

By: Lucio

S.B. No. 458

A BILL TO BE ENTITLED

AN ACT

relating to the Occupational Therapy Licensure Compact;
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 454, Occupations Code, is amended by
adding Subchapter I to read as follows:

SUBCHAPTER I. OCCUPATIONAL THERAPY LICENSURE COMPACT

Sec. 454.401. OCCUPATIONAL THERAPY LICENSURE COMPACT. The
Occupational Therapy Licensure Compact is enacted and entered into
with all other jurisdictions that legally join in the compact,
which reads as follows:

OCCUPATIONAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate
practice of Occupational Therapy with the goal of improving public
access to Occupational Therapy services. The Practice of
Occupational Therapy occurs in the State where the patient/client
is located at the time of the patient/client encounter. The Compact
preserves the regulatory authority of States to protect public
health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Occupational Therapy services
by providing for the mutual recognition of other Member State
licenses;

1 B. Enhance the States' ability to protect the public's
2 health and safety;

3 C. Encourage the cooperation of Member States in regulating
4 multi-State Occupational Therapy Practice;

5 D. Support spouses of relocating military members;

6 E. Enhance the exchange of licensure, investigative, and
7 disciplinary information between Member States;

8 F. Allow a Remote State to hold a provider of services with a
9 Compact Privilege in that State accountable to that State's
10 practice standards; and

11 G. Facilitate the use of Telehealth technology in order to
12 increase access to Occupational Therapy services.

13 SECTION 2. DEFINITIONS

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

16 A. "Active Duty Military" means full-time duty status in the
17 active uniformed service of the United States, including members of
18 the National Guard and Reserve on active duty orders pursuant to 10
19 U.S.C. Chapter 1209 and Section 1211.

20 B. "Adverse Action" means any administrative, civil,
21 equitable, or criminal action permitted by a State's laws which is
22 imposed by a Licensing Board or other authority against an
23 Occupational Therapist or Occupational Therapy Assistant,
24 including actions against an individual's license or Compact
25 Privilege such as censure, revocation, suspension, probation,
26 monitoring of the Licensee, or restriction on the Licensee's
27 practice.

1 C. "Alternative Program" means a non-disciplinary
2 monitoring process approved by an Occupational Therapy Licensing
3 Board.

4 D. "Compact Privilege" means the authorization, which is
5 equivalent to a license, granted by a Remote State to allow a
6 Licensee from another Member State to practice as an Occupational
7 Therapist or practice as an Occupational Therapy Assistant in the
8 Remote State under its laws and rules. The Practice of Occupational
9 Therapy occurs in the Member State where the patient/client is
10 located at the time of the patient/client encounter.

11 E. "Continuing Competence/Education" means a requirement,
12 as a condition of license renewal, to provide evidence of
13 participation in, and/or completion of, educational and
14 professional activities relevant to practice or area of work.

15 F. "Current Significant Investigative Information" means
16 Investigative Information that a Licensing Board, after an inquiry
17 or investigation that includes notification and an opportunity for
18 the Occupational Therapist or Occupational Therapy Assistant to
19 respond, if required by State law, has reason to believe is not
20 groundless and, if proved true, would indicate more than a minor
21 infraction.

22 G. "Data System" means a repository of information about
23 Licensees, including but not limited to license status,
24 Investigative Information, Compact Privileges, and Adverse
25 Actions.

26 H. "Encumbered License" means a license in which an Adverse
27 Action restricts the Practice of Occupational Therapy by the

1 Licensee or said Adverse Action has been reported to the National
2 Practitioners Data Bank (NPDB).

3 I. "Executive Committee" means a group of directors elected
4 or appointed to act on behalf of, and within the powers granted to
5 them by, the Commission.

6 J. "Home State" means the Member State that is the
7 Licensee's Primary State of Residence.

8 K. "Impaired Practitioner" means individuals whose
9 professional practice is adversely affected by substance abuse,
10 addiction, or other health-related conditions.

11 L. "Investigative Information" means information, records,
12 and/or documents received or generated by an Occupational Therapy
13 Licensing Board pursuant to an investigation.

14 M. "Jurisprudence Requirement" means the assessment of an
15 individual's knowledge of the laws and rules governing the Practice
16 of Occupational Therapy in a State.

17 N. "Licensee" means an individual who currently holds an
18 authorization from the State to practice as an Occupational
19 Therapist or as an Occupational Therapy Assistant.

20 O. "Member State" means a State that has enacted the
21 Compact.

22 P. "Occupational Therapist" means an individual who is
23 licensed by a State to practice Occupational Therapy.

24 Q. "Occupational Therapy Assistant" means an individual who
25 is licensed by a State to assist in the Practice of Occupational
26 Therapy.

27 R. "Occupational Therapy," "Occupational Therapy

1 Practice," and the "Practice of Occupational Therapy" mean the care
2 and services provided by an Occupational Therapist or an
3 Occupational Therapy Assistant as set forth in the Member State's
4 statutes and regulations.

5 S. "Occupational Therapy Compact Commission" or
6 "Commission" means the national administrative body whose
7 membership consists of all States that have enacted the Compact.

8 T. "Occupational Therapy Licensing Board" or "Licensing
9 Board" means the agency of a State that is authorized to license and
10 regulate Occupational Therapists and Occupational Therapy
11 Assistants.

12 U. "Primary State of Residence" means the state (also known
13 as the Home State) in which an Occupational Therapist or
14 Occupational Therapy Assistant who is not Active Duty Military
15 declares a primary residence for legal purposes as verified by:
16 driver's license, federal income tax return, lease, deed, mortgage
17 or voter registration or other verifying documentation as further
18 defined by Commission Rules.

19 V. "Remote State" means a Member State other than the Home
20 State, where a Licensee is exercising or seeking to exercise the
21 Compact Privilege.

22 W. "Rule" means a regulation promulgated by the Commission
23 that has the force of law.

24 X. "State" means any state, commonwealth, district, or
25 territory of the United States of America that regulates the
26 Practice of Occupational Therapy.

27 Y. "Single-State License" means an Occupational Therapist

1 or Occupational Therapy Assistant license issued by a Member State
2 that authorizes practice only within the issuing State and does not
3 include a Compact Privilege in any other Member State.

4 Z. "Telehealth" means the application of telecommunication
5 technology to deliver Occupational Therapy services for
6 assessment, intervention and/or consultation.

7 SECTION 3. STATE PARTICIPATION IN THE COMPACT

8 A. To participate in the Compact, a Member State shall:

9 1. License Occupational Therapists and Occupational
10 Therapy Assistants

11 2. Participate fully in the Commission's Data System,
12 including but not limited to using the Commission's unique
13 identifier as defined in Rules of the Commission;

14 3. Have a mechanism in place for receiving and
15 investigating complaints about Licensees;

16 4. Notify the Commission, in compliance with the terms
17 of the Compact and Rules, of any Adverse Action or the availability
18 of Investigative Information regarding a Licensee;

19 5. Implement or utilize procedures for considering the
20 criminal history records of applicants for an initial Compact
21 Privilege. These procedures shall include the submission of
22 fingerprints or other biometric-based information by applicants
23 for the purpose of obtaining an applicant's criminal history record
24 information from the Federal Bureau of Investigation and the agency
25 responsible for retaining that State's criminal records;

26 a. A Member State shall, within a time frame
27 established by the Commission, require a criminal background check

1 for a Licensee seeking/applying for a Compact Privilege whose
2 Primary State of Residence is that Member State, by receiving the
3 results of the Federal Bureau of Investigation criminal record
4 search, and shall use the results in making licensure decisions.

5 b. Communication between a Member State, the
6 Commission and among Member States regarding the verification of
7 eligibility for licensure through the Compact shall not include any
8 information received from the Federal Bureau of Investigation
9 relating to a federal criminal records check performed by a Member
10 State under Public Law 92-544.

11 6. Comply with the Rules of the Commission;

12 7. Utilize only a recognized national examination as a
13 requirement for licensure pursuant to the Rules of the Commission;
14 and

15 8. Have Continuing Competence/Education requirements
16 as a condition for license renewal.

17 B. A Member State shall grant the Compact Privilege to a
18 Licensee holding a valid unencumbered license in another Member
19 State in accordance with the terms of the Compact and Rules.

20 C. Member States may charge a fee for granting a Compact
21 Privilege.

22 D. A Member State shall provide for the State's delegate to
23 attend all Occupational Therapy Compact Commission meetings.

24 E. Individuals not residing in a Member State shall continue
25 to be able to apply for a Member State's Single-State License as
26 provided under the laws of each Member State. However, the
27 Single-State License granted to these individuals shall not be

1 recognized as granting the Compact Privilege in any other Member
2 State.

3 F. Nothing in this Compact shall affect the requirements
4 established by a Member State for the issuance of a Single-State
5 License.

6 SECTION 4. COMPACT PRIVILEGE

7 A. To exercise the Compact Privilege under the terms and
8 provisions of the Compact, the Licensee shall:

9 1. Hold a license in the Home State;

10 2. Have a valid United States Social Security Number
11 or National Practitioner Identification number;

12 3. Have no encumbrance on any State license;

13 4. Be eligible for a Compact Privilege in any Member
14 State in accordance with Section 4D, F, G, and H;

15 5. Have paid all fines and completed all requirements
16 resulting from any Adverse Action against any license or Compact
17 Privilege, and two years have elapsed from the date of such
18 completion;

19 6. Notify the Commission that the Licensee is seeking
20 the Compact Privilege within a Remote State(s);

21 7. Pay any applicable fees, including any State fee,
22 for the Compact Privilege;

23 8. Complete a criminal background check in accordance
24 with Section 3A(5);

25 a. The Licensee shall be responsible for the
26 payment of any fee associated with the completion of a criminal
27 background check.

1 9. Meet any Jurisprudence Requirements established by
2 the Remote State(s) in which the Licensee is seeking a Compact
3 Privilege; and

4 10. Report to the Commission Adverse Action taken by
5 any non-Member State within 30 days from the date the Adverse Action
6 is taken.

7 B. The Compact Privilege is valid until the expiration date
8 of the Home State license. The Licensee must comply with the
9 requirements of Section 4A to maintain the Compact Privilege in the
10 Remote State.

11 C. A Licensee providing Occupational Therapy in a Remote
12 State under the Compact Privilege shall function within the laws
13 and regulations of the Remote State.

14 D. Occupational Therapy Assistants practicing in a Remote
15 State shall be supervised by an Occupational Therapist licensed or
16 holding a Compact Privilege in that Remote State.

17 E. A Licensee providing Occupational Therapy in a Remote
18 State is subject to that State's regulatory authority. A Remote
19 State may, in accordance with due process and that State's laws,
20 remove a Licensee's Compact Privilege in the Remote State for a
21 specific period of time, impose fines, and/or take any other
22 necessary actions to protect the health and safety of its citizens.
23 The Licensee may be ineligible for a Compact Privilege in any State
24 until the specific time for removal has passed and all fines are
25 paid.

26 F. If a Home State license is encumbered, the Licensee shall
27 lose the Compact Privilege in any Remote State until the following

1 occur:

- 2 1. The Home State license is no longer encumbered; and
3 2. Two years have elapsed from the date on which the
4 Home State license is no longer encumbered in accordance with
5 Section 4(F)(1).

6 G. Once an Encumbered License in the Home State is restored
7 to good standing, the Licensee must meet the requirements of
8 Section 4A to obtain a Compact Privilege in any Remote State.

9 H. If a Licensee's Compact Privilege in any Remote State is
10 removed, the individual may lose the Compact Privilege in any other
11 Remote State until the following occur:

- 12 1. The specific period of time for which the Compact
13 Privilege was removed has ended;
14 2. All fines have been paid and all conditions have
15 been met;
16 3. Two years have elapsed from the date of completing
17 requirements for 4(H)(1) and (2); and
18 4. The Compact Privileges are reinstated by the
19 Commission, and the compact Data System is updated to reflect
20 reinstatement.

21 I. If a Licensee's Compact Privilege in any Remote State is
22 removed due to an erroneous charge, privileges shall be restored
23 through the compact Data System.

24 J. Once the requirements of Section 4H have been met, the
25 license must meet the requirements in Section 4A to obtain a Compact
26 Privilege in a Remote State.

1 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT

2 PRIVILEGE

3 A. An Occupational Therapist or Occupational Therapy
4 Assistant may hold a Home State license, which allows for Compact
5 Privileges in Member States, in only one Member State at a time.

6 B. If an Occupational Therapist or Occupational Therapy
7 Assistant changes Primary State of Residence by moving between two
8 Member States:

9 1. The Occupational Therapist or Occupational Therapy
10 Assistant shall file an application for obtaining a new Home State
11 license by virtue of a Compact Privilege, pay all applicable fees,
12 and notify the current and new Home State in accordance with
13 applicable Rules adopted by the Commission.

14 2. Upon receipt of an application for obtaining a new
15 Home State license by virtue of compact privilege, the new Home
16 State shall verify that the Occupational Therapist or Occupational
17 Therapy Assistant meets the pertinent criteria outlined in Section
18 4 via the Data System, without need for primary source verification
19 except for:

20 a. an FBI fingerprint based criminal background
21 check if not previously performed or updated pursuant to applicable
22 Rules adopted by the Commission in accordance with Public Law
23 92-544;

24 b. other criminal background check as required by
25 the new Home State; and

26 c. submission of any requisite Jurisprudence
27 Requirements of the new Home State.

1 3. The former Home State shall convert the former Home
2 State license into a Compact Privilege once the new Home State has
3 activated the new Home State license in accordance with applicable
4 Rules adopted by the Commission.

5 4. Notwithstanding any other provision of this
6 Compact, if the Occupational Therapist or Occupational Therapy
7 Assistant cannot meet the criteria in Section 4, the new Home State
8 shall apply its requirements for issuing a new Single-State
9 License.

10 5. The Occupational Therapist or the Occupational
11 Therapy Assistant shall pay all applicable fees to the new Home
12 State in order to be issued a new Home State license.

13 C. If an Occupational Therapist or Occupational Therapy
14 Assistant changes Primary State of Residence by moving from a
15 Member State to a non-Member State, or from a non-Member State to a
16 Member State, the State criteria shall apply for issuance of a
17 Single-State License in the new State.

18 D. Nothing in this compact shall interfere with a Licensee's
19 ability to hold a Single-State License in multiple States; however,
20 for the purposes of this compact, a Licensee shall have only one
21 Home State license.

22 E. Nothing in this Compact shall affect the requirements
23 established by a Member State for the issuance of a Single-State
24 License.

25 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

26 A. Active Duty Military personnel, or their spouses, shall
27 designate a Home State where the individual has a current license in

1 good standing. The individual may retain the Home State designation
2 during the period the service member is on active duty. Subsequent
3 to designating a Home State, the individual shall only change their
4 Home State through application for licensure in the new State or
5 through the process described in Section 5.

6 SECTION 7. ADVERSE ACTIONS

7 A. A Home State shall have exclusive power to impose Adverse
8 Action against an Occupational Therapist's or Occupational Therapy
9 Assistant's license issued by the Home State.

10 B. In addition to the other powers conferred by State law, a
11 Remote State shall have the authority, in accordance with existing
12 State due process law, to:

13 1. Take Adverse Action against an Occupational
14 Therapist's or Occupational Therapy Assistant's Compact Privilege
15 within that Member State.

16 2. Issue subpoenas for both hearings and
17 investigations that require the attendance and testimony of
18 witnesses as well as the production of evidence. Subpoenas issued
19 by a Licensing Board in a Member State for the attendance and
20 testimony of witnesses or the production of evidence from another
21 Member State shall be enforced in the latter State by any court of
22 competent jurisdiction, according to the practice and procedure of
23 that court applicable to subpoenas issued in proceedings pending
24 before it. The issuing authority shall pay any witness fees, travel
25 expenses, mileage and other fees required by the service statutes
26 of the State in which the witnesses or evidence are located.

27 C. For purposes of taking Adverse Action, the Home State

1 shall give the same priority and effect to reported conduct
2 received from a Member State as it would if the conduct had occurred
3 within the Home State. In so doing, the Home State shall apply its
4 own State laws to determine appropriate action.

5 D. The Home State shall complete any pending investigations
6 of an Occupational Therapist or Occupational Therapy Assistant who
7 changes Primary State of Residence during the course of the
8 investigations. The Home State, where the investigations were
9 initiated, shall also have the authority to take appropriate
10 action(s) and shall promptly report the conclusions of the
11 investigations to the OT Compact Commission Data System. The
12 Occupational Therapy Compact Commission Data System administrator
13 shall promptly notify the new Home State of any Adverse Actions.

14 E. A Member State, if otherwise permitted by State law, may
15 recover from the affected Occupational Therapist or Occupational
16 Therapy Assistant the costs of investigations and disposition of
17 cases resulting from any Adverse Action taken against that
18 Occupational Therapist or Occupational Therapy Assistant.

19 F. A Member State may take Adverse Action based on the
20 factual findings of the Remote State, provided that the Member
21 State follows its own procedures for taking the Adverse Action.

22 G. Joint Investigations

23 1. 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
26 participate with other Member States in joint investigations of
27 Licensees.

1 2. Member States shall share any investigative,
2 litigation, or compliance materials in furtherance of any joint or
3 individual investigation initiated under the Compact.

4 H. If an Adverse Action is taken by the Home State against an
5 Occupational Therapist's or Occupational Therapy Assistant's
6 license, the Occupational Therapist's or Occupational Therapy
7 Assistant's Compact Privilege in all other Member States shall be
8 deactivated until all encumbrances have been removed from the State
9 license. All Home State disciplinary orders that impose Adverse
10 Action against an Occupational Therapist's or Occupational Therapy
11 Assistant's license shall include a Statement that the Occupational
12 Therapist's or Occupational Therapy Assistant's Compact Privilege
13 is deactivated in all Member States during the pendency of the
14 order.

15 I. If a Member State takes Adverse Action, it shall promptly
16 notify the administrator of the Data System. The administrator of
17 the Data System shall promptly notify the Home State of any Adverse
18 Actions by Remote States.

19 J. Nothing in this Compact shall override a Member State's
20 decision that participation in an Alternative Program may be used
21 in lieu of Adverse Action.

22 SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT

23 COMMISSION.

24 A. The Compact Member States hereby create and establish a
25 joint public agency known as the Occupational Therapy Compact
26 Commission:

27 1. The Commission is an instrumentality of the Compact

1 States.

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

8 3. Nothing in this Compact shall be construed to be a
9 waiver of sovereign immunity.

10 B. Membership, Voting, and Meetings

11 1. Each Member State shall have and be limited to one
12 (1) delegate selected by that Member State's Licensing Board.

13 2. The delegate shall be either:

14 a. A current member of the Licensing Board, who
15 is an Occupational Therapist, Occupational Therapy Assistant, or
16 public member; or

17 b. An administrator of the Licensing Board.

18 3. Any delegate may be removed or suspended from
19 office as provided by the law of the State from which the delegate
20 is appointed.

21 4. The Member State board shall fill any vacancy
22 occurring in the Commission within 90 days.

23 5. Each delegate shall be entitled to one (1) vote with
24 regard to the promulgation of Rules and creation of bylaws and shall
25 otherwise have an opportunity to participate in the business and
26 affairs of the Commission. A delegate shall vote in person or by
27 such other means as provided in the bylaws. The bylaws may provide

1 for delegates' participation in meetings by telephone or other
2 means of communication.

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

6 7. The Commission shall establish by Rule a term of
7 office for delegates.

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

10 1. Establish a Code of Ethics for the Commission;

11 2. Establish the fiscal year of the Commission;

12 3. Establish bylaws;

13 4. Maintain its financial records in accordance with
14 the bylaws;

15 5. Meet and take such actions as are consistent with
16 the provisions of this Compact and the bylaws;

17 6. Promulgate uniform Rules to facilitate and
18 coordinate implementation and administration of this Compact. The
19 Rules shall have the force and effect of law and shall be binding in
20 all Member States;

21 7. Bring and prosecute legal proceedings or actions in
22 the name of the Commission, provided that the standing of any State
23 Occupational Therapy Licensing Board to sue or be sued under
24 applicable law shall not be affected;

25 8. Purchase and maintain insurance and bonds;

26 9. Borrow, accept, or contract for services of
27 personnel, including, but not limited to, employees of a Member

1 State;

2 10. Hire employees, elect or appoint officers, fix
3 compensation, define duties, grant such individuals appropriate
4 authority to carry out the purposes of the Compact, and establish
5 the Commission's personnel policies and programs relating to
6 conflicts of interest, qualifications of personnel, and other
7 related personnel matters;

8 11. Accept any and all appropriate donations and
9 grants of money, equipment, supplies, materials and services, and
10 receive, utilize and dispose of the same; provided that at all times
11 the Commission shall avoid any appearance of impropriety and/or
12 conflict of interest;

13 12. Lease, purchase, accept appropriate gifts or
14 donations of, or otherwise own, hold, improve or use, any property,
15 real, personal or mixed; provided that at all times the Commission
16 shall avoid any appearance of impropriety;

17 13. Sell, convey, mortgage, pledge, lease, exchange,
18 abandon, or otherwise dispose of any property real, personal, or
19 mixed;

20 14. Establish a budget and make expenditures;

21 15. Borrow money;

22 16. Appoint committees, including standing committees
23 composed of members, State regulators, State legislators or their
24 representatives, and consumer representatives, and such other
25 interested persons as may be designated in this Compact and the
26 bylaws;

27 17. Provide and receive information from, and

1 cooperate with, law enforcement agencies;

2 18. Establish and elect an Executive Committee; and

3 19. Perform such other functions as may be necessary
4 or appropriate to achieve the purposes of this Compact consistent
5 with the State regulation of Occupational Therapy licensure and
6 practice.

7 D. The Executive Committee

8 The Executive Committee shall have the power to act on behalf of the
9 Commission according to the terms of this Compact.

10 1. The Executive Committee shall be composed of nine
11 members:

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

14 b. One ex-officio, nonvoting member from a
15 recognized national Occupational Therapy professional association;
16 and

17 c. One ex-officio, nonvoting member from a
18 recognized national Occupational Therapy certification
19 organization.

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

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

24 4. The Executive Committee shall meet at least
25 annually.

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

1 a. Recommend to the entire Commission changes to
2 the Rules or bylaws, changes to this Compact legislation, fees paid
3 by Compact Member States such as annual dues, and any Commission
4 Compact fee charged to Licensees for the Compact Privilege;

5 b. Ensure Compact administration services are
6 appropriately provided, contractual or otherwise;

7 c. Prepare and recommend the budget;

8 d. Maintain financial records on behalf of the
9 Commission;

10 e. Monitor Compact compliance of Member States
11 and provide compliance reports to the Commission;

12 f. Establish additional committees as necessary;
13 and

14 g. Perform other duties as provided in Rules or
15 bylaws.

16 E. Meetings of the Commission

17 1. All meetings shall be open to the public, and public
18 notice of meetings shall be given in the same manner as required
19 under the Rulemaking provisions in Section 10.

20 2. The Commission or the Executive Committee or other
21 committees of the Commission may convene in a closed, non-public
22 meeting if the Commission or Executive Committee or other
23 committees of the Commission must discuss:

24 a. Non-compliance of a Member State with its
25 obligations under the Compact;

26 b. The employment, compensation, discipline or
27 other matters, practices or procedures related to specific

1 employees or other matters related to the Commission's internal
2 personnel practices and procedures;

3 c. Current, threatened, or reasonably
4 anticipated litigation;

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

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

9 f. Disclosure of trade secrets or commercial or
10 financial information that is privileged or confidential;

11 g. Disclosure of information of a personal nature
12 where disclosure would constitute a clearly unwarranted invasion of
13 personal privacy;

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

16 i. Disclosure of information related to any
17 investigative reports prepared by or on behalf of or for use of the
18 Commission or other committee charged with responsibility of
19 investigation or determination of compliance issues pursuant to the
20 Compact; or

21 j. Matters specifically exempted from disclosure
22 by federal or Member State statute.

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

27 4. The Commission shall keep minutes that fully and

1 clearly describe all matters discussed in a meeting and shall
2 provide a full and accurate summary of actions taken, and the
3 reasons therefore, including a description of the views expressed.
4 All documents considered in connection with an action shall be
5 identified in such minutes. All minutes and documents of a closed
6 meeting shall remain under seal, subject to release by a majority
7 vote of the Commission or order of a court of competent
8 jurisdiction.

9 F. Financing of the Commission

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

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

16 3. The Commission may levy on and collect an annual
17 assessment from each Member State or impose fees on other parties to
18 cover the cost of the operations and activities of the Commission
19 and its staff, which must be in a total amount sufficient to cover
20 its annual budget as approved by the Commission each year for which
21 revenue is not provided by other sources. The aggregate annual
22 assessment amount shall be allocated based upon a formula to be
23 determined by the Commission, which shall promulgate a Rule binding
24 upon all Member States.

25 4. The Commission shall not incur obligations of any
26 kind prior to securing the funds adequate to meet the same; nor
27 shall the Commission pledge the credit of any of the Member States,

1 except by and with the authority of the Member State.

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

10 G. Qualified Immunity, Defense, and Indemnification

11 1. 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 out of
16 any actual or alleged act, error or omission that occurred, or that
17 the person against whom the claim is made had a reasonable basis for
18 believing occurred within the scope of Commission employment,
19 duties or responsibilities; provided that nothing in this paragraph
20 shall be construed to protect any such person from suit and/or
21 liability for any damage, loss, injury, or liability caused by the
22 intentional or willful or wanton misconduct of that person.

23 2. The Commission shall defend any member, officer,
24 executive director, employee, or representative of the Commission
25 in any civil action seeking to impose liability arising out of any
26 actual or alleged act, error, or omission that occurred within the
27 scope of Commission employment, duties, or responsibilities, or

1 that the person against whom the claim is made had a reasonable
2 basis for believing occurred within the scope of Commission
3 employment, duties, or responsibilities; provided that nothing
4 herein shall be construed to prohibit that person from retaining
5 his or her own counsel; and provided further, that the actual or
6 alleged act, error, or omission did not result from that person's
7 intentional or willful or wanton misconduct.

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

19 SECTION 9. DATA SYSTEM

20 A. The Commission shall provide for the development,
21 maintenance, and utilization of a coordinated database and
22 reporting system containing licensure, Adverse Action, and
23 Investigative Information on all licensed individuals in Member
24 States.

25 B. A Member State shall submit a uniform data set to the Data
26 System on all individuals to whom this Compact is applicable
27 (utilizing a unique identifier) as required by the Rules of the

1 Commission, including:

2 1. Identifying information;

3 2. Licensure data;

4 3. Adverse Actions against a license or Compact
5 Privilege;

6 4. Non-confidential information related to
7 Alternative Program participation;

8 5. Any denial of application for licensure, and the
9 reason(s) for such denial;

10 6. Other information that may facilitate the
11 administration of this Compact, as determined by the Rules of the
12 Commission; and

13 7. Current Significant Investigative Information.

14 C. Current Significant Investigative Information and other
15 Investigative Information pertaining to a Licensee in any Member
16 State will only be available to other Member States.

17 D. The Commission shall promptly notify all Member States of
18 any Adverse Action taken against a Licensee or an individual
19 applying for a license. Adverse Action information pertaining to a
20 Licensee in any Member State will be available to any other Member
21 State.

22 E. Member States contributing information to the Data
23 System may designate information that may not be shared with the
24 public without the express permission of the contributing State.

25 F. Any information submitted to the Data System that is
26 subsequently required to be expunged by the laws of the Member State
27 contributing the information shall be removed from the Data System.

SECTION 10. RULEMAKING

1
2 A. The Commission shall exercise its Rulemaking powers
3 pursuant to the criteria set forth in this Section and the Rules
4 adopted thereunder. Rules and amendments shall become binding as of
5 the date specified in each Rule or amendment.

6 B. The Commission shall promulgate reasonable rules in
7 order to effectively and efficiently achieve the purposes of the
8 Compact. Notwithstanding the foregoing, in the event the Commission
9 exercises its rulemaking authority in a manner that is beyond the
10 scope of the purposes of the Compact, or the powers granted
11 hereunder, then such an action by the Commission shall be invalid
12 and have no force and effect.

13 C. If a majority of the legislatures of the Member States
14 rejects a Rule, by enactment of a statute or resolution in the same
15 manner used to adopt the Compact within 4 years of the date of
16 adoption of the Rule, then such Rule shall have no further force and
17 effect in any Member State.

18 D. Rules or amendments to the Rules shall be adopted at a
19 regular or special meeting of the Commission.

20 E. Prior to promulgation and adoption of a final Rule or
21 Rules by the Commission, and at least thirty (30) days in advance of
22 the meeting at which the Rule will be considered and voted upon, the
23 Commission shall file a Notice of Proposed Rulemaking:

24 1. On the website of the Commission or other publicly
25 accessible platform; and

26 2. On the website of each Member State Occupational
27 Therapy Licensing Board or other publicly accessible platform or

1 the publication in which each State would otherwise publish
2 proposed Rules.

3 F. The Notice of Proposed Rulemaking shall include:

4 1. The proposed time, date, and location of the
5 meeting in which the Rule will be considered and voted upon;

6 2. The text of the proposed Rule or amendment and the
7 reason for the proposed Rule;

8 3. A request for comments on the proposed Rule from any
9 interested person; and

10 4. The manner in which interested persons may submit
11 notice to the Commission of their intention to attend the public
12 hearing and any written comments.

13 G. Prior to adoption of a proposed Rule, the Commission
14 shall allow persons to submit written data, facts, opinions, and
15 arguments, which shall be made available to the public.

16 H. The Commission shall grant an opportunity for a public
17 hearing before it adopts a Rule or amendment if a hearing is
18 requested by:

19 1. At least twenty five (25) persons;

20 2. A State or federal governmental subdivision or
21 agency; or

22 3. An association or organization having at least
23 twenty five (25) members.

24 I. If a hearing is held on the proposed Rule or amendment,
25 the Commission shall publish the place, time, and date of the
26 scheduled public hearing. If the hearing is held via electronic
27 means, the Commission shall publish the mechanism for access to the

1 electronic hearing.

2 1. All persons wishing to be heard at the hearing shall
3 notify the executive director of the Commission or other designated
4 member in writing of their desire to appear and testify at the
5 hearing not less than five (5) business days before the scheduled
6 date of the hearing.

7 2. Hearings shall be conducted in a manner providing
8 each person who wishes to comment a fair and reasonable opportunity
9 to comment orally or in writing.

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

12 4. Nothing in this section shall be construed as
13 requiring a separate hearing on each Rule. Rules may be grouped for
14 the convenience of the Commission at hearings required by this
15 section.

16 J. Following the scheduled hearing date, or by the close of
17 business on the scheduled hearing date if the hearing was not held,
18 the Commission shall consider all written and oral comments
19 received.

20 K. If no written notice of intent to attend the public
21 hearing by interested parties is received, the Commission may
22 proceed with promulgation of the proposed Rule without a public
23 hearing.

24 L. The Commission shall, by majority vote of all members,
25 take final action on the proposed Rule and shall determine the
26 effective date of the Rule, if any, based on the Rulemaking record
27 and the full text of the Rule.

1 M. Upon determination that an emergency exists, the
2 Commission may consider and adopt an emergency Rule without prior
3 notice, opportunity for comment, or hearing, provided that the
4 usual Rulemaking procedures provided in the Compact and in this
5 section shall be retroactively applied to the Rule as soon as
6 reasonably possible, in no event later than ninety (90) days after
7 the effective date of the Rule. For the purposes of this provision,
8 an emergency Rule is one that must be adopted immediately in order
9 to:

- 10 1. Meet an imminent threat to public health, safety,
11 or welfare;
12 2. Prevent a loss of Commission or Member State funds;
13 3. Meet a deadline for the promulgation of an
14 administrative Rule that is established by federal law or Rule; 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, errors
19 in format, errors in consistency, or grammatical errors. Public
20 notice of any revisions shall be posted on the website of the
21 Commission. The revision shall be subject to challenge by any
22 person for a period of thirty (30) days after posting. The revision
23 may be challenged only on grounds that the revision results in a
24 material change to a Rule. A challenge shall be made in writing and
25 delivered to the chair of the Commission prior to the end of the
26 notice period. If no challenge is made, the revision will take
27 effect without further action. If the revision is challenged, the

1 revision may not take effect without the approval of the
2 Commission.

3 SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

4 A. Oversight

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

11 2. All courts shall take judicial notice of the
12 Compact and the Rules in any judicial or administrative proceeding
13 in a Member State pertaining to the subject matter of this Compact
14 which may affect the powers, responsibilities, or actions of the
15 Commission.

16 3. The Commission shall be entitled to receive service
17 of process in any such proceeding, and shall have standing to
18 intervene in such a proceeding for all purposes. Failure to provide
19 service of process to the Commission shall render a judgment or
20 order void as to the Commission, this Compact, or promulgated
21 Rules.

22 B. Default, Technical Assistance, and Termination

23 1. If the Commission determines that a Member State
24 has defaulted in the performance of its obligations or
25 responsibilities under this Compact or the promulgated Rules, the
26 Commission shall:

27 a. Provide written notice to the defaulting State

1 and other Member States of the nature of the default, the proposed
2 means of curing the default and/or any other action to be taken by
3 the Commission; and

4 b. Provide remedial training and specific
5 technical assistance regarding the default.

6 2. If a State in default fails to cure the default, the
7 defaulting State may be terminated from the Compact upon an
8 affirmative vote of a majority of the Member States, and all rights,
9 privileges and benefits conferred by this Compact may be terminated
10 on the effective date of termination. A cure of the default does not
11 relieve the offending State of obligations or liabilities incurred
12 during the period of default.

13 3. Termination of membership in the Compact shall be
14 imposed only after all other means of securing compliance have been
15 exhausted. Notice of intent to suspend or terminate shall be given
16 by the Commission to the governor, the majority and minority
17 leaders of the defaulting State's legislature, and each of the
18 Member States.

19 4. A State that has been terminated is responsible for
20 all assessments, obligations, and liabilities incurred through the
21 effective date of termination, including obligations that extend
22 beyond the effective date of termination.

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

27 6. The defaulting State may appeal the action of the

1 Commission by petitioning the U.S. District Court for the District
2 of Columbia or the federal district where the Commission has its
3 principal offices. The prevailing member shall be awarded all costs
4 of such litigation, including reasonable attorney's fees.

5 C. Dispute Resolution

6 1. Upon request by a Member State, the Commission
7 shall attempt to resolve disputes related to the Compact that arise
8 among Member States and between member and non-Member States.

9 2. The Commission shall promulgate a Rule providing
10 for both mediation and binding dispute resolution for disputes as
11 appropriate.

12 D. Enforcement

13 1. The Commission, in the reasonable exercise of its
14 discretion, shall enforce the provisions and Rules of this Compact.

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

24 3. The remedies herein shall not be the exclusive
25 remedies of the Commission. The Commission may pursue any other
26 remedies available under federal or State law.

1 SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION
2 FOR OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES,
3 WITHDRAWAL, AND AMENDMENT

4 A. The Compact shall come into effect on the date on which
5 the Compact statute is enacted into law in the tenth Member State.
6 The provisions, which become effective at that time, shall be
7 limited to the powers granted to the Commission relating to
8 assembly and the promulgation of Rules. Thereafter, the Commission
9 shall meet and exercise Rulemaking powers necessary to the
10 implementation and administration of the Compact.

11 B. Any State that joins the Compact subsequent to the
12 Commission's initial adoption of the Rules shall be subject to the
13 Rules as they exist on the date on which the Compact becomes law in
14 that State. Any Rule that has been previously adopted by the
15 Commission shall have the full force and effect of law on the day
16 the Compact becomes law in that State.

17 C. Any Member State may withdraw from this Compact by
18 enacting a statute repealing the same.

19 1. A Member State's withdrawal shall not take effect
20 until six (6) months after enactment of the repealing statute.

21 2. Withdrawal shall not affect the continuing
22 requirement of the withdrawing State's Occupational Therapy
23 Licensing Board to comply with the investigative and Adverse Action
24 reporting requirements of this act prior to the effective date of
25 withdrawal.

26 D. Nothing contained in this Compact shall be construed to
27 invalidate or prevent any Occupational Therapy licensure agreement

1 or other cooperative arrangement between a Member State and a
2 non-Member State that does not conflict with the provisions of this
3 Compact.

4 E. This Compact may be amended by the Member States. No
5 amendment to this Compact shall become effective and binding upon
6 any Member State until it is enacted into the laws of all Member
7 States.

8 SECTION 13. CONSTRUCTION AND SEVERABILITY

9 This Compact shall be liberally construed so as to effectuate
10 the purposes thereof. The provisions of this Compact shall be
11 severable and if any phrase, clause, sentence or provision of this
12 Compact is declared to be contrary to the constitution of any Member
13 State or of the United States or the applicability thereof to any
14 government, agency, person, or circumstance is held invalid, the
15 validity of the remainder of this Compact and the applicability
16 thereof to any government, agency, person, or circumstance shall
17 not be affected thereby. If this Compact shall be held contrary to
18 the constitution of any Member State, the Compact shall remain in
19 full force and effect as to the remaining Member States and in full
20 force and effect as to the Member State affected as to all severable
21 matters.

22 SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

23 A. A Licensee providing Occupational Therapy in a Remote
24 State under the Compact Privilege shall function within the laws
25 and regulations of the Remote State.

26 B. Nothing herein prevents the enforcement of any other law
27 of a Member State that is not inconsistent with the Compact.

1 C. Any laws in a Member State in conflict with the Compact
2 are superseded to the extent of the conflict.

3 D. Any lawful actions of the Commission, including all Rules
4 and bylaws promulgated by the Commission, are binding upon the
5 Member States.

6 E. All agreements between the Commission and the Member
7 States are binding in accordance with their terms.

8 F. In the event any provision of the Compact exceeds the
9 constitutional limits imposed on the legislature of any Member
10 State, the provision shall be ineffective to the extent of the
11 conflict with the constitutional provision in question in that
12 Member State.

13 Sec. 454.402. ADMINISTRATION OF COMPACT. The board is the
14 Occupational Therapy Licensure Compact administrator for this
15 state.

16 Sec. 454.403. RULES. The board may adopt rules necessary to
17 implement this subchapter.

18 SECTION 2. This Act takes effect September 1, 2021.