

1 HOUSE BILL 392

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Marian Matthews and Gail Armstrong and Tara Jaramillo and
5 Elizabeth "Liz" Thomson and Natalie Figueroa
6
7
8
9

10 AN ACT

11 RELATING TO INTERGOVERNMENTAL AGREEMENTS; ENACTING THE
12 OCCUPATIONAL THERAPY LICENSURE INTERSTATE COMPACT.
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
16 cited as the "Occupational Therapy Licensure Interstate
17 Compact".

18 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
19 compact is to facilitate interstate practice of occupational
20 therapy with the goal of improving public access to
21 occupational therapy services. The practice of occupational
22 therapy occurs in the state where the patient or client is
23 located at the time of the patient or client encounter. The
24 compact preserves the regulatory authority of states to protect
25 public health and safety through the current system of state

.224227.1

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 licensure. The compact is designed to achieve the following
2 objectives:

3 A. increase public access to occupational therapy
4 services by providing for the mutual recognition of other
5 member state licenses;

6 B. enhance the states' ability to protect the
7 public's health and safety;

8 C. encourage the cooperation of member states in
9 regulating multistate occupational therapy practice;

10 D. support spouses of relocating military members;

11 E. enhance the exchange of licensure, investigative
12 and disciplinary information between member states;

13 F. allow a remote state to hold a provider of
14 services with a compact privilege in that state accountable to
15 that state's practice standards; and

16 G. facilitate the use of telehealth technology in
17 order to increase access to occupational therapy services.

18 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
19 Occupational Therapy Licensure Interstate Compact and except as
20 otherwise provided:

21 A. "active duty military" means full-time duty
22 status in the active uniformed service of the United States,
23 including members of the national guard and reserve on active
24 duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C.
25 Chapter 1211;

.224227.1

1 B. "adverse action" means any administrative,
2 civil, equitable or criminal action permitted by a state's laws
3 that is imposed by a licensing board or other authority against
4 an occupational therapist or occupational therapy assistant,
5 including actions against an individual's license or compact
6 privilege such as censure, revocation, suspension, probation,
7 monitoring of the licensee or restriction on the licensee's
8 practice;

9 C. "alternative program" means a non-disciplinary
10 monitoring process approved by an occupational therapy
11 licensing board;

12 D. "compact privilege" means the authorization,
13 which is equivalent to a license, granted by a remote state to
14 allow a licensee from another member state to practice as an
15 occupational therapist or practice as an occupational therapy
16 assistant in the remote state under its laws and rules. The
17 practice of occupational therapy occurs in the member state
18 where the patient or client is located at the time of the
19 patient or client encounter;

20 E. "continuing competence" or "continuing
21 education" means a requirement, as a condition of license
22 renewal, to provide evidence of participation in or completion
23 of educational and professional activities relevant to practice
24 or area of work;

25 F. "current significant investigative information"

1 means investigative information that a licensing board, after
2 an inquiry or investigation that includes notification and an
3 opportunity for the occupational therapist or occupational
4 therapy assistant to respond, if required by state law, has
5 reason to believe is not groundless and if proved true would
6 indicate more than a minor infraction;

7 G. "data system" means a repository of information
8 about licensees, including license status, investigative
9 information, compact privileges and adverse actions;

10 H. "encumbered license" means a license in which an
11 adverse action restricts the practice of occupational therapy
12 by the licensee or said adverse action has been reported to the
13 national practitioners data bank;

14 I. "executive committee" means a group of directors
15 elected or appointed to act on behalf of and within the powers
16 granted to them by the commission;

17 J. "home state" means the member state that is the
18 licensee's primary state of residence;

19 K. "impaired practitioner" means an individual
20 whose professional practice is adversely affected by substance
21 abuse, addiction or other health-related conditions;

22 L. "investigative information" means information,
23 records, or documents received or generated by an occupational
24 therapy licensing board pursuant to an investigation;

25 M. "jurisprudence requirement" means the assessment

1 of an individual's knowledge of the laws and rules governing
2 the practice of occupational therapy in a state;

3 N. "licensee" means an individual who currently
4 holds an authorization from a state to practice as an
5 occupational therapist or as an occupational therapy assistant;

6 O. "member state" means a state that has enacted
7 the compact;

8 P. "occupational therapist" means an individual who
9 is licensed by a state to practice occupational therapy;

10 Q. "occupational therapy assistant" means an
11 individual who is licensed by a state to assist in the practice
12 of occupational therapy;

13 R. "occupational therapy", "occupational therapy
14 practice" and the "practice of occupational therapy" mean the
15 care and services provided by an occupational therapist or an
16 occupational therapy assistant as set forth in a member state's
17 statutes and regulations;

18 S. "occupational therapy compact commission" or
19 "commission" means the national administrative body whose
20 membership consists of all states that have enacted the
21 compact;

22 T. "occupational therapy licensing board" or
23 "licensing board" means the agency of a state that is
24 authorized to license and regulate occupational therapists and
25 occupational therapy assistants;

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 U. "primary state of residence" means the home
2 state in which an occupational therapist or occupational
3 therapy assistant who is not active duty military declares a
4 primary residence for legal purposes as verified by their
5 driver's license, federal income tax return, lease, deed,
6 mortgage or voter registration or other verifying documentation
7 as further defined by commission rules;

8 V. "remote state" means a member state other than
9 the home state where a licensee is exercising or seeking to
10 exercise the compact privilege;

11 W. "rule" means a regulation promulgated by the
12 commission that has the force of law;

13 X. "state" means any state, commonwealth, district
14 or territory of the United States that regulates the practice
15 of occupational therapy;

16 Y. "single-state license" means an occupational
17 therapist or occupational therapy assistant license issued by a
18 member state that authorizes practice only within the issuing
19 state and does not include a compact privilege in any other
20 member state; and

21 Z. "telehealth" means the application of
22 telecommunication technology to deliver occupational therapy
23 services for assessment, intervention or consultation.

24 SECTION 4. [NEW MATERIAL] STATE PARTICIPATION IN THE
25 COMPACT.--

.224227.1

underscoring material = new
~~[bracketed material]~~ = delete

1 A. To participate in the compact, a member state
2 shall:

3 (1) license occupational therapists and
4 occupational therapy assistants;

5 (2) participate fully in the commission's data
6 system, including using the commission's unique identifier as
7 defined in rules of the commission;

8 (3) have a mechanism in place for receiving
9 and investigating complaints about licensees;

10 (4) notify the commission, in compliance with
11 the terms of the compact and rules, of any adverse action or
12 the availability of investigative information regarding a
13 licensee;

14 (5) implement or utilize procedures for
15 considering the criminal history records of applicants for an
16 initial compact privilege. These procedures shall include the
17 submission of fingerprints or other biometric-based information
18 by applicants for the purpose of obtaining an applicant's
19 criminal history record information from the federal bureau of
20 investigation and the agency responsible for retaining that
21 state's criminal records:

22 (a) a member state shall fully implement
23 a criminal background check requirement, within a time frame
24 established by rule by receiving the results of the federal
25 bureau of investigation criminal record search, and shall use

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 the results in making licensure decisions; and

2 (b) communication between a member state
3 and the commission and among member states regarding the
4 verification of eligibility for licensure through the compact
5 shall not include any information received from the federal
6 bureau of investigation relating to a federal criminal records
7 check performed by a member state under Public Law 92-544;

8 (6) comply with the rules of the commission;

9 (7) utilize only a recognized national
10 examination as a requirement for licensure pursuant to the
11 rules of the commission; and

12 (8) have continuing competence or continuing
13 education requirements as a condition for license renewal.

14 B. A member state shall grant the compact privilege
15 to a licensee holding a valid unencumbered license in another
16 member state in accordance with the terms of the compact and
17 rules.

18 C. Member states may charge a fee for granting a
19 compact privilege.

20 D. A member state shall provide for the state's
21 delegate to attend all occupational therapy compact commission
22 meetings.

23 E. Individuals not residing in a member state shall
24 continue to be able to apply for a member state's single-state
25 license as provided under the laws of each member state.

.224227.1

underscored material = new
[bracketed material] = delete

1 However, the single-state license granted to these individuals
2 shall not be recognized as granting the compact privilege in
3 any other member state.

4 F. Nothing in the compact shall affect the
5 requirements established by a member state for the issuance of
6 a single-state license.

7 SECTION 5. [NEW MATERIAL] COMPACT PRIVILEGE.--

8 A. To exercise the compact privilege under the
9 terms and provisions of the compact, the licensee shall:

- 10 (1) hold a license in the home state;
- 11 (2) have a valid United States social security
12 number or national practitioner identification number;
- 13 (3) have no encumbrance on any state license;
- 14 (4) be eligible for a compact privilege in any
15 member state in accordance with Subsections D, F, G and H of
16 this section;
- 17 (5) have paid all fines and completed all
18 requirements resulting from any adverse action against any
19 license or compact privilege, and two years have elapsed from
20 the date of such completion;
- 21 (6) notify the commission that the licensee is
22 seeking the compact privilege within a remote state;
- 23 (7) pay any applicable fees, including any
24 state fee, for the compact privilege;
- 25 (8) complete a criminal background check in

.224227.1

1 accordance with Section 3 of the Occupational Therapy Licensure
2 Interstate Compact. The licensee shall be responsible for the
3 payment of any fee associated with the completion of a criminal
4 background check;

5 (9) meet any jurisprudence requirements
6 established by the remote state or states in which the licensee
7 is seeking a compact privilege; and

8 (10) report to the commission adverse action
9 taken by any nonmember state within thirty days from the date
10 the adverse action is taken.

11 B. The compact privilege is valid until the
12 expiration date of the home state license. The licensee must
13 comply with the requirements of Subsection A of this section to
14 maintain the compact privilege in the remote state.

15 C. A licensee providing occupational therapy in a
16 remote state under the compact privilege shall function within
17 the laws and regulations of the remote state.

18 D. Occupational therapy assistants practicing in a
19 remote state shall be supervised by an occupational therapist
20 licensed or holding a compact privilege in that remote state.

21 E. A licensee providing occupational therapy in a
22 remote state is subject to that state's regulatory authority.
23 A remote state may, in accordance with due process and that
24 state's laws, remove a licensee's compact privilege in the
25 remote state for a specific period of time, impose fines or

1 take any other necessary actions to protect the health and
2 safety of its citizens. The licensee may be ineligible for a
3 compact privilege in any state until the specific time for
4 removal has passed and all fines are paid.

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

8 (1) the home state license is no longer
9 encumbered; and

10 (2) two years have elapsed from the date on
11 which the home state license became unencumbered.

12 G. Once an encumbered license in the home state is
13 restored to good standing, the licensee must meet the
14 requirements of Subsection A of this section to obtain a
15 compact privilege in any remote state.

16 H. If a licensee's compact privilege in any remote
17 state is removed, the individual may lose the compact privilege
18 in any other remote state until the following occur:

19 (1) the specific period of time for which the
20 compact privilege was removed has ended;

21 (2) all fines have been paid and all
22 conditions have been met;

23 (3) two years have elapsed from the date in
24 which the requirements in Paragraphs (1) and (2) of this
25 subsection were completed; and

underscored material = new
[bracketed material] = delete

1 (4) the compact privileges are reinstated by
2 the commission, and the compact data system is updated to
3 reflect reinstatement.

4 I. If a licensee's compact privilege in any remote
5 state is removed due to an erroneous charge, privileges shall
6 be restored through the compact data system.

7 J. Once the requirements of Subsection H have been
8 met, the licensee must meet the requirements in Subsection A of
9 this section to obtain a compact privilege in a remote state.

10 SECTION 6. [NEW MATERIAL] OBTAINING A NEW HOME STATE
11 LICENSE BY VIRTUE OF COMPACT PRIVILEGE.--

12 A. An occupational therapist or occupational
13 therapy assistant may hold a home state license, which allows
14 for compact privileges in member states, in only one member
15 state at a time.

16 B. If an occupational therapist or occupational
17 therapy assistant changes primary state of residence by moving
18 between two member states:

19 (1) the occupational therapist or occupational
20 therapy assistant shall file an application for obtaining a new
21 home state license by virtue of a compact privilege, pay all
22 applicable fees and notify the current and new home state in
23 accordance with applicable rules adopted by the commission;

24 (2) upon receipt of an application for
25 obtaining a new home state license by virtue of compact

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 privilege, the new home state shall verify that the
2 occupational therapist or occupational therapy assistant meets
3 the pertinent criteria outlined in Section 5 of the
4 Occupational Therapy Licensure Interstate Compact via the data
5 system, without need for primary source verification except
6 for:

7 (a) a federal bureau of investigation
8 fingerprint-based criminal background check, if not previously
9 performed or updated pursuant to applicable rules adopted by
10 the commission in accordance with Public Law 92-544;

11 (b) any other criminal background check
12 as required by the new home state; and

13 (c) submission of any requisite
14 jurisprudence requirements of the new home state;

15 (3) the former home state shall convert the
16 former home state license into a compact privilege once the new
17 home state has activated the new home state license in
18 accordance with applicable rules adopted by the commission;

19 (4) notwithstanding any other provision of the
20 compact, if the occupational therapist or occupational therapy
21 assistant cannot meet the requirements in Section 5 of the
22 Occupational Therapy Licensure Interstate Compact, the new home
23 state shall apply its requirements for issuing a new
24 single-state license; and

25 (5) the occupational therapist or the

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 occupational therapy assistant shall pay all applicable fees to
2 the new home state in order to be issued a new home state
3 license.

4 C. If an occupational therapist or occupational
5 therapy assistant changes primary state of residence by moving
6 from a member state to a nonmember state, or from a nonmember
7 state to a member state, the state criteria shall apply for
8 issuance of a single-state license in the new state.

9 D. Nothing in the compact shall interfere with a
10 licensee's ability to hold a single-state license in multiple
11 states; however, for the purposes of the compact, a licensee
12 shall have only one home state license.

13 E. Nothing in the compact shall affect the
14 requirements established by a member state for the issuance of
15 a single-state license.

16 SECTION 7. [NEW MATERIAL] ACTIVE DUTY MILITARY PERSONNEL
17 OR THEIR SPOUSES.--Active duty military personnel, or their
18 spouses, shall designate a home state where the individual has
19 a current license in good standing. The individual may retain
20 the home state designation during the period the service member
21 is on active duty. Subsequent to designating a home state, the
22 individual shall only change the individual's home state
23 through application for licensure in the new state or through
24 the process described in Section 6 of the Occupational Therapy
25 Licensure Interstate Compact.

.224227.1

1 SECTION 8. [NEW MATERIAL] ADVERSE ACTIONS.--

2 A. A home state shall have exclusive power to
3 impose adverse action against an occupational therapist's or
4 occupational therapy assistant's license issued by the home
5 state.

6 B. In addition to the other powers conferred by
7 state law, a remote state shall have the authority, in
8 accordance with existing state due process law, to:

9 (1) take adverse action against an
10 occupational therapist's or occupational therapy assistant's
11 compact privilege within that member state; and

12 (2) issue subpoenas for both hearings and
13 investigations that require the attendance and testimony of
14 witnesses as well as the production of evidence. Subpoenas
15 issued by a licensing board in a member state for the
16 attendance and testimony of witnesses or the production of
17 evidence from another member state shall be enforced in the
18 latter state by any court of competent jurisdiction according
19 to the practice and procedure of that court applicable to
20 subpoenas issued in proceedings pending before it. The issuing
21 authority shall pay any witness fees, travel expenses, mileage
22 and other fees required by the service statutes of the state in
23 which the witnesses or evidence are located.

24 C. For purposes of taking adverse action, the home
25 state shall give the same priority and effect to reported

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 conduct received from a member state as it would if the conduct
2 had occurred within the home state. In so doing, the home
3 state shall apply its own state laws to determine appropriate
4 action.

5 D. The home state shall complete any pending
6 investigations of an occupational therapist or occupational
7 therapy assistant who changes primary state of residence during
8 the course of the investigations. The home state shall also
9 have the authority to take appropriate action and shall
10 promptly report the conclusions of the investigations to the
11 data system. The data system administrator shall promptly
12 notify the new home state of any adverse actions.

13 E. If otherwise permitted by state law, a member
14 state may recover from the affected occupational therapist or
15 occupational therapy assistant the costs of investigations and
16 disposition of cases resulting from any adverse action taken
17 against that occupational therapist or occupational therapy
18 assistant.

19 F. A member state may take adverse action based on
20 the factual findings of the remote state, provided that the
21 member state follows its own procedures for taking the adverse
22 action.

23 G. In addition to the authority granted to a member
24 state by its respective state occupational therapy laws and
25 regulations or other applicable state law, any member state may

.224227.1

underscoring material = new
[bracketed material] = delete

1 participate with other member states in joint investigations of
2 licensees. Member states shall share any investigative,
3 litigation or compliance materials in furtherance of any joint
4 or individual investigation initiated under the compact.

5 H. If adverse action is taken by the home state
6 against an occupational therapist's or occupational therapy
7 assistant's license, the occupational therapist's or
8 occupational therapy assistant's compact privilege in all other
9 member states shall be deactivated until all encumbrances have
10 been removed from the state license. All home state
11 disciplinary orders that impose adverse action against an
12 occupational therapist's or occupational therapy assistant's
13 license shall include a statement that the occupational
14 therapist's or occupational therapy assistant's compact
15 privilege is deactivated in all member states during the
16 pendency of the order.

17 I. If a member state takes adverse action, it shall
18 promptly notify the administrator of the data system. The
19 administrator of the data system shall promptly notify the home
20 state of any adverse actions by remote states.

21 J. Nothing in the compact shall override a member
22 state's decision that participation in an alternative program
23 may be used in lieu of adverse action.

24 SECTION 9. [NEW MATERIAL] OCCUPATIONAL THERAPY COMPACT
25 COMMISSION--CREATED.--

.224227.1

1 A. The compact member states hereby create and
2 establish a joint public agency known as the "occupational
3 therapy compact commission", subject to the following
4 provisions:

5 (1) the commission is an instrumentality of
6 the compact states;

7 (2) venue is proper and judicial proceedings
8 by or against the commission shall be brought solely and
9 exclusively in a court of competent jurisdiction where the
10 principal office of the commission is located. The commission
11 may waive venue and jurisdictional defenses to the extent it
12 adopts or consents to participate in alternative dispute
13 resolution proceedings; and

14 (3) nothing in the compact shall be construed
15 to be a waiver of sovereign immunity.

16 B. Membership, voting and meetings of the
17 commission shall proceed as follows:

18 (1) each member state shall have and be
19 limited to one delegate selected by that member state's
20 licensing board. The delegate shall be either:

21 (a) a current member of the licensing
22 board who is an occupational therapist, occupational therapy
23 assistant or public member; or

24 (b) an administrator of the licensing
25 board;

1 (2) any delegate may be removed or suspended
2 from office as provided by the law of the state from which the
3 delegate is appointed;

4 (3) the member state licensing board shall
5 fill any vacancy occurring in the commission within ninety
6 days;

7 (4) each delegate shall be entitled to one
8 vote with regard to the promulgation of rules and creation of
9 bylaws and shall otherwise have an opportunity to participate
10 in the business and affairs of the commission;

11 (5) a delegate shall vote in person or by such
12 other means as provided in the bylaws. The bylaws may provide
13 for delegates' participation in meetings by telephone or other
14 means of communication;

15 (6) the commission shall meet at least once
16 during each calendar year. Additional meetings shall be held
17 as set forth in the bylaws; and

18 (7) the commission shall establish by rule a
19 term of office for delegates.

20 C. The commission shall:

21 (1) establish a code of ethics for the
22 commission;

23 (2) establish the fiscal year of the
24 commission;

25 (3) establish bylaws;

1 (4) maintain its financial records in
2 accordance with the bylaws;

3 (5) meet and take such actions as are
4 consistent with the provisions of the compact and the bylaws;

5 (6) promulgate uniform rules to facilitate and
6 coordinate implementation and administration of the compact.

7 The rules shall have the force and effect of law and shall be
8 binding in all member states;

9 (7) bring and prosecute legal proceedings or
10 actions in the name of the commission; provided that the
11 standing of any state occupational therapy licensing board to
12 sue or be sued under applicable law shall not be affected;

13 (8) purchase and maintain insurance and bonds;

14 (9) borrow, accept or contract for services of
15 personnel, including employees of a member state;

16 (10) hire employees, elect or appoint
17 officers, fix compensation, define duties, grant such
18 individuals appropriate authority to carry out the purposes of
19 the compact and establish the commission's personnel policies
20 and programs relating to conflicts of interest, qualifications
21 of personnel and other related personnel matters;

22 (11) accept any and all appropriate donations
23 and grants of money, equipment, supplies, materials and
24 services and receive, utilize and dispose of the same; provided
25 that at all times the commission shall avoid any appearance of

.224227.1

1 impropriety or conflict of interest;

2 (12) lease, purchase, accept appropriate gifts
3 or donations of, or otherwise own, hold, improve or use, any
4 property, whether real, personal or mixed; provided that at all
5 times the commission shall avoid any appearance of impropriety;

6 (13) sell, convey, mortgage, pledge, lease,
7 exchange, abandon or otherwise dispose of any property, whether
8 real, personal or mixed;

9 (14) establish a budget and make expenditures;

10 (15) borrow money;

11 (16) appoint committees, including standing
12 committees composed of members, state regulators, state
13 legislators or their representatives, consumer representatives
14 and such other interested persons as may be designated in the
15 compact and the bylaws;

16 (17) provide and receive information from, and
17 cooperate with, law enforcement agencies;

18 (18) establish and elect an executive
19 committee; and

20 (19) perform such other functions as may be
21 necessary or appropriate to achieve the purposes of the compact
22 consistent with the state regulation of occupational therapy
23 licensure and practice.

24 D. The executive committee shall have the power to
25 act on behalf of the commission according to the terms of the

.224227.1

1 compact and shall be composed of nine members as follows:

2 (1) seven voting members who are elected by
3 the commission from the current membership of the commission;

4 (2) one nonvoting ex-officio member from a
5 recognized national occupational therapy professional
6 association; and

7 (3) one nonvoting ex-officio member from a
8 recognized national occupational therapy certification
9 organization.

10 E. The ex-officio members of the executive
11 committee shall be selected by their respective organizations.

12 F. The commission may remove any member of the
13 executive committee as provided in bylaws.

14 G. The executive committee shall meet at least
15 annually.

16 H. The executive committee shall have the following
17 duties and responsibilities:

18 (1) recommend to the entire commission changes
19 to the rules or bylaws, changes to the compact legislation,
20 fees paid by compact member states, such as annual dues and any
21 commission compact fee charged to licensees for the compact
22 privilege;

23 (2) ensure that compact administration
24 services are appropriately provided, contractual or otherwise;

25 (3) prepare and recommend a budget;

1 (4) maintain financial records on behalf of
2 the commission;

3 (5) monitor compact compliance of member
4 states and provide compliance reports to the commission;

5 (6) establish additional committees as
6 necessary; and

7 (7) carry out other duties as provided in
8 rules or bylaws.

9 I. All meetings of the commission shall be open to
10 the public, and public notice of meetings shall be given in the
11 same manner as required under the rulemaking provisions in
12 Section 12 of the Occupational Therapy Licensure Interstate
13 Compact.

14 J. The commission or the executive committee or
15 other committees of the commission may convene in a closed,
16 nonpublic meeting if the commission or executive committee or
17 other committees of the commission must discuss:

18 (1) noncompliance of a member state with its
19 obligations under the compact;

20 (2) the employment, compensation, discipline
21 or other matters, practices or procedures related to specific
22 employees or other matters related to the commission's internal
23 personnel practices and procedures;

24 (3) current, threatened or reasonably
25 anticipated litigation;

.224227.1

1 (4) negotiation of contracts for the purchase,
2 lease or sale of goods, services or real estate;

3 (5) accusations made of any person of a crime
4 or formal censuring of any person;

5 (6) disclosure of trade secrets or commercial
6 or financial information that is privileged or confidential;

7 (7) disclosure of information of a personal
8 nature where disclosure would constitute a clearly unwarranted
9 invasion of personal privacy;

10 (8) disclosure of investigative records
11 compiled for law enforcement purposes;

12 (9) disclosure of information related to any
13 investigative reports prepared by or on behalf of or for use of
14 the commission or other committee charged with responsibility
15 of investigation or determination of compliance issues pursuant
16 to the compact; or

17 (10) matters specifically exempted from
18 disclosure by federal or member state statute.

19 K. If a meeting, or portion of a meeting, is closed
20 pursuant to Subsection J of this section, the commission's
21 legal counsel or designee shall certify that the meeting may be
22 closed and shall reference each relevant exempting provision.

23 L. The commission shall keep minutes that fully and
24 clearly describe all matters discussed in a meeting and shall
25 provide a full and accurate summary of actions taken, and the

.224227.1

underscoring material = new
~~[bracketed material]~~ = delete

1 reasons therefore, including a description of the views
2 expressed. All documents considered in connection with an
3 action shall be identified in the minutes. All minutes and
4 documents of a closed meeting shall remain under seal, subject
5 to release by a majority vote of the commission or order of a
6 court of competent jurisdiction.

7 M. The commission shall pay, or provide for the
8 payment of, the reasonable expenses of its establishment,
9 organization and ongoing activities. The commission may accept
10 any and all appropriate revenue sources, donations and grants
11 of money, equipment, supplies, materials and services. The
12 commission may levy on and collect an annual assessment from
13 each member state or impose fees on other parties to cover the
14 cost of the operations and activities of the commission and its
15 staff, which must be in a total amount sufficient to cover its
16 annual budget as approved by the commission each year for which
17 revenue is not provided by other sources. The aggregate annual
18 assessment amount shall be allocated based upon a formula to be
19 determined by the commission, which shall promulgate a rule
20 binding upon all member states.

21 N. The commission shall not incur obligations of
22 any kind prior to securing the funds adequate to meet the
23 obligations; nor shall the commission pledge the credit of any
24 of the member states, except by and with the authority of the
25 member state.

.224227.1

underscored material = new
~~[bracketed material]~~ = delete

1 O. The commission shall keep accurate accounts of
2 all receipts and disbursements. The receipts and disbursements
3 of the commission shall be subject to the audit and accounting
4 procedures established under its bylaws. However, all receipts
5 and disbursements of funds handled by the commission shall be
6 audited yearly by a certified or licensed public accountant,
7 and the report of the audit shall be included in and become
8 part of the annual report of the commission.

9 **SECTION 10. [NEW MATERIAL] QUALIFIED IMMUNITY, DEFENSE**
10 **AND INDEMNIFICATION.--**

11 A. The members, officers, executive director,
12 employees and representatives of the commission shall be immune
13 from suit and liability, either personally or in their official
14 capacity, for any claim for damage to or loss of property or
15 personal injury or other civil liability caused by or arising
16 out of any actual or alleged act, error or omission that
17 occurred, or that the person against whom the claim is made had
18 a reasonable basis for believing occurred within the scope of
19 commission employment, duties or responsibilities; provided
20 that nothing in this subsection shall be construed to protect
21 any such person from suit or liability for any damage, loss,
22 injury or liability caused by the intentional or willful or
23 wanton misconduct of that person.

24 B. The commission shall defend any member, officer,
25 executive director, employee or representative of the

underscored material = new
[bracketed material] = delete

1 commission in any civil action seeking to impose liability
2 arising out of any actual or alleged act, error or omission
3 that occurred within the scope of commission employment, duties
4 or responsibilities, or that the person against whom the claim
5 is made had a reasonable basis for believing occurred within
6 the scope of commission employment, duties or responsibilities;
7 provided that nothing in this section shall be construed to
8 prohibit that person from retaining counsel; and further
9 provided that the actual or alleged act, error or omission did
10 not result from that person's intentional or willful or wanton
11 misconduct.

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

23 SECTION 11. [NEW MATERIAL] DATA SYSTEM.--

24 A. The commission shall provide for the
25 development, maintenance and utilization of a coordinated

.224227.1

1 database and reporting system containing licensure, adverse
2 action and investigative information on all licensed
3 individuals in member states.

4 B. A member state shall submit a uniform data set
5 to the data system on all individuals to whom the compact is
6 applicable as required by the rules of the commission,
7 including:

- 8 (1) identifying information;
- 9 (2) licensure data;
- 10 (3) adverse actions against a license or
11 compact privilege;
- 12 (4) non-confidential information related to
13 alternative program participation;
- 14 (5) any denial of application for licensure,
15 and the reason for such denial;
- 16 (6) other information that may facilitate the
17 administration of the compact, as determined by the rules of
18 the commission; and
- 19 (7) current significant investigative
20 information.

21 C. Current significant investigative information
22 and other investigative information pertaining to a licensee in
23 any member state shall only be available to other member
24 states.

25 D. The commission shall promptly notify all member

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1 states of any adverse action taken against a licensee or an
2 individual applying for a license. Adverse action information
3 pertaining to a licensee in any member state will be available
4 to any other member state.

5 E. Member states contributing information to the
6 data system may designate information that may not be shared
7 with the public without the express permission of the
8 contributing state.

9 F. Any information submitted to the data system
10 that is subsequently required to be expunged by the laws of the
11 member state contributing the information shall be removed from
12 the data system.

13 SECTION 12. [NEW MATERIAL] RULEMAKING.--

14 A. The commission shall exercise its rulemaking
15 powers pursuant to the criteria set forth in this section and
16 the rules adopted thereunder. Rules and amendments shall
17 become binding as of the date specified in each rule or
18 amendment.

19 B. The commission shall promulgate reasonable rules
20 in order to effectively and efficiently achieve the purposes of
21 the compact. In the event the commission exercises its
22 rulemaking authority in a manner that is beyond the scope of
23 the purposes of the compact, such an action by the commission
24 shall be invalid and have no force and effect.

25 C. If a majority of the legislatures of the member

.224227.1

1 states rejects a rule, by enactment of a statute or resolution
2 in the same manner used to adopt the compact within four years
3 of the date of adoption of the rule, the rule shall have no
4 further force and effect in any member state.

5 D. Rules or amendments to the rules shall be
6 adopted at a regular or special meeting of the commission.

7 E. Prior to promulgation and adoption of a final
8 rule by the commission, and at least thirty days in advance of
9 the meeting at which the rule will be considered and voted
10 upon, the commission shall file a notice of proposed
11 rulemaking:

12 (1) on the website of the commission or other
13 publicly accessible platform; and

14 (2) on the website of each member state
15 occupational therapy licensing board or other publicly
16 accessible platform or the publication in which each state
17 would otherwise publish proposed rules.

18 F. The notice of proposed rulemaking shall include:

19 (1) the proposed time, date and location of
20 the meeting in which the rule will be considered and voted
21 upon;

22 (2) the text of the proposed rule or amendment
23 and the reason for the proposed rule;

24 (3) a request for comments on the proposed
25 rule from any interested person; and

underscoring material = new
~~[bracketed material] = delete~~

1 (4) the manner in which interested persons may
2 submit notice to the commission of their intention to attend
3 the public hearing and any written comments.

4 G. Prior to adoption of a proposed rule, the
5 commission shall allow persons to submit written data, facts,
6 opinions and arguments, which shall be made available to the
7 public.

8 H. The commission shall grant an opportunity for a
9 public hearing before it adopts a rule or amendment if a
10 hearing is requested by:

11 (1) at least twenty-five persons;

12 (2) a state or federal governmental
13 subdivision or agency; or

14 (3) an association or organization having at
15 least twenty-five members.

16 I. If a hearing is held on the proposed rule or
17 amendment, the commission shall publish the place, time and
18 date of the scheduled public hearing. If the hearing is held
19 via electronic means, the commission shall publish the
20 mechanism for access to the electronic hearing and the
21 procedure for hearings shall be conducted according to the
22 following provisions:

23 (1) all persons wishing to be heard at the
24 hearing shall notify the executive director of the commission
25 or other designated member in writing of their desire to appear

.224227.1

1 and testify at the hearing not less than five business days
2 before the scheduled date of the hearing;

3 (2) hearings shall be conducted in a manner
4 providing each person who wishes to comment a fair and
5 reasonable opportunity to comment orally or in writing;

6 (3) all hearings will be recorded. A copy of
7 the recording will be made available on request; and

8 (4) nothing in this section shall be construed
9 as requiring a separate hearing on each rule. Rules may be
10 grouped for the convenience of the commission at hearings
11 required by this section.

12 J. Following the scheduled hearing date, or by the
13 close of business on the scheduled hearing date if the hearing
14 was not held, the commission shall consider all written and
15 oral comments received.

16 K. If no written notice of intent to attend the
17 public hearing by interested parties is received, the
18 commission may proceed with promulgation of the proposed rule
19 without a public hearing.

20 L. The commission shall, by majority vote of all
21 members, take final action on the proposed rule and shall
22 determine the effective date of the rule, if any, based on the
23 rulemaking record and the full text of the rule.

24 M. Upon determination that an emergency exists, the
25 commission may consider and adopt an emergency rule without

1 prior notice, opportunity for comment or hearing; provided that
2 the usual rulemaking procedures provided in the compact and in
3 this section shall be retroactively applied to the rule as soon
4 as reasonably possible, but in no event later than ninety days
5 after the effective date of the rule. For the purposes of this
6 provision, an emergency rule is one that must be adopted
7 immediately in order to:

8 (1) meet an imminent threat to public health,
9 safety or welfare;

10 (2) prevent a loss of commission or member
11 state funds;

12 (3) meet a deadline for the promulgation of an
13 administrative rule that is established by federal law or rule;
14 or

15 (4) protect public health and safety.

16 N. The commission or an authorized committee of the
17 commission may direct revisions to a previously adopted rule or
18 amendment for purposes of correcting typographical errors,
19 errors in format, errors in consistency or grammatical errors.
20 Public notice of any revisions shall be posted on the website
21 of the commission. The revision shall be subject to challenge
22 by any person for a period of thirty days after posting. The
23 revision may be challenged only on grounds that the revision
24 results in a material change to a rule. A challenge shall be
25 made in writing and delivered to the chair of the commission

.224227.1

underscored material = new
~~[bracketed material] = delete~~

1 prior to the end of the notice period. If no challenge is
2 made, the revision shall take effect without further action.
3 If the revision is challenged, the revision may not take effect
4 without the approval of the commission.

5 SECTION 13. [NEW MATERIAL] OVERSIGHT, DISPUTE RESOLUTION,
6 AND ENFORCEMENT.--

7 A. The executive, legislative and judicial branches
8 of state government in each member state shall enforce the
9 compact and take all actions necessary and appropriate to
10 effectuate the compact's purposes and intent. The provisions
11 of the compact and the rules promulgated hereunder shall have
12 standing as statutory law.

13 B. All courts shall take judicial notice of the
14 compact and the rules in any judicial or administrative
15 proceeding in a member state pertaining to the subject matter
16 of the compact which may affect the powers, responsibilities or
17 actions of the commission. The commission shall be entitled to
18 receive service of process in any judicial or administrative
19 proceeding and shall have standing to intervene in such a
20 proceeding for all purposes. Failure to provide service of
21 process to the commission shall render a judgment or order void
22 as to the commission, the compact or promulgated rules.

23 C. If the commission determines that a member state
24 has defaulted in the performance of its obligations or
25 responsibilities under the compact or the promulgated rules,

.224227.1

1 the commission shall:

2 (1) provide written notice to the defaulting
3 state and other member states of the nature of the default, the
4 proposed means of curing the default or any other action to be
5 taken by the commission; and

6 (2) provide remedial training and specific
7 technical assistance regarding the default.

8 D. If a state in default fails to cure the default,
9 the defaulting state may be terminated from the compact upon an
10 affirmative vote of a majority of the member states, and all
11 rights, privileges and benefits conferred by the compact may be
12 terminated on the effective date of termination. A cure of the
13 default does not relieve the offending state of obligations or
14 liabilities incurred during the period of default.

15 E. Termination of membership in the compact shall
16 be imposed only after all other means of securing compliance
17 have been exhausted. Notice of intent to suspend or terminate
18 shall be given by the commission to the governor, the majority
19 and minority leaders of the defaulting state's legislature and
20 each of the member states.

21 F. A state that has been terminated is responsible
22 for all assessments, obligations and liabilities incurred
23 through the effective date of termination, including
24 obligations that extend beyond the effective date of
25 termination.

underscoring material = new
~~[bracketed material] = delete~~

1 G. The commission shall not bear any costs related
2 to a state that is found to be in default or that has been
3 terminated from the compact, unless agreed upon in writing
4 between the commission and the defaulting state.

5 H. The defaulting state may appeal the action of
6 the commission by petitioning the United States district court
7 for the District of Columbia or the federal district where the
8 commission has its principal offices. The prevailing member
9 shall be awarded all costs of such litigation, including
10 reasonable attorney fees.

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

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

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

21 L. By majority vote, the commission may initiate
22 legal action in the United States district court for the
23 District of Columbia or the federal district where the
24 commission has its principal offices against a member state in
25 default to enforce compliance with the provisions of the

.224227.1

underscored material = new
~~[bracketed material] = delete~~

1 compact and its promulgated rules and bylaws. The relief
2 sought may include both injunctive relief and damages. In the
3 event judicial enforcement is necessary, the prevailing member
4 shall be awarded all costs of such litigation, including
5 reasonable attorney fees.

6 M. The remedies provided in the compact shall not
7 be the exclusive remedies of the commission. The commission
8 may pursue any other remedies available under federal or state
9 law.

10 SECTION 14. [NEW MATERIAL] DATE OF IMPLEMENTATION OF THE
11 OCCUPATIONAL THERAPY LICENSURE INTERSTATE COMPACT AND
12 ASSOCIATED RULES, WITHDRAWAL AND AMENDMENT.--

13 A. The compact shall come into effect on the date
14 on which the compact statute is enacted into law in the tenth
15 member state. The provisions, which become effective at that
16 time, shall be limited to the powers granted to the commission
17 relating to assembly and the promulgation of rules.
18 Thereafter, the commission shall meet and exercise rulemaking
19 powers necessary to the implementation and administration of
20 the compact.

21 B. Any state that joins the compact subsequent to
22 the commission's initial adoption of the rules shall be subject
23 to the rules as they exist on the date on which the compact
24 becomes law in that state. Any rule that has been previously
25 adopted by the commission shall have the full force and effect

.224227.1

underscored material = new
[bracketed material] = delete

1 of law on the day the compact becomes law in that state.

2 C. Any member state may withdraw from the compact
3 by enacting a statute repealing the same.

4 D. A member state's withdrawal shall not take
5 effect until six months after enactment of the repealing
6 statute.

7 E. Withdrawal shall not affect the continuing
8 requirement of the withdrawing state's occupational therapy
9 licensing board to comply with the investigative and adverse
10 action reporting requirements of the compact prior to the
11 effective date of withdrawal.

12 F. Nothing contained in the compact shall be
13 construed to invalidate or prevent any occupational therapy
14 licensure agreement or other cooperative arrangement between a
15 member state and a nonmember state that does not conflict with
16 the provisions of the compact.

17 G. The compact may be amended by the member states.
18 No amendment to the compact shall become effective and binding
19 upon any member state until it is enacted into the laws of all
20 member states.

21 SECTION 15. [NEW MATERIAL] CONSTRUCTION AND
22 SEVERABILITY.--The compact shall be liberally construed so as
23 to effectuate the purposes of the compact. The provisions of
24 the compact shall be severable and if any phrase, clause,
25 sentence or provision of the compact is declared to be contrary

.224227.1

underscoring material = new
[bracketed material] = delete

1 to the constitution of any member state or of the United States
2 or the applicability thereof to any government, agency, person
3 or circumstance is held invalid, the validity of the remainder
4 of the compact and the applicability thereof to any government,
5 agency, person or circumstance shall not be affected thereby.
6 If the compact shall be held contrary to the constitution of
7 any member state, the compact shall remain in full force and
8 effect as to the remaining member states and in full force and
9 effect as to the member state affected as to all severable
10 matters.

11 SECTION 16. [NEW MATERIAL] BINDING EFFECT OF COMPACT AND
12 OTHER LAWS.--

13 A. A licensee providing occupational therapy in a
14 remote state under the compact privilege shall function within
15 the laws and regulations of the remote state.

16 B. Nothing in the compact prevents the enforcement
17 of any other law of a member state that is not inconsistent
18 with the compact.

19 C. Any laws in a member state in conflict with the
20 compact are superseded to the extent of the conflict.

21 D. Any lawful actions of the commission, including
22 all rules and bylaws promulgated by the commission, are binding
23 upon the member states.

24 E. All agreements between the commission and the
25 member states are binding in accordance with their terms.

.224227.1

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

F. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.