or that such person had a reasonable basis for believing occurred
26 within the scope of commission employment, duties or responsibilities, as long as the
27 actual or alleged act, error or omission did not result from the intentional or willful or
28 wanton misconduct of that person.

29 **§18709. Data system**

30 1. Database and reporting system. The commission shall provide for the
31 development, maintenance and utilization of a coordinated database and reporting system
32 containing licensure, adverse action and investigative information on all licensed
33 individuals in member states.

34 2. Uniform data set submission. Notwithstanding any other provision of state law to
35 the contrary, a member state shall submit a uniform data set to the data system on all
36 individuals to whom this compact is applicable as required by the rules of the commission,
37 including:

38 A. Identifying information;

39 B. Licensure data;

40 C. Adverse actions against a licensee or compact privilege;

41 D. Nonconfidential information related to alternative program participation;

42 E. Any denial of application for licensure and the reasons for that denial; and

1 F. Other information that may facilitate the administration of this compact, as
2 determined by the rules of the commission.

3 **3. Investigative information availability.** Investigative information pertaining to a
4 licensee in any member state may be made available only to other party states.

5 **4. Adverse action information.** The commission shall promptly notify all member
6 states of any adverse action taken against a licensee or an individual applying for a license.
7 Adverse action information pertaining to a licensee in any member state must be available
8 to any other member state.

9 **5. Confidential information.** Member states contributing information to the data
10 system may designate information that may not be shared with the public without the
11 express permission of the contributing state.

12 **6. Information expungement.** Any information submitted to the data system that is
13 subsequently required to be expunged by the laws of the member state contributing the
14 information must be removed from the data system.

15 **§18710. Rulemaking**

16 **1. Powers.** The commission shall exercise its rule-making powers pursuant to the
17 criteria set forth in this section and the rules adopted thereunder. Rules and amendments
18 become binding as of the date specified in each rule or amendment.

19 **2. Rule rejection.** If a majority of the legislatures of the member states rejects a rule,
20 by enactment of a law or resolution in the same manner used to adopt the compact within
21 4 years of the date of adoption of the rule, then that rule has no further force and effect in
22 any member state.

23 **3. Rule adoption procedure.** Rules or amendments to the rules must be adopted at a
24 regular or special meeting of the commission.

25 **4. Notice.** Prior to promulgation and adoption of a final rule or rules by the
26 commission, and at least 30 days in advance of the meeting at which the rule will be
27 considered and voted upon, the commission shall file a notice of proposed rulemaking:

28 A. On the website of the commission or other publicly accessible platform; and

29 B. On the website of each member state physical therapy licensing board or other
30 publicly accessible platform or the publication in which each state would otherwise
31 publish proposed rules.

32 **5. Notice requirements.** The notice of proposed rulemaking must include:

33 A. The proposed time, date and location of the meeting in which the rule will be
34 considered and voted upon;

35 B. The text of the proposed rule or amendment and the reason for the proposed rule;

36 C. A request for comments on the proposed rule from any interested person; and

37 D. The manner in which interested persons may submit notice to the commission of
38 their intention to attend the public hearing and any written comments.

39 **6. Public comment.** Prior to adoption of a proposed rule, the commission shall allow
40 persons to submit written data, facts, opinions and arguments, which must be made
41 available to the public.

1 **7. Public hearing.** The commission shall grant an opportunity for a public hearing
2 before it adopts a rule or amendment if a hearing is requested by:

3 A. At least 25 persons;

4 B. A state or federal governmental subdivision or agency; or

5 C. An association having at least 25 members.

6 **8. Hearing notice.** If a hearing is held on the proposed rule or amendment, the
7 commission shall publish the place, time and date of the scheduled public hearing. If the
8 hearing is held via electronic means, the commission shall publish the mechanism for
9 access to the electronic hearing.

10 A. All persons wishing to be heard at the hearing must notify the executive director of
11 the commission or other designated member in writing of their desire to appear and
12 testify at the hearing not less than 5 business days before the scheduled date of the
13 hearing.

14 B. Hearings must be conducted in a manner providing each person who wishes to
15 comment a fair and reasonable opportunity to comment orally or in writing.

16 C. All hearings must be recorded. A copy of the recording must be made available on
17 request.

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

21 **9. Consideration.** Following the scheduled hearing date, or by the close of business
22 on the scheduled hearing date if the hearing was not held, the commission shall consider
23 all written and oral comments received.

24 **10. Proceeding without public hearing.** If no written notice of intent to attend the
25 public hearing by interested parties is received, the commission may proceed with
26 promulgation of the proposed rule without a public hearing.

27 **11. Final action.** The commission shall, by majority vote of all members, take final
28 action on the proposed rule and shall determine the effective date of the rule, if any, based
29 on the rule-making record and the full text of the rule.

30 **12. Emergency rulemaking.** Upon determination that an emergency exists, the
31 commission may consider and adopt an emergency rule without prior notice, opportunity
32 for comment or hearing, as long as the usual rule-making procedures provided in the
33 compact and in this section are retroactively applied to the rule as soon as reasonably
34 possible, in no event later than 90 days after the effective date of the rule. For the purposes
35 of this subsection, "emergency rule" means a rule that must be adopted immediately in
36 order to:

37 A. Meet an imminent threat to public health, safety or welfare;

38 B. Prevent a loss of commission or member state funds;

39 C. Meet a deadline for the promulgation of an administrative rule that is established
40 by federal law or rule; or

41 D. Protect public health and safety.

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

11 **§18711. Oversight; dispute resolution; enforcement**

12 **1. Oversight.** Oversight of the compact is governed by this subsection.

13 A. The executive, legislative and judicial branches of state government in each
14 member state shall enforce this compact and take all actions necessary and appropriate
15 to effectuate the compact's purposes and intent. The provisions of this compact and
16 the rules promulgated hereunder have standing as statutory law.

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

20 C. The commission is entitled to receive service of process in any proceeding under
21 paragraph B and has standing to intervene in such a proceeding for all purposes.
22 Failure to provide service of process to the commission renders a judgment or order
23 void as to the commission, this compact or promulgated rules.

24 **2. Default; technical assistance; termination.** Default, technical assistance and
25 termination are governed by this subsection.

26 A. If the commission determines that a member state has defaulted in the performance
27 of its obligations or responsibilities under this compact or the promulgated rules, the
28 commission shall:

29 (1) Provide written notice to the defaulting state and other member states of the
30 nature of the default, the proposed means of curing the default and any other action
31 to be taken by the commission; and

32 (2) Provide remedial training and specific technical assistance regarding the
33 default.

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

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

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

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

7 F. The defaulting state may appeal the action of the commission by petitioning the
8 United States District Court for the District of Columbia or the federal district where
9 the commission has its principal offices. The prevailing member must be awarded all
10 costs of that litigation, including reasonable attorney's fees.

11 **3. Dispute resolution.** Dispute resolution is governed by this subsection.

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

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

17 **4. Enforcement.** Enforcement of the compact is governed by this subsection.

18 A. The commission, in the reasonable exercise of its discretion, shall enforce the
19 provisions and rules of this compact.

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

27 C. The remedies under this subsection are not the exclusive remedies of the
28 commission. The commission may pursue any other remedies available under federal
29 or state law.

30 **§18712. Date of implementation of compact; associated rules; withdrawal;**
31 **amendment**

32 **1. Effective date.** The compact takes effect on the date on which the compact statute
33 is enacted into law in the 10th member state. The provisions of the compact that become
34 effective at that time are limited to the powers granted to the commission relating to
35 assembly and the promulgation of rules. After the effective date of the compact, the
36 commission shall meet and exercise rule-making powers necessary to the implementation
37 and administration of the compact.

38 **2. Subsequent member states.** Any state that joins the compact subsequent to the
39 commission's initial adoption of the rules is subject to the rules as they exist on the date on
40 which the compact becomes law in that state. Any rule that has been previously adopted by
41 the commission has the full force and effect of law on the day the compact becomes law in
42 that state.

1 **3. Withdrawal.** Any member state may withdraw from this compact by enacting a
2 statute repealing the same.

3 A. A member state's withdrawal does not take effect until 6 months after enactment of
4 the repealing statute.

5 B. Withdrawal does not affect the continuing requirement of the withdrawing state's
6 physical therapy licensing board to comply with the investigative and adverse action
7 reporting requirements of this chapter prior to the effective date of withdrawal.

8 **4. Other agreements or arrangements.** Nothing contained in this compact may be
9 construed to invalidate or prevent any physical therapy licensure agreement or other
10 cooperative arrangement between a member state and a nonmember state that does not
11 conflict with the provisions of this compact.

12 **5. Amendment.** This compact may be amended by the member states. An amendment
13 to this compact does not become effective and binding upon any member state until it is
14 enacted into the laws of all member states.

15 **§18713. Construction and severability**

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

25 **PART B**

26 **Sec. B-1. 25 MRSA §1542-A, sub-§1, ¶AA** is enacted to read:

27 AA. Who is required to have a criminal history record check under Title 32, section
28 3114-D.

29 **Sec. B-2. 25 MRSA §1542-A, sub-§3, ¶Z** is enacted to read:

30 Z. The State Police shall take or cause to be taken the fingerprints of the person named
31 in subsection 1, paragraph AA at the request of that person or the Board of Examiners
32 in Physical Therapy and upon payment of the fee as provided under Title 32, section
33 3114-D.

34 **Sec. B-3. 32 MRSA §3114-D** is enacted to read:

35 **§3114-D. Criminal history record information; fees**

36 **1. Background check.** The board shall request a background check for each person
37 who submits an application for initial licensure under this chapter. The background check
38 must include criminal history record information obtained from the Maine Criminal Justice
39 Information System, created pursuant to Title 16, section 631, and the Federal Bureau of
40 Investigation.

1 A. The criminal history record information obtained from the Maine Criminal Justice
2 Information System, created pursuant to Title 16, section 631, must include a record of
3 public criminal history record information as defined in Title 16, section 703,
4 subsection 8.

5 B. The criminal history record information obtained from the Federal Bureau of
6 Investigation must include other state and national criminal history record information.

7 C. An applicant shall submit to having fingerprints taken. The Department of Public
8 Safety, Bureau of State Police, upon payment of a fee established by the board by rule
9 by the applicant, shall take or cause to be taken the applicant's fingerprints and shall
10 immediately transmit the fingerprints to the Department of Public Safety, Bureau of
11 State Police, State Bureau of Identification so that the State Bureau of Identification
12 can conduct state and national criminal history record checks. Except for the portion
13 of the payment, if any, that constitutes the processing fee charged by the Federal
14 Bureau of Investigation, all money received by the State Police for purposes of this
15 paragraph must be paid over to the Treasurer of State. The money must be applied to
16 the expenses of administration incurred by the Department of Public Safety. Any
17 person who fails to transmit criminal fingerprint records to the State Bureau of
18 Identification pursuant to this paragraph is subject to the provisions of Title 25, section
19 1550.

20 D. The subject of a Federal Bureau of Investigation criminal history record check may
21 obtain a copy of the criminal history record check by following the procedures outlined
22 in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state
23 criminal history record check may inspect and review the criminal history record
24 information pursuant to Title 16, section 709.

25 E. State and federal criminal history record information may be used by the board for
26 the purpose of screening each applicant. A board action against an applicant under this
27 subsection is subject to the provisions of Title 5, chapter 341.

28 F. Information obtained pursuant to this subsection is confidential. The results of
29 background checks received by the board are for official use only and may not be
30 disseminated to any other person or entity.

31 G. An applicant whose license has expired and who has not applied for renewal may
32 request in writing that the Department of Public Safety, Bureau of State Police, State
33 Bureau of Identification remove the applicant's fingerprints from the State Bureau of
34 Identification's fingerprint file. In response to a written request, the bureau shall
35 remove the applicant's fingerprints from the fingerprint file and provide written
36 confirmation of that removal.

37 **2. Rules.** The board, following consultation with the Department of Public Safety,
38 Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this
39 section. Rules adopted pursuant to this subsection are routine technical rules as defined in
40 Title 5, chapter 375, subchapter 2-A.

41 SUMMARY

42 Part A of this bill enacts the Physical Therapy Licensure Compact, which provides a
43 mechanism to facilitate interstate practice by licensed professional physical therapists and

1 physical therapist assistants in order to improve public access to professional physical
2 therapy services.

3 The form, format and text of the Physical Therapy Licensure Compact have been
4 changed minimally so as to conform to Maine statutory conventions. The changes are
5 technical in nature and it is the intent of the Legislature that this compact be interpreted as
6 substantively the same as the Physical Therapy Licensure Compact that is enacted by other
7 member states.

8 Part B of this bill requires that all applicants for initial licensure as a physical therapist
9 or physical therapist assistant undergo a background check, which includes fingerprints and
10 criminal history record information.