

PHYSICAL THERAPY LICENSURE COMPACT

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Senate Bill 18 as passed by the Senate

Sponsor: Sen. Dale Zorn

House Committee: Health Policy

Senate Committee: Health Policy and Human Services

Complete to 4-29-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 18 would add section 16188 to the Public Health Code to enter Michigan into the Physical Therapy Licensure Compact (PTLC), which would allow physical therapists to obtain multistate licensure to practice physical therapy (PT) in states that are parties to the compact without having to obtain licensure in each individual state. A detailed description of the PTLC follows.

Article 1: Purpose

The PTLC's stated purpose is to facilitate interstate practice of PT with a goal of improving public access to services, while preserving the regulatory authority of states to protect health and safety through their current systems of state licensure.

Article 2: Definitions

This article defines 22 terms that pertain to the execution of the duties outlined in the PTLC. Notably, the article defines *compact privilege* as 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 PT would be deemed to occur in the member state where the patient/client is located at the time of the patient/client encounter.

Article 3: State participation in the compact

This article would provide that a state must do all of the following to participate in the compact:

- Participate fully in the data system of the Physical Therapy Compact Commission (see below), including using the commission's unique identifier.
- Have a mechanism in place for receiving and investigating complaints about licensees.
- Notify the commission, in compliance with the terms of the compact and rules, of any adverse disciplinary action against a licensee ("adverse action") or the availability of investigative information regarding a licensee.
- Fully implement a criminal background check requirement by receiving the results of the FBI criminal background check and using the results to make licensure decisions.
- Comply with the rules of the commission.
- Utilize a recognized national examination as a requirement for licensure.
- Have continuing competence requirements as a condition of license renewal.

Additionally, upon adoption of the compact, Michigan would have the authority to obtain biometric-based information from PT licensure applicants and submit this information to the Federal Bureau of Investigation (FBI) for a criminal background check.

A member state would have to grant the compact privilege to licensees holding valid unencumbered licenses in other member states and could charge a fee for granting it.

Article 4: Compact privilege

To exercise the compact privilege under the compact, a licensee would have to do all of the following:

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

To maintain compact privilege, a licensee would have to comply with the requirements above. The compact privilege would be valid until the expiration date of the home license.

The licensee would have to function within the laws and regulations of the remote state and would be subject to that state's regulatory authority. The remote state could remove a licensee's compact privilege, impose fines, or take any other necessary actions to protect its citizens.

If a licensee's home state license were encumbered, the licensee would lose the compact privilege in remote states until the home state license was no longer encumbered and two years had elapsed from the date of the adverse action. Then, the licensee would have to meet the requirements listed above for obtaining the compact privilege in any remote state.

If a licensee's compact privilege in any remote state were removed, the licensee would lose privilege in remote states until the time for removal had passed, all fines were paid, and two years had elapsed from the date of the adverse action. Then, the licensee would have to meet the requirements listed above for obtaining the compact privilege in any remote state.

Article 5: Active duty military personnel or their spouses

An active duty military licensee or his or her spouse could designate the home of record, permanent change of station (PCS), or state of current residence as the home state.

Article 6: Adverse actions

Under the compact, a home state would have the exclusive power to impose adverse actions against a PT license issued by the home state and could also take adverse actions based on the investigative information of a remote state, using its own procedures. A member state could still participate in an alternative program in lieu of adverse action. A remote state would have the authority to take adverse actions against a licensee's compact privilege in the state and to issue subpoenas. A member state would have to enforce subpoenas issued by a PT licensing board for attendance and testimony of witnesses or production of evidence from another member state.

Member states could participate in joint investigations against a licensee and would have to share any investigative, litigation, or compliance materials to assist any joint or individual investigation under the compact.

Article 7: Establishment of the Physical Therapy Compact Commission

The compact would create a commission composed of one delegate from each member state, each of whom must be a current member of that state's licensing board who is a physical therapist, PT assistant, public member, or the board administrator. According to rules specified in the compact, the commission would meet at least annually and would establish bylaws and uniform rules, maintain financial records, take actions to further the compact and bylaws, and prosecute legal actions (without affecting the standing of individual state PT licensing boards to sue or be sued), in addition to other responsibilities.

A nine-member executive board, composed of seven elected members of the commission, a member of a national PT professional association, and a member from the recognized membership organization of the PT licensing boards, could act on behalf of the commission.

The compact provides that all commission meetings must be open to the public, with public notice of the meetings. However, the commission or executive board could convene in closed nonpublic meetings to discuss noncompliance of a member state; employment, compensation, or discipline related to specific employees; current or prospective litigation; or other specified sensitive topics.

Further, the compact prescribes the allowable payments of expenses, receipt of money, and assessments levied on member states. The commission would have to keep accurate accounts of all receipts and disbursements, which would be subject to an annual audit.

The compact also specifies the individual and collective liability of members of the commission.

Article 8: Data system

The commission would have to develop, maintain, and use a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensees in member states. Member states would have to submit the identifying information, licensure data, adverse actions taken, and other information regarding all

licensees. The compact would specify the sharing of this information, including adverse actions.

Article 9: Rulemaking

The commission would have to exercise its rulemaking powers, with rules or amendments to the rules adopted at regular or special meetings and notice given at least 30 days before consideration of the rule. A public hearing would have to be convened before adopting a rule or amendment if that hearing were requested by at least 25 individuals, a state or federal governmental subdivision or agency, or an association that has at least 25 members. The commission would then take final action on the proposed rule by a majority vote of all members.

If a majority of the legislatures of the member states rejected a rule (by enactment of a statute or resolution in the same manner used to adopt the compact) within four years of the rule's adoption, the rule would have no further force and effect.

Article 10: Oversight, dispute resolution, and enforcement

State officials would have to enforce the compact and take necessary actions to effectuate its purposes and intent. The compact and the rules promulgated under it would have standing as statutory law.

If the commission determined that a member state had defaulted in the performance of its obligations or responsibilities under the compact, it would have to provide all member states with notice of the default and any actions to be taken. A defaulting state could be terminated from the compact as a last resort upon a majority vote of the member states. The defaulting state could appeal that action by petitioning the U.S. District Court for Washington, D.C., or the applicable federal district. The commission would also have to promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Article 11: Date of implementation of the Interstate Commission for Physical Therapy Practice and associated rules, withdrawal, and amendment

The compact would come into effect once it was enacted into law in the tenth member state, and the compact provisions would take effect at that time. Any state joining the compact subsequently would be subject to the rules as they exist on the date the compact becomes law in that state.

A member state could withdraw from the compact by enacting a statute to repeal it, with the withdrawal taking effect six months after the repealing statute.

The compact could be amended by the member states, and no amendment to the compact would be effective and binding upon any member state until it was enacted into the laws of all member states.

Article 12: Construction and severability

The compact's provisions would be severable, and if any part of the compact were held invalid, the remainder of the compact and its applicability would not be affected.

The bill would take effect 90 days after being enacted.

BACKGROUND:

Michigan passed legislation in 2017 to enter the state into the Interstate Medical Licensure Compact (IMLC).¹ The IMLC allows physicians to be licensed in multiple states simultaneously and promptly, after the respective state legislatures enact the “model language” of the compact into state law. The IMLC also includes a commission with rulemaking authority and a coordinated information system.

Additionally, the House and Senate passed legislation in 2020 that would have entered Michigan into a Nurse Licensure Compact (NLC)² and a Psychology Interjurisdictional Compact (PIC).³ However, both bills were vetoed by Governor Whitmer in December of 2020.

FISCAL IMPACT:

A fiscal analysis is in progress.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ 2018 PA 563; the act sunsets in 2022, when it would then be repealed. HFA analysis of this act can be found at <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4066-B6CC93BC.pdf>

² House Fiscal Agency analysis of House Bill 4042 of 2019-20: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4042-8E7577C8.pdf>

³ House Fiscal Agency analysis of Senate Bill 758 of 2019-20: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0758-CA58C99E.pdf>