



# 2020 South Dakota Legislature

## Senate Bill 60

*Introduced by: Senator Duhamel*

1 **An Act to adopt the Physical Therapist Licensure Compact.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **36-10-17.1. Physical Therapist Licensure Compact.**

5 The Physical Therapy Licensure Compact is enacted into law and entered into with  
 6 all other jurisdictions that legally join the compact, which is substantially as follows:

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8 PHYSICAL THERAPY LICENSURE COMPACT

9 SECTION 1. PURPOSE

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

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16 This Compact is designed to achieve the following objectives:

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

19 2. Enhance the states' ability to protect the public's health and safety;

20 3. Encourage the cooperation of member states in regulating multi-state physical  
 21 therapy practice;

22 4. Support spouses of relocating military members;

23 5. Enhance the exchange of licensure, investigative, and disciplinary information  
 24 between member states; and

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

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## SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "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 U.S.C. Section 1209 and 1211.

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

3. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. "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.

5. "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.

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

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

8. "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.

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

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

11. "Jurisprudence Requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "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.

13. "Member state" means a state that has enacted the Compact.

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

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

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

7           17. "Physical therapy," "physical therapy practice," and "the practice of physical  
8 therapy" mean the care and services provided by or under the direction and supervision  
9 of a licensed physical therapist.

10           18. "Physical Therapy Compact Commission" or "Commission" means the national  
11 administrative body whose membership consists of all states that have enacted the  
12 Compact.

13           19. "Physical therapy licensing board" or "licensing board" means the agency of a  
14 state that is responsible for the licensing and regulation of physical therapists and physical  
15 therapist assistants.

16           20. "Remote State" means a member state other than the home state, where a  
17 licensee is exercising or seeking to exercise the compact privilege.

18           21. "Rule" means a regulation, principle, or directive promulgated by the  
19 Commission that has the force of law.

20           22. "State" means any state, commonwealth, district, or territory of the United  
21 States of America that regulates the practice of physical therapy.

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### 23           SECTION 3. STATE PARTICIPATION IN THE COMPACT

24           A. To participate in the Compact, a state must:

25           1. Participate fully in the Commission's data system, including using the  
26 Commission's unique identifier as defined in rules;

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

29           3. Notify the Commission, in compliance with the terms of the Compact and rules,  
30 of any adverse action or the availability of investigative information regarding a licensee;

31           4. Fully implement a criminal background check requirement, within a time frame  
32 established by rule, by receiving the results of the Federal Bureau of Investigation record  
33 search on criminal background checks and use the results in making licensure decisions  
34 in accordance with Section 3.B.;

35           5. Comply with the rules of the Commission;

1 6. Utilize a recognized national examination as a requirement for licensure  
2 pursuant to the rules of the Commission; and

3 7. Have continuing competence requirements as a condition for license renewal.  
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5 B. Upon adoption of this statute, the member state shall have the authority to  
6 obtain biometric-based information from each physical therapy licensure applicant and  
7 submit this information to the Federal Bureau of Investigation for a criminal background  
8 check in accordance with 28 U.S.C. §534 and 42 U.S.C. §14616.  
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10 C. A member state shall grant the compact privilege to a licensee holding a valid  
11 unencumbered license in another member state in accordance with the terms of the  
12 Compact and rules.  
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14 D. Member states may charge a fee for granting a compact privilege.  
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#### 16 SECTION 4. COMPACT PRIVILEGE

17 A. To exercise the compact privilege under the terms and provisions of the  
18 Compact, the licensee shall:

19 1. Hold a license in the home state;

20 2. Have no encumbrance on any state license;

21 3. Be eligible for a compact privilege in any member state in accordance with  
22 Section 4D, G and H;

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

25 5. Notify the Commission that the licensee is seeking the compact privilege within  
26 a remote state(s);

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

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

30 8. Report to the Commission adverse action taken by any non-member state  
31 within 30 days from the date the adverse action is taken.  
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33 B. The compact privilege is valid until the expiration date of the home license. The  
34 licensee must comply with the requirements of Section 4.A. to maintain the compact  
35 privilege in the remote state.

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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.

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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.

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E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

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1. The home state license is no longer encumbered; and

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2. Two years have elapsed from the date of the adverse action.

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

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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 the following occur:

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1. The specific period of time for which the compact privilege was removed has ended;

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2. All fines have been paid; and

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3. Two years have elapsed from the date of the adverse action.

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

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#### SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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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:

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1. Home of record;

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2. Permanent Change of Station (PCS); or

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

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3                                   SECTION 6. ADVERSE ACTIONS

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

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7           B. A home state may take adverse action based on the investigative information  
8 of a remote state, so long as the home state follows its own procedures for imposing  
9 adverse action.

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11           C. Nothing in this Compact shall override a member state's decision that  
12 participation in an alternative program may be used in lieu of adverse action and that such  
13 participation shall remain non-public if required by the member state's laws. Member  
14 states must require licensees who enter any alternative programs in lieu of discipline to  
15 agree not to practice in any other member state during the term of the alternative program  
16 without prior authorization from such other member state.

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

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22           E. A remote state shall have the authority to:

23           1. Take adverse actions as set forth in Section 4.D. against a licensee's compact  
24 privilege in the state;

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

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

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5           F. Joint Investigations

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

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

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12           SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION.

13           A. The Compact member states hereby create and establish a joint public agency  
14 known as the Physical Therapy Compact Commission:

15           1. The Commission is an instrumentality of the Compact states.

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

21           3. Nothing in this Compact shall be construed to be a waiver of sovereign  
22 immunity.

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24           B. Membership, Voting, and Meetings

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

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

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

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

32           5. Each delegate shall be entitled to one (1) vote with regard to the promulgation  
33 of rules and creation of bylaws and shall otherwise have an opportunity to participate in  
34 the business and affairs of the Commission.

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

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

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7           C. The Commission shall have the following powers and duties:

8           1. Establish the fiscal year of the Commission;

9           2. Establish bylaws;

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

11          4. Meet and take such actions as are consistent with the provisions of this  
12 Compact and the bylaws;

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

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

19          7. Purchase and maintain insurance and bonds;

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

22          9. Hire employees, elect or appoint officers, fix compensation, define duties, grant  
23 such individuals appropriate authority to carry out the purposes of the Compact, and to  
24 establish the Commission's personnel policies and programs relating to conflicts of  
25 interest, qualifications of personnel, and other related personnel matters;

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

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

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

35          13. Establish a budget and make expenditures;



- 1           14. Borrow money;  
2           15. Appoint committees, including standing committees composed of members,  
3           state regulators, state legislators or their representatives, and consumer representatives,  
4           and such other interested persons as may be designated in this Compact and the bylaws;  
5           16. Provide and receive information from, and cooperate with, law enforcement  
6           agencies;  
7           17. Establish and elect an Executive Board; and  
8           18. Perform such other functions as may be necessary or appropriate to achieve  
9           the purposes of this Compact consistent with the state regulation of physical therapy  
10           licensure and practice.

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12           D. The Executive Board

13           The Executive Board shall have the power to act on behalf of the Commission  
14           according to the terms of this Compact.

15           1. The Executive Board shall be composed of nine members:

16           a. Seven voting members who are elected by the Commission from the members  
17           who are elected by the Commission from the current membership of the Commission;

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

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

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

23           3. The Commission may remove any member of the Executive Board as provided  
24           in bylaws.

25           4. The Executive Board shall meet at least annually.

26           5. The Executive Board shall have the following Duties and responsibilities:

27           a. Recommend to the entire Commission changes to the rules or bylaws, changes  
28           to this Compact legislation, fees paid by Compact member states such as annual dues,  
29           and any commission Compact fee charged to licensees for the compact privilege;

30           b. Ensure Compact administration services are appropriately provided, contractual  
31           or otherwise;

32           c. Prepare and recommend the budget;

33           d. Maintain financial records on behalf of the Commission;

34           e. Monitor Compact compliance of member states and provide compliance reports  
35           to the Commission;

1 f. Establish additional committees as necessary; and

2 g. Other duties as provided in rules or bylaws.

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4 E. Meetings of the Commission

5 1. All meetings shall be open to the public, and public notice of meetings shall be  
6 given in the same manner as required under the rulemaking provisions in Section 9.

7 2. The Commission or the Executive Board or other committees of the Commission  
8 may convene in a closed, non-public meeting if the Commission or Executive Board or  
9 other committees of the Commission must discuss:

10 a. Non-compliance of a member state with its obligations under the Compact;

11 b. The employment, compensation, discipline or other matters, practices or  
12 procedures related to specific employees or other matters related to the Commission's  
13 internal personnel practices and procedures;

14 c. Current, threatened, or reasonably anticipated litigation;

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

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

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

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

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

23 i. Disclosure of information related to any investigative reports prepared by or on  
24 behalf of or for use of the Commission or other committee charged with responsibility of  
25 investigation or determination of compliance issues pursuant to the Compact; or

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

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

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

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

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4 F. Financing of the Commission

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

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

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

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

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

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26 G. Qualified Immunity, Defense, and Indemnification

27 1. The members, officers, executive director, employees and representatives of  
28 the Commission shall be immune from suit and liability, either personally or in their official  
29 capacity, for any claim for damage to or loss of property or personal injury or other civil  
30 liability caused by or arising out of any actual or alleged act, error or omission that  
31 occurred, or that the person against whom the claim is made had a reasonable basis for  
32 believing occurred within the scope of Commission employment, duties or responsibilities;  
33 provided that nothing in this paragraph shall be construed to protect any such person from  
34 suit and/or liability for any damage, loss, injury, or liability caused by the intentional or  
35 willful or wanton misconduct of that person.

1           2. The Commission shall defend any member, officer, executive director,  
2 employee or representative of the Commission in any civil action seeking to impose liability  
3 arising out of any actual or alleged act, error, or omission that occurred within the scope  
4 of Commission employment, duties, or responsibilities, or that the person against whom  
5 the claim is made had a reasonable basis for believing occurred within the scope of  
6 Commission employment, duties, or responsibilities; provided that nothing herein shall be  
7 construed to prohibit that person from retaining his or her own counsel; and provided  
8 further, that the actual or alleged act, error, or omission did not result from that person's  
9 intentional or willful or wanton misconduct.

10           3. The Commission shall indemnify and hold harmless any member, officer,  
11 executive director, employee, or representative of the Commission for the amount of any  
12 settlement or judgment obtained against that person arising out of any actual or alleged  
13 act, error or omission that occurred within the scope of Commission employment, duties,  
14 or responsibilities, or that such person had a reasonable basis for believing occurred within  
15 the scope of Commission employment, duties, or responsibilities, provided that the actual  
16 or alleged act, error, or omission did not result from the intentional or willful or wanton  
17 misconduct of that person.

#### 18 19   SECTION 8. DATA SYSTEM

20           A. The Commission shall provide for the development, maintenance, and  
21 utilization of a coordinated database and reporting system containing licensure, adverse  
22 action, and investigative information on all licensed individuals in member states.

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24           B. Notwithstanding any other provision of state law to the contrary, a member  
25 state shall submit a uniform data set to the data system on all individuals to whom this  
26 Compact is applicable as required by the rules of the Commission, including:

- 27           1. Identifying information;
  - 28           2. Licensure data;
  - 29           3. Adverse actions against a license or compact privilege;
  - 30           4. Non-confidential information related to alternative program participation;
  - 31           5. Any denial of application for licensure, and the reason(s) for such denial; and
  - 32           6. Other information that may facilitate the administration of this Compact, as  
33 determined by the rules of the Commission.
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E. The Notice of Proposed Rulemaking shall include:

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; and
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

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

H. 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.

1. 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 five (5) business days before the scheduled date of the hearing.

2. 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.

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

4. 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.

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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 rulemaking 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 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. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

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; or
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 thirty (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.

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2           SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

3           A. Oversight

4           1. The executive, legislative, and judicial branches of state government in each  
5 member state shall enforce this Compact and take all actions necessary and appropriate  
6 to effectuate the Compact's purposes and intent. The provisions of this Compact and the  
7 rules promulgated hereunder shall have standing as statutory law.

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

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

15  
16           B. Default, Technical Assistance, and Termination

17           1. If the Commission determines that a member state has defaulted in the  
18 performance of its obligations or responsibilities under this Compact or the promulgated  
19 rules, the Commission shall:

20           a. Provide written notice to the defaulting state and other member states of the  
21 nature of the default, the proposed means of curing the default and/or any other action  
22 to be taken by the Commission; and

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

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

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



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

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

7           6. The defaulting state may appeal the action of the Commission by petitioning  
8           the U.S. District Court for the District of Columbia or the federal district where the  
9           Commission has its principal offices. The prevailing member shall be awarded all costs of  
10           such litigation, including reasonable attorney's fees.

11  
12           C. Dispute Resolution

13           1. Upon request by a member state, the Commission shall attempt to resolve  
14           disputes related to the Compact that arise among member states and between member  
15           and non-member states.

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

18  
19           D. Enforcement

20           1. The Commission, in the reasonable exercise of its discretion, shall enforce the  
21           provisions and rules of this Compact.

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

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

31  
32           SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL  
33           THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

34           A. The Compact shall come into effect on the date on which the Compact statute  
35           is enacted into law in the tenth member state. The provisions, which become effective at

1 that time, shall be limited to the powers granted to the Commission relating to assembly  
2 and the promulgation of rules. Thereafter, the Commission shall meet and exercise  
3 rulemaking powers necessary to the implementation and administration of the Compact.

4  
5 B. Any state that joins the Compact subsequent to the Commission's initial  
6 adoption of the rules shall be subject to the rules as they exist on the date on which the  
7 Compact becomes law in that state. Any rule that has been previously adopted by the  
8 Commission shall have the full force and effect of law on the day the Compact becomes  
9 law in that state.

10  
11 C. Any member state may withdraw from this Compact by enacting a statute  
12 repealing the same.

13 1. A member state's withdrawal shall not take effect until six (6) months after  
14 enactment of the repealing statute.

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

18  
19 D. Nothing contained in this Compact shall be construed to invalidate or prevent  
20 any physical therapy licensure agreement or other cooperative arrangement between a  
21 member state and a non-member state that does not conflict with the provisions of this  
22 Compact.

23  
24 E. This Compact may be amended by the member states. No amendment to this  
25 Compact shall become effective and binding upon any member state until it is enacted  
26 into the laws of all member states.

## 27 28 SECTION 12. CONSTRUCTION AND SEVERABILITY

29 This Compact shall be liberally construed so as to effectuate the purposes thereof.  
30 The provisions of this Compact shall be severable and if any phrase, clause, sentence or  
31 provision of this Compact is declared to be contrary to the constitution of any party state  
32 or of the United States or the applicability thereof to any government, agency, person or  
33 circumstance is held invalid, the validity of the remainder of this Compact and the  
34 applicability thereof to any government, agency, person or circumstance shall not be  
35 affected thereby. If this Compact shall be held contrary to the constitution of any party

1 state, the Compact shall remain in full force and effect as to the remaining party states  
2 and in full force and effect as to the party state affected as to all severable matters.

3 **Section 2.** That a NEW SECTION be added:

4 **36-10-27.1. Criminal Background Investigation--Licensure.**

5 In addition to the requirements in § § 36-10-27 and 36-10-35.1, an applicant for  
6 licensure shall submit to the board a full set of the applicant's fingerprints in a form and  
7 manner prescribed by the board. The board shall deliver the fingerprints to the Division of  
8 Criminal Investigation to conduct a state and federal criminal history record background  
9 check by the division and the Federal Bureau of Investigation. The applicant shall sign a  
10 release of information to the board and pay any fees for the background check including  
11 fingerprinting. Upon completion of the background check, the division shall deliver to the  
12 board all criminal history record information regarding the applicant, and the board shall  
13 consider this information in determining whether to issue a license to the applicant. The  
14 board may not issue a license to the applicant before receiving this information. The board  
15 may not disseminate an applicant's criminal history record information to any person  
16 outside the Department of Health. The board may require any licensee who is the subject  
17 of a disciplinary investigation by the board to submit to a state and federal criminal history  
18 record background check. The board may deny the issuance of a license or suspend or  
19 revoke a license for failure to submit to or cooperate with a criminal background check.

20 **Section 3.** That § 36-10-18 be AMENDED:

21 **36-10-18. Definition of terms.**

22 Terms used in ~~this chapter~~ §§ 36-10-18 through 36-10-52 mean:

- 23 (1) "Board of Examiners," or "board," the South Dakota State Board of Medical and  
24 Osteopathic Examiners;
- 25 (2) "Physical therapist," a person licensed in this state to practice physical therapy  
26 under the provisions of this chapter;
- 27 (3) "Physical therapy," the practice of physical therapy as defined in § 36-10-18.1;
- 28 (4) "Physical therapist assistant," a person who is a graduate of an accredited physical  
29 therapist assistant education program as determined by the board, who has passed  
30 an examination approved by the board, and who assists in providing physical  
31 therapy services under the supervision of a physical therapist;
- 32 (5) "Physical therapy advisory committee," the committee provided for in this chapter.

1 **Section 4.** That § 36-10-18.1 be AMENDED:

2 **36-10-18.1. Physical therapy defined.**

3 For the purposes of ~~this chapter §§ 36-10-18 through 36-10-52~~, the practice of  
4 physical therapy is the examination and evaluation of patients with mechanical,  
5 physiological, and developmental impairments, functional limitation, and disability or  
6 other similar conditions in order to determine a diagnosis, prognosis, and therapeutic  
7 intervention; alleviation of impairments and functional limitations by designing,  
8 implementing, and modifying therapeutic interventions that include therapeutic exercise,  
9 functional training in community or work reintegration, manual therapy techniques  
10 including soft tissue and joint mobilization, assistive and adaptive devices and equipment,  
11 brochopulmonary hygiene, debridement and wound care, physical agents and mechanical  
12 modalities, therapeutic massage, electrotherapeutic modalities, and patient-related  
13 instruction; prevention of injury, impairments, functional limitations, and disability  
14 including the promotion and maintenance of fitness, health, and quality of life in all age  
15 populations; and consultation, education, and research.

16 **Section 5.** That § 36-10-30 be AMENDED:

17 **36-10-30. Licensing of applicant registered by Federation of State Boards of**  
18 **Physical Therapy or who has passed national examination.**

19 The Board of Examiners may in its discretion, without examination, issue a license  
20 to any applicant who:

- 21 (1) Is registered by the Federation of State Boards of Physical Therapy; ~~or~~  
22 (2) Has passed a national examination recognized by the board with a grade acceptable  
23 to the board and meets the qualifications for licensure under this chapter and the  
24 rules promulgated by the board; or  
25 (3) May be licensed under the Physical Therapist Licensure Compact under § 36-10-  
26 17.1.

27 **Section 6.** That § 36-10-37 be REPEALED.

28 **36-10-37. Procedure for adoption of rules and regulations.**