

HOUSE BILL NO. 2471 REVIEW

For: Committee on Health and Human Services
From: Norm Furse, Revisor of Statutes Office

Background: This bill would enact the physical therapy licensure compact. This is an interstate compact in that it is an agreement among several states for a particular purpose or to accomplish a particular goal. From the K.S.A. Index, I count at least 45 different compacts the legislature has enacted over the years.

Most compacts provide for some sort of delegation of legislative power to a central, compact, entity. For many of these compacts, under Kansas law, that would be an impermissible delegation of legislative authority. However, the people of Kansas in 1974 adopted section 30 of article 2 of the constitution of the state of Kansas which specifically allows the legislature to confer legislative powers upon interstate bodies.

Under section 10 of article 1 of the United States constitution, no state without the consent of Congress, among other things, shall enter into any agreement or compact with another state. This has been interpreted by the United States Supreme Court in *Virginia v. Tennessee* (1893) to mean that only those agreements which in some way would increase the power of the states at the expense of the federal government require this approval. The compact proposed in HB No. 2471 does not violate this provision.

HB 2471 physical therapy licensure compact is designed to allow physical therapists and physical therapist assistants credentialed in one state to be credentialed in other states through the mechanism set forth in the compact.

To be effectively adopted, the compact must be in substance identical with other states (in the nature of a contract). Terminology and form may be changed to comport with usage in a particular state, but substance must remain unchanged. This compact specifically provides: "This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states."

Compact provisions (briefly):

Section 1. Purpose.

Sec. 2. Definitions. Sets out a long list of definitions of various terms used in the compact.

Sec. 3. State participation in the compact. To participate, among other things, a state must fully participate in the commission's data system, notify the commission of various licensure actions, implement the criminal background check requirement, comply with the rules of the commission and have continuing competency requirements.

House Health and Human Services
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Attachment #: 30

Sec. 4. Compact privilege. This is 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 rules and laws.

Sec. 5. Active duty military personnel or their spouses. Allows these active duty personnel or spouses to designate their home state for purposes of the compact. NOTE: Kansas already has an expedited state licensure procedure for military service members credentialed in another state, K.S.A. 48-3406.

Sec. 6. Adverse actions. This means a disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance or a combination of both. The section provides that a home state shall have exclusive power to impose adverse action against a license issued by the home state.

Sec. 7. Establishment of physical therapy compact commission. The physical therapy compact commission is created in this section and its powers and duties are set out. Each member state has one delegate on the commission selected by that member state's licensing board. A delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. The commission elects an executive board of nine members with powers and duties set out in this section. The commission has authority to levy and collect an annual assessment from each member state. The section grants a limited immunity from suit for the members, officers and employees of the commission for act arising within the scope of commission employment.

Sec. 8. Data system. The commission is 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 to whom the compact is applicable in member states. A member state is to submit a uniform data set to the data system on all such individuals as required by rules of the commission.

Sec. 9. Rule Making. This sections sets out the criteria for rule making by the commission.

Sec. 10. Oversight, Dispute Resolution and Enforcement. This section provides in part: "The executive, legislative and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent." Courts are directed to take judicial notice of the compact in any judicial or administrative proceeding in a member state. The commission may terminate a member state that has defaulted in the performance of its obligations under the compact but the affirmative vote of a majority of the member states. The commission shall attempt to resolve disputes among member states upon petition by one or the member states. The commission is to enforce the provisions and rules of the compact.

Sec. 11. Date of Implementation of the Interstate Commission for Physical Therapy Practice and Associated Rules, Withdrawal and Amendment. The compact takes effect when enacted into law by the 10th member state. A member state may withdraw from the compact by enacting a statute

repealing the compact statute. A withdrawal takes effect six months after enactment of the repealing statute.

Sec. 12. Construction and Severability. The compact is to be liberally construed to effectuate its purpose. If a part of the compact is found unconstitutional, that part is to be severed from the rest of the compact.

Section 2 of the bill (not part of the compact). This section provides for background criminal records checks of Kansas applicants for or holders of a license as a physical therapist or a certificate as a physical therapy assistant.

COMMUNITY STRATEGIC PLANNING ASSISTANCE ACT

Generally, 74-5092 et seq.
Administration, 74-5096
Agreements, 74-5097
Committee, 74-5095
Cooperation, 74-5099
Definitions, 74-5093
Economic development organizations,
Cooperation, 74-5099
Grants, 74-5096, 74-5097
Uses, 74-5098
Educational institutions, agreements, 74-5097
Eligibility, 74-5097
Evaluation of, 74-50,101
Grants, 74-5097
Termination date, 74-50,100
Uses, 74-5098
Neighborhood revitalization organizations, 74-5096, 74-5097,
74-5098
Purposes, 74-5094
Reports, 74-5097, 74-50,101
Termination of grants, 74-50,100
Use of grants, 74-5097, 74-5098

COMMUTATION OF SENTENCE

Pardons. Criminal Procedure, this index

COMPACTS

Generally, Kan. Const., Art. 2, § 30
Adoption and medical assistance, interstate compact on, 38-335 et seq.
Agricultural grain marketing, interstate compact, 2-3101
Arkansas River Basin Compact, Kansas-Oklahoma, 82a-528
Arkansas River Compact, 82a-520
Central Interstate Low-Level Radioactive Waste Compact, 65-34a01 et seq.
Civil defense and disaster, interstate compact, 48-3201
Conservation of oil and gas, interstate compact, 55-801 et seq.
Corrections, interstate compact, 76-3001 et seq.
Crime prevention and privacy, national, 22-5001
Dairy interstate compact, 74-577
Dealer licensing, interstate compact, 8-2429
Detainers, agreement on, 22-4401
Driver license compact, 8-1212 et seq.
Education, 72-8261 et seq. See, also, Education, this index
Educational opportunity for military children, interstate compact, 72-8268
Emergency management assistance, 48-9a01
Foreign trade zones, 12-825h
Great plains interstate fire compact, 31-801
Health care compact, 65-6230
Indian gaming compacts, 46-2301 et seq.
Interlocal Cooperation Law, 12-2901 et seq.
Interstate Agreement on Qualification of Educational Personnel, generally, this index
Interstate Civil Defense and Disaster Compact, 48-3201
Interstate Compact for Adult Offender Supervision, 22-4110 et seq.
Interstate Compact for Juveniles, 38-1808
Interstate Compact for Recognition of Emergency Medical Personnel Licensure, 65-6158
Interstate Compact on Agricultural Grain Marketing, 2-3101
Interstate compact on educational opportunity for military children, 72-8268
Interstate Compact on Mental Health, 65-3101 et seq.
Interstate Compact on Placement of Children, 38-1201 et seq.

COMPACTS—Cont'd

Interstate Correctional Compact, 76-3001
Interstate dealer licensing compact, 8-2429
Interstate Insurance Product Registration Compact, 40-5301 et seq.
Juveniles, interstate compact, 38-1008
Kansas City Area Transportation District and Authority Compact, 12-2524 et seq.
Kansas-Missouri compacts, 12-2514 et seq.
Boundary Compact, 82a-521
Culture District Compact, 12-2536 et seq.
Waterworks Compact, 79-205
Kansas-Nebraska Big Blue River Compact, 82a-529
Lottery, multistate, 74-8731 et seq.
Low-level radioactive waste compact, 65-34a01 et seq.
Mental health, interstate compact, 65-3101 et seq.
Midwest interstate passenger rail compact, 75-5090
Midwestern higher education compact, 74-32,264 et seq.
Mo-Kan Metropolitan Development District and Agency Compact, 12-2514 et seq.
Multistate Tax Compact. Taxation, generally, this index
National crime prevention and privacy compact, 22-5001
National Guard Mutual Assistance Compact. Military Forces, this index
Nonresident Violator Compact, 8-1219 et seq.
Oil and gas conservation, 55-801 et seq.
Extension and amendment, 55-862 et seq.
Parole violators, interstate cooperation for return, 22-4104 et seq.
Pest Control Compact, interstate, 2-2135 et seq.
Placement of children, interstate compact, 38-1201 et seq.
Qualifications of educational personnel, interstate agreement on, 72-8265 et seq.
Radioactive waste compact, low-level, 65-34a01 et seq.
Republican River Compact, 82a-518
Tax compact.
Iowa Tribe of Kansas and Nebraska, 79-2985
Kickapoo Tribe, 79-2986
Prairie Band Potawatomi Nation, 79-2984
Wildlife Violator Compact, 32-1061 et seq.

COMPARATIVE NEGLIGENCE

Negligence, this index

COMPENSATING TAX

Generally, 79-3701 et seq.
Assumption by retailer, 79-3705b
Aviation fuel, tax proceeds, report, 75-5152
Banks claiming exemptions ineligible for award of state account, 75-4223
Boats, 12-198
Bond, 79-3707, 79-3713
Certificate of registration, sales contracts not enforceable in courts, 79-3631
City or county tax, 12-198
Collection of tax, 79-3705a, 79-3705c, 79-3709
Debt owed by retailer, 79-3705e
Procedure on payment refusal, 79-3617, 79-3709
Reciprocal agreement with other states, 79-3707
Crimes, punishments and penalties. Fines and penalties, post
Definitions, 79-3702
Delinquency, 79-3706
Abatement, service fee, 75-5162
Disposition of taxes, penalties, interest and fees, 75-5162
Payment plan service fee, 75-5162
Discount, 79-3702
Disposition of moneys, 79-3710