

House Bill 268 (AS PASSED HOUSE AND SENATE)

By: Representatives Werkheiser of the 157th, Lott of the 122nd, Belton of the 112th, Bennett of the 94th, Hawkins of the 27th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 28 of Title 43 of the Official Code of Georgia Annotated, relating to
2 occupational therapists, so as to revise licensing provisions; to enter into an interstate
3 compact known as the "Occupational Therapy Licensure Compact"; to authorize the State
4 Board of Occupational Therapy to administer the compact in this state; to provide
5 definitions; to provide for conditions; to provide for eligibility; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 28 of Title 43 of the Official Code of Georgia Annotated, relating to occupational
10 therapists, is amended by revising paragraph (2) of Code Section 43-28-3, relating to
11 definitions relative to occupational therapists, as follows:

12 "(2) 'License' means a valid and current certificate of registration issued by the division
13 director or holding a valid Occupational Therapy Compact Privilege pursuant to Article 2
14 of this chapter."

SECTION 2.

15

16 Said chapter is further amended by revising Code Section 43-28-6, relating to the general
17 powers and duties of the board and continuing professional education, by adding two new
18 subsections to read as follows:

19 "(h) The board shall administer the Occupational Therapy Licensure Compact contained
20 in Article 2 of this chapter.

21 (i) The board is authorized to conduct national background checks by the submission of
22 fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information
23 Center; provided, however, that reports from such background checks shall not be shared
24 with entities outside the state."

25

SECTION 3.

26 Said chapter is further amended by revising subsection (a) of Code Section 43-28-9, relating
27 to qualifications of license applicants and waiver, as follows:

28 "(a) An applicant applying for a license as an occupational therapist or as an occupational
29 therapy assistant shall file an application, on forms provided by the board, showing to the
30 satisfaction of the board that such applicant:

31 (1) Is of good moral character;

32 (2) Has successfully completed the academic requirements of an accredited educational
33 program in occupational therapy recognized by the board, with concentration in
34 biological or physical science, psychology, and sociology and with education in selected
35 manual skills. For an occupational therapist or occupational therapy assistant, such a
36 program shall be accredited by a recognized accrediting agency acceptable to the board.
37 Other comparable educational programs such as those approved by the World Federation
38 of Occupational Therapists may be recognized by the board upon evaluation of detailed
39 program and course content. An applicant who is foreign trained shall complete an

40 academic program that is recognized or approved by the World Federation of
41 Occupational Therapists or such other credentialing entity recognized by the board;
42 (3) Has successfully completed a period of supervised field work experience approved
43 by the board; ~~and~~
44 (4) Has passed an examination approved by the board as provided for in Code Section
45 43-28-10; ~~and~~
46 (5) Has satisfactory results from a fingerprint record check report conducted by the
47 Georgia Crime Information Center and the Federal Bureau of Investigation, as
48 determined by the board. Application for the issuance of a license under this Code
49 section shall constitute express consent and authorization for the board to perform a
50 criminal background check. Each applicant who submits an application to the board for
51 licensure agrees to provide the board with any and all information necessary to run a
52 criminal background check, including, but not limited to, classifiable sets of fingerprints.
53 Such applicant shall be responsible for all fees associated with the performance of such
54 background check."

55 **SECTION 4.**

56 Said chapter is further amended by redesignating provisions of said chapter as Article 1, by
57 replacing "this chapter" with "this article" everywhere such term occurs in the new article,
58 and by adding a new article to read as follows:

59 "ARTICLE 2

60 43-28-20.

61 This article shall be known and may be cited as 'The Occupational Therapy Licensure
62 Compact Act.'

63 43-28-21.

64 The Occupational Therapy Licensure Compact is enacted into law and entered into by the
65 State of Georgia with any and all other states legally joining therein in the form
66 substantially as follows:

67 'OCCUPATIONAL THERAPY LICENSURE COMPACT

68 SECTION 1. PURPOSE

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

74 This Compact is designed to achieve the following objectives:

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

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

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

80 D. Support spouses of relocating military members;

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

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

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

87 SECTION 2. DEFINITIONS

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

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

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

98 C. "Alternative Program" means a non-disciplinary monitoring process approved by an
99 Occupational Therapy Licensing Board.

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

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

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

- 113 G. "Data System" means a repository of information about Licensees, including but not
114 limited to license status, Investigative Information, Compact Privileges, and Adverse
115 Actions.
- 116 H. "Encumbered License" means a license in which an Adverse Action restricts the
117 Practice of Occupational Therapy by the Licensee or said Adverse Action has been
118 reported to the National Practitioners Data Bank (NPDB).
- 119 I. "Executive Committee" means a group of directors elected or appointed to act on behalf
120 of, and within the powers granted to them by, the Commission.
- 121 J. "Home State" means the Member State that is the Licensee's Primary State of Residence.
- 122 K. "Impaired Practitioner" means individuals whose professional practice is adversely
123 affected by substance abuse, addiction, or other health-related conditions.
- 124 L. "Investigative Information" means information, records, and/or documents received or
125 generated by an Occupational Therapy Licensing Board pursuant to an investigation.
- 126 M. "Jurisprudence Requirement" means the assessment of an individual's knowledge of
127 the laws and rules governing the Practice of Occupational Therapy in a State.
- 128 N. "Licensee" means an individual who currently holds an authorization from the State to
129 practice as an Occupational Therapist or as an Occupational Therapy Assistant.
- 130 O. "Member State" means a State that has enacted the Compact.
- 131 P. "Occupational Therapist" means an individual who is licensed by a State to practice
132 Occupational Therapy.
- 133 Q. "Occupational Therapy Assistant" means an individual who is licensed by a State to
134 assist in the Practice of Occupational Therapy.
- 135 R. "Occupational Therapy," "Occupational Therapy Practice," and the "Practice of
136 Occupational Therapy" mean the care and services provided by an Occupational Therapist
137 or an Occupational Therapy Assistant as set forth in the Member State's statutes and
138 regulations.

139 S. "Occupational Therapy Compact Commission" or "Commission" means the national
140 administrative body whose membership consists of all States that have enacted the
141 Compact.

142 T. "Occupational Therapy Licensing Board" or "Licensing Board" means the agency of
143 a State that is authorized to license and regulate Occupational Therapists and Occupational
144 Therapy Assistants.

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

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

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

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

155 Y. "Single-State License" means an Occupational Therapist or Occupational Therapy
156 Assistant license issued by a Member State that authorizes practice only within the issuing
157 State and does not include a Compact Privilege in any other Member State.

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

160 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

162 1. License Occupational Therapists and Occupational Therapy Assistants

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

- 165 3. Have a mechanism in place for receiving and investigating complaints about
166 Licensees;
- 167 4. Notify the Commission, in compliance with the terms of the Compact and Rules, of
168 any Adverse Action or the availability of Investigative Information regarding a Licensee;
- 169 5. Implement or utilize procedures for considering the criminal history records of
170 applicants for an initial Compact Privilege. These procedures shall include the
171 submission of fingerprints or other biometric-based information by applicants for the
172 purpose of obtaining an applicant's criminal history record information from the Federal
173 Bureau of Investigation and the agency responsible for retaining that State's criminal
174 records;
- 175 a. A Member State shall, within a time frame established by the Commission, require
176 a criminal background check for a Licensee seeking/applying for a Compact Privilege
177 whose Primary State of Residence is that Member State, by receiving the results of the
178 Federal Bureau of Investigation criminal record search, and shall use the results in
179 making licensure decisions.
- 180 b. Communication between a Member State, the Commission and among Member
181 States regarding the verification of eligibility for licensure through the Compact shall
182 not include any information received from the Federal Bureau of Investigation relating
183 to a federal criminal records check performed by a Member State under Public
184 Law 92-544.
- 185 6. Comply with the Rules of the Commission;
- 186 7. Utilize only a recognized national examination as a requirement for licensure pursuant
187 to the Rules of the Commission; and
- 188 8. Have Continuing Competence/Education requirements as a condition for license
189 renewal.

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

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

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

196 E. Individuals not residing in a Member State shall continue to be able to apply for a
197 Member State's Single-State License as provided under the laws of each Member State.
198 However, the Single-State License granted to these individuals shall not be recognized as
199 granting the Compact Privilege in any other Member State.

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

202 SECTION 4. COMPACT PRIVILEGE

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

205 1. Hold a license in the Home State;

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

208 3. Have no encumbrance on any State license;

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

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

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

- 216 7. Pay any applicable fees, including any State fee, for the Compact Privilege;
217 8. Complete a criminal background check in accordance with Section 3A(5);
218 a. The Licensee shall be responsible for the payment of any fee associated with the
219 completion of a criminal background check.
220 9. Meet any Jurisprudence Requirements established by the Remote State(s) in which the
221 Licensee is seeking a Compact Privilege; and
222 10. Report to the Commission Adverse Action taken by any non-Member State within
223 30 days from the date the Adverse Action is taken.
224 B. The Compact Privilege is valid until the expiration date of the Home State license. The
225 Licensee must comply with the requirements of Section 4A to maintain the Compact
226 Privilege in the Remote State.
227 C. A Licensee providing Occupational Therapy in a Remote State under the Compact
228 Privilege shall function within the laws and regulations of the Remote State.
229 D. Occupational Therapy Assistants practicing in a Remote State shall be supervised by
230 an Occupational Therapist licensed or holding a Compact Privilege in that Remote State.
231 E. A Licensee providing Occupational Therapy in a Remote State is subject to that State's
232 regulatory authority. A Remote State may, in accordance with due process and that State's
233 laws, remove a Licensee's Compact Privilege in the Remote State for a specific period of
234 time, impose fines, and/or take any other necessary actions to protect the health and safety
235 of its citizens. The Licensee may be ineligible for a Compact Privilege in any State until
236 the specific time for removal has passed and all fines are paid.
237 F. If a Home State license is encumbered, the Licensee shall lose the Compact Privilege
238 in any Remote State until the following occur:
239 1. The Home State license is no longer encumbered; and
240 2. Two years have elapsed from the date on which the Home State license is no longer
241 encumbered in accordance with Section 4(F)(1).

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

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

247 1. The specific period of time for which the Compact Privilege was removed has ended;

248 2. All fines have been paid and all conditions have been met;

249 3. Two years have elapsed from the date of completing requirements for 4(H)(1) and (2);
250 and

251 4. The Compact Privileges are reinstated by the Commission, and the compact Data
252 System is updated to reflect reinstatement.

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

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

257 SECTION 5: OBTAINING A NEW HOME STATE LICENSE
258 BY VIRTUE OF COMPACT PRIVILEGE

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

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

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

- 268 2. Upon receipt of an application for obtaining a new Home State license by virtue of
269 compact privilege, the new Home State shall verify that the Occupational Therapist or
270 Occupational Therapy Assistant meets the pertinent criteria outlined in Section 4 via the
271 Data System, without need for primary source verification except for:
- 272 a. An FBI fingerprint based criminal background check if not previously performed or
273 updated pursuant to applicable Rules adopted by the Commission in accordance with
274 Public Law 92-544;
 - 275 b. Other criminal background check as required by the new Home State; and
 - 276 c. Submission of any requisite Jurisprudence Requirements of the new Home State.
- 277 3. The former Home State shall convert the former Home State license into a Compact
278 Privilege once the new Home State has activated the new Home State license in
279 accordance with applicable Rules adopted by the Commission.
- 280 4. Notwithstanding any other provision of this Compact, if the Occupational Therapist
281 or Occupational Therapy Assistant cannot meet the criteria in Section 4, the new Home
282 State shall apply its requirements for issuing a new Single-State License.
- 283 5. The Occupational Therapist or the Occupational Therapy Assistant shall pay all
284 applicable fees to the new Home State in order to be issued a new Home State license.
- 285 C. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State
286 of Residence by moving from a Member State to a non-Member State, or from a
287 non-Member State to a Member State, the State criteria shall apply for issuance of a
288 Single-State License in the new State.
- 289 D. Nothing in this compact shall interfere with a Licensee's ability to hold a Single-State
290 License in multiple States; however, for the purposes of this compact, a Licensee shall have
291 only one Home State license.
- 292 E. Nothing in this Compact shall affect the requirements established by a Member State
293 for the issuance of a Single-State License.

294 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

295 A. Active Duty Military personnel, or their spouses, shall designate a Home State where
296 the individual has a current license in good standing. The individual may retain the Home
297 State designation during the period the service member is on active duty. Subsequent to
298 designating a Home State, the individual shall only change their Home State through
299 application for licensure in the new State or through the process described in Section 5.

300 SECTION 7. ADVERSE ACTIONS

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

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

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

308 2. Issue subpoenas for both hearings and investigations that require the attendance and
309 testimony of witnesses as well as the production of evidence. Subpoenas issued by a
310 Licensing Board in a Member State for the attendance and testimony of witnesses or the
311 production of evidence from another Member State shall be enforced in the latter State
312 by any court of competent jurisdiction, according to the practice and procedure of that
313 court applicable to subpoenas issued in proceedings pending before it. The issuing
314 authority shall pay any witness fees, travel expenses, mileage and other fees required by
315 the service statutes of the State in which the witnesses or evidence are located.

316 C. For purposes of taking Adverse Action, the Home State shall give the same priority and
317 effect to reported conduct received from a Member State as it would if the conduct had
318 occurred within the Home State. In so doing, the Home State shall apply its own State laws
319 to determine appropriate action.

320 D. The Home State shall complete any pending investigations of an Occupational
321 Therapist or Occupational Therapy Assistant who changes Primary State of Residence
322 during the course of the investigations. The Home State, where the investigations were
323 initiated, shall also have the authority to take appropriate action(s) and shall promptly
324 report the conclusions of the investigations to the OT Compact Commission Data System.
325 The Occupational Therapy Compact Commission Data System administrator shall
326 promptly notify the new Home State of any Adverse Actions.

327 E. A Member State, if otherwise permitted by State law, may recover from the affected
328 Occupational Therapist or Occupational Therapy Assistant the costs of investigations and
329 disposition of cases resulting from any Adverse Action taken against that Occupational
330 Therapist or Occupational Therapy Assistant.

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

334 G. Joint Investigations

335 1. In addition to the authority granted to a Member State by its respective State
336 Occupational Therapy laws and regulations or other applicable State law, any Member
337 State may participate with other Member States in joint investigations of Licensees.

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

340 H. If an Adverse Action is taken by the Home State against an Occupational Therapist's
341 or Occupational Therapy Assistant's license, the Occupational Therapist's or Occupational
342 Therapy Assistant's Compact Privilege in all other Member States shall be deactivated until
343 all encumbrances have been removed from the State license. All Home State disciplinary
344 orders that impose Adverse Action against an Occupational Therapist's or Occupational
345 Therapy Assistant's license shall include a Statement that the Occupational Therapist's or

346 Occupational Therapy Assistant's Compact Privilege is deactivated in all Member States
347 during the pendency of the order.

348 I. If a Member State takes Adverse Action, it shall promptly notify the administrator of the
349 Data System. The administrator of the Data System shall promptly notify the Home State
350 of any Adverse Actions by Remote States.

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

353 SECTION 8. ESTABLISHMENT OF THE
354 OCCUPATIONAL THERAPY COMPACT COMMISSION.

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

357 1. The Commission is an instrumentality of the Compact States.

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

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

364 B. Membership, Voting, and Meetings

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

367 2. The delegate shall be either:

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

370 b. An administrator of the Licensing Board.

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

373 4. The Member State board shall fill any vacancy occurring in the Commission within
374 90 days.

375 5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of
376 Rules and creation of bylaws and shall otherwise have an opportunity to participate in the
377 business and affairs of the Commission. A delegate shall vote in person or by such other
378 means as provided in the bylaws. The bylaws may provide for delegates' participation
379 in meetings by telephone or other means of communication.

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

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

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

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

385 2. Establish the fiscal year of the Commission;

386 3. Establish bylaws;

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

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

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

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

396 8. Purchase and maintain insurance and bonds;

- 397 9. Borrow, accept, or contract for services of personnel, including, but not limited to,
398 employees of a Member State;
- 399 10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
400 individuals appropriate authority to carry out the purposes of the Compact, and establish
401 the Commission's personnel policies and programs relating to conflicts of interest,
402 qualifications of personnel, and other related personnel matters;
- 403 11. Accept any and all appropriate donations and grants of money, equipment, supplies,
404 materials and services, and receive, utilize and dispose of the same; provided that at all
405 times the Commission shall avoid any appearance of impropriety and/or conflict of
406 interest;
- 407 12. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold,
408 improve or use, any property, real, personal or mixed; provided that at all times the
409 Commission shall avoid any appearance of impropriety;
- 410 13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
411 any property real, personal, or mixed;
- 412 14. Establish a budget and make expenditures;
- 413 15. Borrow money;
- 414 16. Appoint committees, including standing committees composed of members, State
415 regulators, State legislators or their representatives, and consumer representatives, and
416 such other interested persons as may be designated in this Compact and the bylaws;
- 417 17. Provide and receive information from, and cooperate with, law enforcement
418 agencies;
- 419 18. Establish and elect an Executive Committee; and
- 420 19. Perform such other functions as may be necessary or appropriate to achieve the
421 purposes of this Compact consistent with the State regulation of Occupational Therapy
422 licensure and practice.

423 D. The Executive Committee

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

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

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

429 b. One ex-officio, nonvoting member from a recognized national Occupational
430 Therapy professional association; and

431 c. One ex-officio, nonvoting member from a recognized national Occupational Therapy
432 certification organization.

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

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

436 4. The Executive Committee shall meet at least annually.

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

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

441 b. Ensure Compact administration services are appropriately provided, contractual or
442 otherwise;

443 c. Prepare and recommend the budget;

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

445 e. Monitor Compact compliance of Member States and provide compliance reports to
446 the Commission;

447 f. Establish additional committees as necessary; and

448 g. Perform other duties as provided in Rules or bylaws.

449 E. Meetings of the Commission

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

452 2. The Commission or the Executive Committee or other committees of the Commission
453 may convene in a closed, non-public meeting if the Commission or Executive Committee
454 or other committees of the Commission must discuss:

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

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

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

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

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

463 f. Disclosure of trade secrets or commercial or financial information that is privileged
464 or confidential;

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

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

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

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

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

475 4. The Commission shall keep minutes that fully and clearly describe all matters
476 discussed in a meeting and shall provide a full and accurate summary of actions taken,
477 and the reasons therefore, including a description of the views expressed. All documents
478 considered in connection with an action shall be identified in such minutes. All minutes
479 and documents of a closed meeting shall remain under seal, subject to release by a
480 majority vote of the Commission or order of a court of competent jurisdiction.

481 F. Financing of the Commission

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

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

486 3. The Commission may levy on and collect an annual assessment from each Member
487 State or impose fees on other parties to cover the cost of the operations and activities of
488 the Commission and its staff, which must be in a total amount sufficient to cover its
489 annual budget as approved by the Commission each year for which revenue is not
490 provided by other sources. The aggregate annual assessment amount shall be allocated
491 based upon a formula to be determined by the Commission, which shall promulgate a
492 Rule binding upon all Member States.

493 4. The Commission shall not incur obligations of any kind prior to securing the funds
494 adequate to meet the same; nor shall the Commission pledge the credit of any of the
495 Member States, except by and with the authority of the Member State.

496 5. The Commission shall keep accurate accounts of all receipts and disbursements. The
497 receipts and disbursements of the Commission shall be subject to the audit and
498 accounting procedures established under its bylaws. However, all receipts and
499 disbursements of funds handled by the Commission shall be audited yearly by a certified
500 or licensed public accountant, and the report of the audit shall be included in and become
501 part of the annual report of the Commission.

502 G. Qualified Immunity, Defense, and Indemnification

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

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

521 3. The Commission shall indemnify and hold harmless any member, officer, executive
522 director, employee, or representative of the Commission for the amount of any settlement
523 or judgment obtained against that person arising out of any actual or alleged act, error or
524 omission that occurred within the scope of Commission employment, duties, or
525 responsibilities, or that such person had a reasonable basis for believing occurred within
526 the scope of Commission employment, duties, or responsibilities, provided that the actual
527 or alleged act, error, or omission did not result from the intentional or willful or wanton
528 misconduct of that person.

529 SECTION 9. DATA SYSTEM

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

533 B. A Member State shall submit a uniform data set to the Data System on all individuals
534 to whom this Compact is applicable (utilizing a unique identifier) as required by the Rules
535 of the Commission, including:

536 1. Identifying information;

537 2. Licensure data;

538 3. Adverse Actions against a license or Compact Privilege;

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

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

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

543 7. Current Significant Investigative Information.

544 C. Current Significant Investigative Information and other Investigative Information
545 pertaining to a Licensee in any Member State will only be available to other Member
546 States.

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

550 E. Member States contributing information to the Data System may designate information
551 that may not be shared with the public without the express permission of the contributing
552 State.

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

556 SECTION 10. RULEMAKING

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

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

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

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

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

- 574 1. On the website of the Commission or other publicly accessible platform; and
575 2. On the website of each Member State Occupational Therapy Licensing Board or other
576 publicly accessible platform or the publication in which each State would otherwise
577 publish proposed Rules.

578 F. The Notice of Proposed Rulemaking shall include:

- 579 1. The proposed time, date, and location of the meeting in which the Rule will be
580 considered and voted upon;
581 2. The text of the proposed Rule or amendment and the reason for the proposed Rule;
582 3. A request for comments on the proposed Rule from any interested person; and

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

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

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

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

590 2. A State or federal governmental subdivision or agency; or

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

592 I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish
593 the place, time, and date of the scheduled public hearing. If the hearing is held via
594 electronic means, the Commission shall publish the mechanism for access to the electronic
595 hearing.

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

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

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

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

607 J. Following the scheduled hearing date, or by the close of business on the scheduled
608 hearing date if the hearing was not held, the Commission shall consider all written and oral
609 comments received.

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

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

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

- 622 1. Meet an imminent threat to public health, safety, or welfare;
- 623 2. Prevent a loss of Commission or Member State funds;
- 624 3. Meet a deadline for the promulgation of an administrative Rule that is established by
625 federal law or Rule; or
- 626 4. Protect public health and safety.

627 N. The Commission or an authorized committee of the Commission may direct revisions
628 to a previously adopted Rule or amendment for purposes of correcting typographical errors,
629 errors in format, errors in consistency, or grammatical errors. Public notice of any
630 revisions shall be posted on the website of the Commission. The revision shall be subject
631 to challenge by any person for a period of thirty (30) days after posting. The revision may
632 be challenged only on grounds that the revision results in a material change to a Rule. A
633 challenge shall be made in writing and delivered to the chair of the Commission prior to
634 the end of the notice period. If no challenge is made, the revision will take effect without
635 further action. If the revision is challenged, the revision may not take effect without the
636 approval of the Commission.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION,
AND ENFORCEMENT

A. Oversight

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

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

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

B. Default, Technical Assistance, and Termination

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

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

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

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

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

668 4. A State that has been terminated is responsible for all assessments, obligations, and
669 liabilities incurred through the effective date of termination, including obligations that
670 extend beyond the effective date of termination.

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

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

678 C. Dispute Resolution

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

682 2. The Commission shall promulgate a Rule providing for both mediation and binding
683 dispute resolution for disputes as appropriate.

684 D. Enforcement

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

687 2. By majority vote, the Commission may initiate legal action in the United States
688 District Court for the District of Columbia or the federal district where the Commission
689 has its principal offices against a Member State in default to enforce compliance with the
690 provisions of the Compact and its promulgated Rules and bylaws. The relief sought may

691 include both injunctive relief and damages. In the event judicial enforcement is
692 necessary, the prevailing member shall be awarded all costs of such litigation, including
693 reasonable attorney's fees.

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

696 SECTION 12. DATE OF IMPLEMENTATION OF THE
697 INTERSTATE COMMISSION FOR OCCUPATIONAL THERAPY PRACTICE
698 AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

699 A. The Compact shall come into effect on the date on which the Compact statute is
700 enacted into law in the tenth Member State. The provisions, which become effective at that
701 time, shall be limited to the powers granted to the Commission relating to assembly and the
702 promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking
703 powers necessary to the implementation and administration of the Compact.

704 B. Any State that joins the Compact subsequent to the Commission's initial adoption of
705 the Rules shall be subject to the Rules as they exist on the date on which the Compact
706 becomes law in that State. Any Rule that has been previously adopted by the Commission
707 shall have the full force and effect of law on the day the Compact becomes law in that
708 State.

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

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

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

716 D. Nothing contained in this Compact shall be construed to invalidate or prevent any
717 Occupational Therapy licensure agreement or other cooperative arrangement between a
718 Member State and a non-Member State that does not conflict with the provisions of this
719 Compact.

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

723 SECTION 13. CONSTRUCTION AND SEVERABILITY

724 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
725 provisions of this Compact shall be severable and if any phrase, clause, sentence or provision
726 of this Compact is declared to be contrary to the constitution of any Member State or of the
727 United States or the applicability thereof to any government, agency, person, or circumstance
728 is held invalid, the validity of the remainder of this Compact and the applicability thereof to
729 any government, agency, person, or circumstance shall not be affected thereby. If this
730 Compact shall be held contrary to the constitution of any Member State, the Compact shall
731 remain in full force and effect as to the remaining Member States and in full force and effect
732 as to the Member State affected as to all severable matters.

733 SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

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

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

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

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

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

744 F. In the event any provision of the Compact exceeds the constitutional limits imposed on
745 the legislature of any Member State, the provision shall be ineffective to the extent of the
746 conflict with the constitutional provision in question in that Member State."

747 **SECTION 5.**

748 All laws and parts of laws in conflict with this Act are repealed.