

BILL ANALYSIS

Senate Research Center
85R8770 KKR-F

H.B. 2765
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Business & Commerce
5/13/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have advocated for the enactment of a physical therapy licensure compact to explore the possibility of establishing a multistate compact for physical therapy licensure and to improve the public's access to physical therapy services. The parties note that certain other states have enacted similar legislation and contend that Texas would benefit from adopting such a compact. H.B. 2765 creates a physical therapy licensure compact and sets out the compact's provisions.

H.B. 2765 creates the Physical Therapy Licensure Compact and establishes that the compact is enacted and entered into with all other jurisdictions that legally join in the compact. The bill sets out the compact's provisions, including provisions relating to the compact's purpose, requirements for state participation, compact privilege, the establishment of the Physical Therapy Compact Commission as a joint public agency, a coordinated database and reporting system, commission rulemaking powers, and certain other administrative provisions. The bill designates the Texas Board of Physical Therapy Examiners as the compact administrator for Texas and authorizes the board to adopt rules necessary to implement the compact.

H.B. 2765 amends current law relating to the Physical Therapy Licensure Compact and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Physical Therapy Compact Commission in SECTION 1 (Section 453.501, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Physical Therapy Examiners in SECTION 1 (Section 453.503, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 453, Occupations Code, by adding Subchapter K, as follows:

SUBCHAPTER K. PHYSICAL THERAPY LICENSURE COMPACT

Sec. 453.501. PHYSICAL THERAPY LICENSURE COMPACT. Provides that the Physical Therapy Licensure Compact (compact) is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

SECTION 1. PURPOSE

Sets forth the purpose and objectives of this compact.

SECTION 2. DEFINITIONS

Defines "active duty military," "adverse action," "alternative program," "compact privilege," "continuing competence," "data system," "encumbered license," "executive board," "home state," "investigative information," "jurisprudence requirement," "licensee," "member state,"

"party state," "physical therapist," "physical therapist assistant," "physical therapy," "physical therapy practice," "the practice of physical therapy," "Physical Therapy Compact Commission," "physical therapy licensing board," "remote state," "rule," and "state."

SECTION 3. STATE PARTICIPATION IN THE COMPACT.

A. Requires that a state, to participate in the compact:

1. participate fully in the Physical Therapy Compact Commission's (PTCC) data system, including using PTCC's unique identifier as defined in rules;
2. have a mechanism in place for receiving and investigating complaints about licensees;
3. notify PTCC, 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 (FBI) record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3.B.;
5. comply with the rules of PTCC;
6. utilize a recognized national examination as a requirement for licensure pursuant to the rules of PTCC; and
7. have continuing competence requirements as a condition for license renewal.

B. Requires the member state, upon adoption of this statute, to have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the FBI for a criminal background check in accordance with 28 U.S.C. Section 534 and 42 U.S.C. Section 14616.

C. Requires a member state to 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. Authorizes member states to charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. Requires the licensee, to exercise the compact privilege under the terms and provisions of the compact, to meet certain requirements.

B. Provides that the compact privilege is valid until the expiration date of the home license. Requires that the licensee comply with the requirements of Section 4.A. to maintain the compact privilege in the remote state.

C. Requires a licensee providing physical therapy in a remote state under the compact privilege to function within the laws and regulations of the remote state.

D. Provides that a licensee providing physical therapy in a remote state is subject to that state's regulatory authority. Authorizes a remote state, in accordance with due process and that state's laws, to 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. Provides that 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. Requires that the licensee, if a home state license is encumbered, lose the compact privilege in any remote state until the home state license is no longer encumbered and two years have elapsed from the date of the adverse action.

F. Requires the licensee, once an encumbered license in the home state is restored to good standing, to meet the requirements of Section 4.A. to obtain a compact privilege in any remote state.

G. Requires that an individual, if the licensee's compact privilege in any remote state is removed, lose the compact privilege in any remote state until the specific period of time for which the compact privilege was removed has ended, all fines have been paid, and two years have elapsed from the date of the adverse action.

H. Requires that the license, once the requirements of Section 4G have been met, meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Authorizes a licensee who is active duty military or is the spouse of an individual who is active duty military to designate one of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. Requires a home state to have exclusive power to impose adverse action against a license issued by the home state.

B. Authorizes a home state to 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. Requires that nothing in this compact 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 non-public if required by the member state's laws. Requires member states to 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. Authorizes any member state to investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any

other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. Requires a remote state to have the authority to take adverse actions as set forth in Section 4.D. against a licensee's compact privilege in the state, issue certain subpoenas, and, 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. Authorizes a member state, in addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, to participate with other member states in joint investigations of licensees.

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

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

A. Provides that the compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. Provides that PTCC is an instrumentality of the compact states.

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

3. Requires that nothing in this compact be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Requires each member state to have and be limited to one (1) delegate selected by that member state's licensing board.

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

3. Authorizes any delegate to be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. Requires the member state board to fill any vacancy occurring in PTCC.

5. Requires that each delegate be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and to otherwise have an opportunity to participate in the business and affairs of PTCC.

6. Requires a delegate to vote in person or by such other means as provided in the bylaws. Authorizes the bylaws to provide for delegates' participation in meetings by telephone or other means of communication.

7. Requires PTCC to meet at least once during each calendar year. Requires that additional meetings be held as set forth in the bylaws.

C. Requires that PTCC have the following powers and duties:

1. Establish the fiscal year of PTCC;

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 the compact and the bylaws;

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

6. Bring and prosecute legal proceedings or actions in the name of PTCC, 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 appropriate 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; and

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

Requires that the Executive Board have the power to act on behalf of PTCC according to the terms of this compact.

1. Requires the Executive Board to be composed of nine members and sets forth the composition of the board.

2. Provides that the ex-officio members will be selected by their respective organizations.

3. Authorizes PTCC to remove any member of the Executive Board as provided in bylaws.

4. Requires the Executive Board to meet at least annually.

5. Requires that the Executive Board have certain duties and responsibilities.

E. Meetings of the Commission

1. Requires that all meetings be open to the public, and that public notice of meetings be given in the same manner as required under the rulemaking provisions in Section 9.

2. Authorizes PTCC or the Executive Board or other committees of PTCC to convene in a closed, non-public meeting if PTCC or the Executive Board or other committees of PTCC must discuss certain issues.

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

4. Requires PTCC to keep minutes in a certain manner.

F. Financing of the Commission.

1. Requires PTCC to pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. Authorizes PTCC to accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
3. Authorizes PTCC to levy on and collect an annual assessment from each member state or impose certain fees. Requires that the aggregate annual assessment amount be allocated based upon a formula to be determined by PTCC, which shall promulgate a rule binding upon all member states.
4. Prohibits PTCC from incurring obligations of any kind prior to securing the funds adequate to meet the same; prohibits PTCC from pledging the credit of any of the member states, except by and with the authority of the member state.
5. Requires PTCC to keep accurate accounts of all receipts and disbursements. Requires that the receipts and disbursements of PTCC be subject to the audit and accounting procedures established under its bylaws. Requires that, however, all receipts and disbursements of funds handled by PTCC be audited yearly by a certified or licensed public accountant, and that the report of the audit be included in and become part of the annual report of PTCC.

G. Qualified Immunity, Defense, and Indemnification

1. Requires that certain officials of PTCC be immune from suit and liability, either personally or in their official capacity, for any of certain claims.
2. Requires PTCC to defend any certain official of PTCC in any civil action seeking to impose liability arising out of any of certain civil actions; 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. Requires PTCC to indemnify and hold harmless any member, officer, executive director, employee, or representative of PTCC for the amount of any settlement or judgment obtained against that person arising out of any of certain situations.

SECTION 8. DATA SYSTEM

- A. Requires PTCC to provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
- B. Requires a member state, notwithstanding any other provision of state law to the contrary, to submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of PTCC, including certain information.
- C. Provides that investigative information pertaining to a licensee in any member state will only be available to other party states.
- D. Requires PTCC to promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license.

Provides that adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Authorizes member states contributing information to the data system to designate information that may not be shared with the public without the express permission of the contributing state.

F. Requires that any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information be removed from the data system.

SECTION 9. RULEMAKING

A. Requires PTCC to exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Requires that rules and amendments become binding as of the date specified in each rule or amendment.

B. Requires that such rule, if a majority of the legislature of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, have no further force and effect in any member state.

C. Requires that rules or amendments to the rules be adopted at a regular or special meeting of PTCC.

D. Requires PTCC, prior to promulgation and adoption of a final rule or rules by PTCC, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, to file a Notice of Proposed Rulemaking. Sets forth the requirements for the publication on a certain website of the Notice of Proposed Rulemaking.

E. Requires that the notice of proposed rulemaking include certain information.

F. Requires PTCC, prior to adoption of a proposed rule, to allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. Requires PTCC to grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by certain persons or entities.

H. Requires PTCC, if a hearing is held on the proposed rule or amendment, to publish the place, time, and date, of the scheduled public hearing. Requires PTCC, if the hearing is held via electronic means, to publish the mechanism for access to the electronic hearing.

1. Requires all persons wishing to be heard at the hearing to notify the executive director of PTCC or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Requires that hearings be conducted in a certain manner.

3. Provides that all hearings will be recorded. Provides that a copy of the recording will be made available on request.

4. Requires that nothing in this section be construed as requiring a separate hearing on each rule. Authorizes rules to be grouped for the convenience of PTCC at hearings required by this section.

I. Requires PTCC, following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, to consider all written and oral comments received.

J. Authorizes PTCC, if no written notice of intent to attend the public hearing by interested parties is received, to proceed with promulgation of the proposed rule without a public hearing.

K. Requires PTCC, by majority vote of all members, to take final action on the proposed rule and to determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Authorizes PTCC, upon determination that an emergency exists, to consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking 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 ninety (90) days after the effective date of the rule. Provides that, for the purposes of this provision, an emergency rule is one that must be adopted immediately in order to fulfill certain criteria.

M. Authorizes PTCC or an authorized committee of PTCC to direct revisions to a previously adopted rule or amendment for purposes of correcting certain errors. Requires that public notice of any revisions be posted on the website of PTCC. Requires that the revision be subject to challenge by any person for a certain period. Authorizes the revision to be challenged only on grounds that the revision results in a material change to a rule. Requires that a challenge be made in writing, and delivered to the chair of PTCC prior to the end of the notice period. Provides that, if no challenge is made, the revision will take effect without further action. Prohibits the revision, if the revision is challenged, from taking effect without the approval of PTCC.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. Requires certain governmental entities in each member state to enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. Requires that the provisions of this compact and the rules promulgated hereunder have standing as statutory law.

2. Requires all courts to 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 PTCC.

3. Requires that PTCC be entitled to receive service of process in any such proceeding, and have standing to intervene in such a proceeding for all purposes. Requires that failure to provide service of process to PTCC render a judgment or order void as to PTCC, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. Requires PTCC, if PTCC determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, to provide a certain notice and remedial training and specific technical assistance regarding the default.
2. Authorizes the defaulting state, if a state in default fails to cure the default, to 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 to be terminated on the effective date of termination. Provides that a cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Requires that termination of membership in the compact be imposed only after all other means of securing compliances have been exhausted. Requires that notice of intent to suspend or terminate be given by PTCC to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
4. Provides that 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. Prohibits PTCC from bearing 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 PTCC and the defaulting state.
6. Authorizes the defaulting state to appeal the action of PTCC by petitioning certain district courts. Requires that the prevailing member be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Requires PTCC, upon request by a member state, to attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.
2. Requires PTCC to promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. Requires PTCC, in the reasonable exercise of its discretion, to enforce the provisions and rules of this compact.
2. Authorizes PTCC, by majority vote, to initiate legal action in certain district courts against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. Authorizes the relief sought to include both injunctive relief and damages. Requires the prevailing member, in the event judicial enforcement is necessary, to be awarded all costs of such litigation, including reasonable attorney's fees.

3. Prohibits the remedies herein from being the exclusive remedies of PTCC. Authorizes PTCC to pursue any other remedies available under federal or state law.

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

A. Requires that the compact come into effect on the date on which the compact statute is enacted into law in the tenth member state. Requires that the provisions, which become effective at that time, be limited to the powers granted to PTCC relating to assembly and the promulgation of rules. Requires PTCC, thereafter, to meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

B. Requires any state that joins the compact subsequent to PTCC's initial adoption of the rules to be subject to the rules as they exist on the date on which the compact becomes law in that state. Requires that any rule that has been previously adopted by PTCC have the full force and effect of law on the day the compact becomes law in that state.

C. Authorizes any member state to withdraw from this compact by enacting a statute repealing the same.

1. Prohibits a member state's withdrawal from taking effect until six (6) months after enactment of the repealing statute.

2. Prohibits withdrawal from affecting 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. Requires that nothing contained in this compact be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

E. Authorizes this compact to be amended by the member states. Requires that no amendment to this compact become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

Requires that this compact be liberally construed so as to effectuate the purposes thereof. Requires that the provisions of this compact be severable and prohibits the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance, 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, from being affected thereby. Requires that the compact, if this compact shall be held contrary to the constitution of any party state, 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.

Sec. 453.502. ADMINISTRATION OF COMPACT. Provides that the Texas Board of Physical Therapy Examiners (TBPTE) is the compact administrator for this state.

Sec. 453.503. RULES. Authorizes TBPTE to adopt rules necessary to implement this subchapter.

SECTION 2. Effective date: September 1, 2017.