

HOUSE BILL No. 2533

By Committee on Health and Human Services

Requested by William Wilk on behalf of the Kansas Chamber of Commerce

1-23

1 AN ACT concerning health professions and practices; relating to the
2 practice of occupational therapy; enacting the occupational therapy
3 licensure compact to provide interstate practice privileges to
4 occupational therapists and occupational therapy assistants.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. This section shall be known and may be cited as the
8 occupational therapy licensure compact.

ARTICLE 1 – PURPOSE

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

17 (b) This compact is designed to achieve the following objectives:

18 (1) Increase public access to occupational therapy services by
19 providing for the mutual recognition of other member state licenses;

20 (2) enhance the states' ability to protect the public's health and safety;

21 (3) encourage the cooperation of member states in regulating multi-
22 state occupational therapy practice;

23 (4) support spouses of relocating military members;

24 (5) enhance the exchange of licensure, investigative and disciplinary
25 information between member states;

26 (6) allow a remote state to hold a provider of services with a compact
27 privilege in that state that is accountable to that state's practice standards;
28 and

29 (7) facilitate the use of telehealth technology in order to increase
30 access to occupational therapy services.

ARTICLE 2 – DEFINITIONS

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

34 (a) "Active duty military" means full-time duty status in the active
35 uniformed service of the United States, including members of the national

1 guard and reserve on active duty orders pursuant to 10 U.S.C. chapter
2 1209 and 10 U.S.C. chapter 1211.

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

9 (c) "Alternative program" means a non-disciplinary monitoring
10 process approved by an occupational therapy licensing board.

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

17 (e) "Continuing competence or education" means a requirement, as a
18 condition of license renewal, to provide evidence of participation in or
19 completion of, educational and professional activities relevant to practice
20 or area of work.

21 (f) "Current significant investigative information" means
22 investigative information that a licensing board, after an inquiry or
23 investigation that includes notification and an opportunity for the
24 occupational therapist or occupational therapy assistant to respond, if
25 required by state law, has reason to believe is not groundless and, if proved
26 true, would indicate more than a minor infraction.

27 (g) "Data system" means a repository of information concerning
28 licensees, including, but not limited to, license status, investigative
29 information, compact privileges and adverse actions.

30 (h) "Encumbered license" means a license in which an adverse action
31 restricts the practice of occupational therapy by the licensee or such
32 adverse action has been reported to the national practitioner data bank
33 (NPDB).

34 (i) "Executive committee" means a group of directors elected or
35 appointed to act on behalf of and within the powers granted to them by the
36 commission.

37 (j) "Home state" means the member state that is the licensee's primary
38 state of residence.

39 (k) "Impaired practitioner" means individuals whose professional
40 practice is adversely affected by substance abuse, addiction or other
41 health-related conditions.

42 (l) "Investigative information" means information, records or
43 documents received or generated by an occupational therapy licensing

1 board pursuant to an investigation.

2 (m) "Jurisprudence requirement" means the assessment of an
3 individual's knowledge of the laws and rules governing the practice of
4 occupational therapy in a state.

5 (n) "Licensee" means an individual who currently holds an
6 authorization from the state to practice as an occupational therapist or as
7 an occupational therapy assistant.

8 (o) "Member state" means a state that has enacted the compact.

9 (p) "Occupational therapist" means an individual who is licensed by a
10 state to practice occupational therapy.

11 (q) "Occupational therapy assistant" means an individual who is
12 licensed by a state to assist in the practice of occupational therapy.

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

17 (s) "Occupational therapy compact commission" or "commission"
18 means the national administrative body whose membership consists of all
19 states that have enacted the compact.

20 (t) "Occupational therapy licensing board" or "licensing board"
21 means the agency of a state that is authorized to license and regulate
22 occupational therapists and occupational therapy assistants.

23 (u) "Primary state of residence" means the state, also known as the
24 home state, where an occupational therapist or occupational therapy
25 assistant who is not active-duty military declares a primary residence for
26 legal purposes as verified by driver's license, federal income tax return,
27 lease, deed, mortgage, voter registration or other verifying documentation
28 as further defined by commission rules.

29 (v) "Remote state" means a member state other than the home state
30 where a licensee is exercising or seeking to exercise the compact privilege.

31 (w) "Rule" means a regulation promulgated by the commission that
32 has the force of law.

33 (x) "State" means any state, commonwealth, district or territory of the
34 United States that regulates the practice of occupational therapy.

35 (y) "Single-state license" means an occupational therapist or
36 occupational therapy assistant license issued by a member state that
37 authorizes practice only within the issuing state and does not include a
38 compact privilege in any other member state.

39 (z) "Telehealth" means the application of telecommunication
40 technology to deliver occupational therapy services for assessment,
41 intervention or consultation.

42 ARTICLE 3 – STATE PARTICIPATION IN THE COMPACT

43 (a) To participate in the compact, a member state shall:

- 1 (1) License occupational therapists and occupational therapy
2 assistants;
- 3 (2) participate fully in the commission's data system, including, but
4 not limited to, using the commission's unique identifier as defined in rules
5 of the commission;
- 6 (3) have a mechanism in place for receiving and investigating
7 complaints concerning licensees;
- 8 (4) notify the commission, in compliance with the terms of the
9 compact and rules, of any adverse action or the availability of investigative
10 information regarding a licensee;
- 11 (5) implement or utilize procedures for considering the criminal
12 history records of applicants for an initial compact privilege. These
13 procedures shall include the submission of fingerprints or other biometric-
14 based information by applicants for the purpose of obtaining an applicant's
15 criminal history record information from the federal bureau of
16 investigation and the agency responsible for retaining that state's criminal
17 records;
- 18 (A) A member state shall, within a time frame established by the
19 commission, require a criminal background check for a licensee seeking or
20 applying for a compact privilege whose primary state of residence is in
21 that member state, by receiving the results of the federal bureau of
22 investigation criminal record search and shall use the results in making
23 licensure decisions.
- 24 (B) Communication between a member state, the commission and
25 among member states regarding the verification of eligibility for licensure
26 through the compact shall not include any information received from the
27 federal bureau of investigation relating to a federal criminal records check
28 performed by a member state under public law 92-544;
- 29 (6) comply with the rules of the commission;
- 30 (7) utilize only a recognized national examination as a requirement
31 for licensure pursuant to the rules of the commission; and
- 32 (8) have continuing competence or education requirements as a
33 condition for license renewal.
- 34 (b) A member state shall grant the compact privilege to a licensee
35 holding a valid unencumbered license in another member state in
36 accordance with the terms of the compact and rules.
- 37 (c) Member states may charge a fee for granting the compact
38 privilege.
- 39 (d) A member state shall provide for the state's delegate to attend all
40 occupational therapy compact commission meetings.
- 41 (e) Individuals not residing in a member state shall continue to be
42 able to apply for a member state's single-state license as provided under
43 the laws of each member state. However, the single-state license granted to

1 these individuals shall not be recognized as granting the compact privilege
2 in any other member state.

3 (f) Nothing in this compact shall affect the requirements established
4 by a member state for the issuance of a single-state license.

5 **ARTICLE 4 – COMPACT PRIVILEGE**

6 (a) To exercise the compact privilege under the terms and provisions
7 of the compact, the licensee shall:

8 (1) Hold a license in the home state;

9 (2) have a valid United States social security number or national
10 practitioner identification number;

11 (3) have no encumbrance on any state license;

12 (4) be eligible for a compact privilege in any member state in
13 accordance with article 4(d), (f), (g) and (h);

14 (5) have paid all fines and completed all requirements resulting from
15 any adverse action against any license or compact privilege and two years
16 have elapsed from the date of such completion;

17 (6) notify the commission that the licensee is seeking the compact
18 privilege within a remote state;

19 (7) pay any applicable fees, including any state fee, for the compact
20 privilege;

21 (8) complete a criminal background check in accordance with article
22 3(a)(5), for which the licensee shall be responsible for the payment of any
23 fee associated with the completion of a criminal background check;

24 (9) meet any jurisprudence requirements established by the remote
25 state where the licensee is seeking a compact privilege; and

26 (10) report to the commission adverse action taken by any
27 nonmember state within 30 days from the date the adverse action is taken.

28 (b) The compact privilege is valid until the expiration date of the
29 home state license. The licensee shall comply with the requirements of
30 article 4(a) in order to maintain the compact privilege in the remote state.

31 (c) A licensee providing occupational therapy in a remote state under
32 the compact privilege shall function within the laws and regulations of the
33 remote state.

34 (d) Occupational therapy assistants practicing in a remote state shall
35 be supervised by an occupational therapist licensed or holding a compact
36 privilege in that remote state.

37 (e) A licensee providing occupational therapy in a remote state shall
38 be subject to that state's regulatory authority. A remote state may, in
39 accordance with due process and that state's laws, remove a licensee's
40 compact privilege in the remote state for a specific period of time, impose
41 fines or take any other necessary actions to protect the health and safety of
42 its citizens. The licensee may be ineligible for the compact privilege in any
43 state until the specific time for removal has passed and all fines have been

1 paid.

2 (f) If a home state license is encumbered, the licensee shall lose the
3 compact privilege in any remote state until the following occur:

4 (1) The home state license is no longer encumbered; and

5 (2) two years have elapsed from the date that the home state license is
6 no longer encumbered in accordance with article 4(f)(1).

7 (g) Once an encumbered license in the home state is restored to good
8 standing, the licensee shall meet the requirements of article 4(a) to obtain a
9 compact privilege in any remote state.

10 (h) If a licensee's compact privilege in any remote state is removed,
11 the individual may lose the compact privilege in any other remote state
12 until the following occur:

13 (1) The specific period of time when the compact privilege was
14 removed has ended;

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

16 (3) two years have elapsed from the date of completing requirements
17 for paragraphs (1) and (2);

18 (4) the compact privileges are reinstated by the commission; and

19 (5) the compact data system is updated to reflect reinstatement.

20 (i) If a licensee's compact privilege in any remote state is removed
21 due to an erroneous charge, privileges shall be restored through the
22 compact data system.

23 (j) Once the requirements of article 4(h) have been met, the licensee
24 shall meet the requirements in article 4(a) to obtain a compact privilege in
25 a remote state.

26 ARTICLE 5 – OBTAINING A NEW HOME STATE 27 LICENSE BY VIRTUE OF COMPACT PRIVILEGE

28 (a) An occupational therapist or occupational therapy assistant may
29 hold a home state license that allows for compact privileges in member
30 states in only one member state at a time.

31 (b) If an occupational therapist or occupational therapy assistant
32 changes primary state of residence by moving between two member states:

33 (1) The occupational therapist or occupational therapy assistant shall
34 file an application for obtaining a new home state license by virtue of a
35 compact privilege, pay all applicable fees and notify the current and new
36 home state in accordance with applicable rules adopted by the
37 commission;

38 (2) upon receipt of an application for obtaining a new home state
39 license by virtue of compact privilege, the new home state shall verify that
40 the occupational therapist or occupational therapy assistant meets the
41 pertinent criteria outlined in article 4 via the data system without need for
42 primary source verification, except for:

43 (A) A federal bureau of investigation fingerprint-based criminal

1 background check if not previously performed or updated pursuant to
2 applicable rules adopted by the commission in accordance with public law
3 92-544; and

4 (B) other criminal background check as required by the new home
5 state;

6 (3) the occupational therapist or occupational therapy assistant shall
7 submit to any requisite jurisprudence requirements of the new home state;

8 (4) the former home state shall convert the former home state license
9 into a compact privilege once the new home state has activated the new
10 home state license in accordance with applicable rules adopted by the
11 commission;

12 (5) notwithstanding any other provision of this compact, if the
13 occupational therapist or occupational therapy assistant cannot meet the
14 criteria in article 4, the new home state shall apply its requirements for
15 issuing a new single-state license; and

16 (6) the occupational therapist or the occupational therapy assistant
17 shall pay all applicable fees to the new home state to be issued a new home
18 state license.

19 (c) If an occupational therapist or occupational therapy assistant
20 changes primary state of residence by moving from a member state to a
21 nonmember state or from a nonmember state to a member state, the state
22 criteria shall apply for the issuance of a single-state license in the new
23 state.

24 (d) Nothing in this compact shall interfere with a licensee's ability to
25 hold a single-state license in multiple states, except that, for the purposes
26 of this compact, a licensee shall have only one home state license.

27 (e) Nothing in this compact shall affect the requirements established
28 by a member state for the issuance of a single-state license.

ARTICLE 6 – ACTIVE-DUTY MILITARY PERSONNEL OR THEIR SPOUSES

31 Active-duty military personnel or their spouse shall designate a home
32 state where the individual has a current license in good standing. The
33 individual may retain the home state designation during the period the
34 service member is on active duty. Subsequent to designating a home state,
35 the individual shall only change their home state through application for
36 licensure in the new state or through the process described in article 5.

ARTICLE 7 – ADVERSE ACTIONS

38 (a) A home state shall have exclusive power to impose adverse action
39 against an occupational therapist's or occupational therapy assistant's
40 license issued by the home state.

41 (b) In addition to the other powers conferred by state law, a remote
42 state shall have the authority, in accordance with existing state due process
43 law, to:

1 (1) Take adverse action against an occupational therapist's or
2 occupational therapy assistant's compact privilege within that member
3 state; and

4 (2) issue subpoenas for both hearings and investigations that require
5 the attendance and testimony of witnesses as well as the production of
6 evidence. Subpoenas issued by a licensing board in a member state for the
7 attendance and testimony of witnesses or the production of evidence from
8 another member state shall be enforced in the latter state by any court of
9 competent jurisdiction, according to the practice and procedure of that
10 court applicable to subpoenas issued in proceedings pending before it. The
11 issuing authority shall pay any witness fees, travel expenses, mileage and
12 other fees required by the service statutes of the state where the witnesses
13 or evidence are located.

14 (c) For purposes of taking adverse action, the home state shall give
15 the same priority and effect to reported conduct received from a member
16 state as it would if the conduct had occurred within the home state. In so
17 doing, the home state shall apply its own state laws to determine
18 appropriate action.

19 (d) The home state shall complete any pending investigations of an
20 occupational therapist or occupational therapy assistant who changes
21 primary state of residence during the course of the investigations. The
22 home state, where the investigations were initiated, shall also have the
23 authority to take appropriate action and shall promptly report the
24 conclusions of the investigations to the occupational therapy compact
25 commission data system. The occupational therapist compact commission
26 data system administrator shall promptly notify the new home state of any
27 adverse actions.

28 (e) A member state, if otherwise permitted by state law, may recover
29 from the affected occupational therapist or occupational therapy assistant
30 the costs of investigations and disposition of cases resulting from any
31 adverse action taken against that occupational therapist or occupational
32 therapy assistant.

33 (f) A member state may take adverse action based on the factual
34 findings of the remote state if the member state follows its own procedures
35 for taking the adverse action.

36 (g) Joint investigations:

37 (1) In addition to the authority granted to a member state by its
38 respective state occupational therapy laws and regulations or other
39 applicable state law, any member state may participate with other member
40 states in joint investigations of licensees.

41 (2) Member states shall share any investigative, litigation or
42 compliance materials in furtherance of any joint or individual investigation
43 initiated under the compact.

1 (h) If an adverse action is taken by the home state against an
2 occupational therapist's or occupational therapy assistant's license, the
3 occupational therapist's or occupational therapy assistant's compact
4 privilege in all other member states shall be deactivated until all
5 encumbrances have been removed from the state license. All home state
6 disciplinary orders that impose adverse action against an occupational
7 therapist's or occupational therapy assistant's license shall include a
8 statement that the occupational therapist's or occupational therapy
9 assistant's compact privilege is deactivated in all member states during the
10 pendency of the order.

11 (i) If a member state takes adverse action, it shall promptly notify the
12 administrator of the data system. The administrator of the data system shall
13 promptly notify the home state of any adverse actions by remote states.

14 (j) Nothing in this compact shall override a member state's decision
15 that participation in an alternative program may be used in lieu of adverse
16 action.

17 ARTICLE 8 – ESTABLISHMENT OF THE OCCUPATIONAL 18 THERAPY COMPACT COMMISSION

19 (a) The compact member states hereby create and establish a joint
20 public agency known as the occupational therapy compact commission.

21 (1) The commission is an instrumentality of the compact states.

22 (2) Venue is proper and judicial proceedings by or against the
23 commission shall be brought solely and exclusively in a court of
24 competent jurisdiction where the principal office of the commission is
25 located. The commission may waive venue and jurisdictional defenses to
26 the extent it adopts or consents to participate in alternative dispute
27 resolution proceedings.

28 (3) Nothing in this compact shall be construed to be a waiver of
29 sovereign immunity.

30 (b) Membership, voting and meetings:

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

33 (2) The delegate shall be either:

34 (A) A current member of the licensing board who is an occupational
35 therapist, occupational therapy assistant or public member; or

36 (B) an administrator of the licensing board.

37 (3) Any delegate may be removed or suspended from office as
38 provided by the law of the state where the delegate is appointed.

39 (4) The member state board shall fill any vacancy occurring in the
40 commission within 90 days.

41 (5) Each delegate shall be entitled to one vote with regard to the
42 promulgation of rules and creation of bylaws and shall otherwise have an
43 opportunity to participate in the business and affairs of the commission. A

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

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

6 (7) The commission shall establish by rule a term of office for
7 delegates.

8 (c) The commission shall have the following powers and duties:

9 (1) Establish a code of ethics for the commission;

10 (2) establish the fiscal year of the commission;

11 (3) establish bylaws;

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

13 (5) meet and take such actions as are consistent with the provisions of
14 this compact and the bylaws;

15 (6) promulgate uniform rules to facilitate and coordinate
16 implementation and administration of this compact. The rules shall have
17 the force and effect of law and shall be binding in all member states;

18 (7) bring and prosecute legal proceedings or actions in the name of
19 the commission, except that the standing of any state occupational therapy
20 licensing board to sue or be sued under applicable law shall not be
21 affected;

22 (8) purchase and maintain insurance and bonds;

23 (9) borrow, accept or contract for services of personnel, including, but
24 not limited to, employees of a member state;

25 (10) hire employees, elect or appoint officers, fix compensation,
26 define duties, grant such individuals appropriate authority to carry out the
27 purposes of the compact and establish the commission's personnel policies
28 and programs relating to conflicts of interest, qualifications of personnel
29 and other related personnel matters;

30 (11) accept any and all appropriate donations and grants of money,
31 equipment, supplies, materials and services and receive, utilize and
32 dispose of the same except that at all times the commission shall avoid any
33 appearance of impropriety or conflict of interest;

34 (12) lease, purchase, accept appropriate gifts or donations of, or
35 otherwise own, hold, improve or use any property, real, personal or mixed
36 except that at all times the commission shall avoid any appearance of
37 impropriety;

38 (13) sell, convey, mortgage, pledge, lease, exchange, abandon or
39 otherwise dispose of any property, real, personal or mixed;

40 (14) establish a budget and make expenditures;

41 (15) borrow money;

42 (16) appoint committees, including standing committees composed of
43 members, state regulators, state legislators or their representatives and

1 consumer representatives and such other interested persons as may be
2 designated in this compact and the bylaws;

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

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

6 (19) perform such other functions as may be necessary or appropriate
7 to achieve the purposes of this compact, consistent with the state
8 regulation of occupational therapy licensure and practice.

9 (d) The executive committee:

10 (1) The executive committee shall have the power to act on behalf of
11 the commission according to the terms of this compact.

12 (2) The executive committee shall be composed of nine members, as
13 follows:

14 (A) Seven voting members who are elected by the commission from
15 the current membership of the commission;

16 (B) one ex officio, nonvoting member from a recognized national
17 occupational therapy professional association; and

18 (C) one ex officio, nonvoting member from a recognized national
19 occupational therapy certification organization.

20 (3) The ex officio members shall be selected by their respective
21 organizations.

22 (4) The commission may remove any member of the executive
23 committee as provided in bylaws.

24 (5) The executive committee shall meet at least annually.

25 (6) The executive committee shall have the following duties and
26 responsibilities:

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

31 (B) ensure that compact administration services are appropriately
32 provided, contractual or otherwise;

33 (C) prepare and recommend the budget;

34 (D) maintain financial records on behalf of the commission;

35 (E) monitor compact compliance of member states and provide
36 compliance reports to the commission;

37 (F) establish additional committees as necessary; and

38 (G) perform other duties as provided in rules or bylaws.

39 (e) Meetings of the commission:

40 (1) All meetings shall be open to the public, and public notice of
41 meetings shall be given in the same manner as required under the
42 rulemaking provisions in article 10.

43 (2) The commission or the executive committee or other committees

1 of the commission may convene in a closed, nonpublic meeting if the
2 commission or executive committee or other committees of the
3 commission must discuss:

4 (A) Noncompliance of a member state with its obligations under the
5 compact;

6 (B) the employment, compensation, discipline or other matters,
7 practices or procedures related to specific employees or other matters
8 related to the commission's internal personnel practices and procedures;

9 (C) current, threatened or reasonably anticipated litigation;

10 (D) negotiation of contracts for the purchase, lease or sale of goods,
11 services or real estate;

12 (E) accusing any person of a crime or formally censuring any person;

13 (F) disclosure of trade secrets or commercial or financial information
14 that is privileged or confidential;

15 (G) disclosure of information of a personal nature where disclosure
16 would constitute a clearly unwarranted invasion of personal privacy;

17 (H) disclosure of investigative records compiled for law enforcement
18 purposes;

19 (I) disclosure of information related to any investigative reports
20 prepared by or on behalf of or for use of the commission or other
21 committee charged with the responsibility of investigation or
22 determination of compliance issues pursuant to the compact; or

23 (J) matters specifically exempted from disclosure by federal or
24 member state statute.

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

29 (4) The commission shall keep minutes that fully and clearly describe
30 all matters discussed in a meeting and shall provide a full and accurate
31 summary of actions taken and the reasons therefor, including a description
32 of the views expressed. All documents considered in connection with an
33 action shall be identified in such minutes. All minutes and documents of a
34 closed meeting shall remain under seal, subject to release by a majority
35 vote of the commission or order of a court of competent jurisdiction.

36 (f) Financing of the commission:

37 (1) The commission shall pay or provide for the payment of the
38 reasonable expenses of its establishment, organization and ongoing
39 activities.

40 (2) The commission may accept any and all appropriate revenue
41 sources, donations and grants of money, equipment, supplies, materials
42 and services.

43 (3) The commission may levy on and collect an annual assessment

1 from each member state or impose fees on other parties to cover the cost
2 of the operations and activities of the commission and its staff that shall be
3 in a total amount sufficient to cover its annual budget as approved by the
4 commission each year for which revenue is not provided by other sources.
5 The aggregate annual assessment amount shall be allocated based upon a
6 formula to be determined by the commission, which shall promulgate a
7 rule binding upon all member states.

8 (4) The commission shall not incur obligations of any kind prior to
9 securing the funds adequate to meet the same nor shall the commission
10 pledge the credit of any of the member states except by and with the
11 authority of the member state.

12 (5) The commission shall keep accurate accounts of all receipts and
13 disbursements. The receipts and disbursements of the commission shall be
14 subject to the audit and accounting procedures established under its
15 bylaws. All receipts and disbursements of funds handled by the
16 commission shall be audited yearly by a certified or licensed public
17 accountant, and the report of the audit shall be included in and become
18 part of the annual report of the commission.

19 (g) Qualified immunity, defense and indemnification:

20 (1) The members, officers, executive director, employees and
21 representatives of the commission shall be immune from suit and liability,
22 either personally or in their official capacity, for any claim for damage to
23 or loss of property or personal injury or other civil liability caused by or
24 arising out of any actual or alleged act, error or omission that occurred, or
25 that the person against whom the claim is made had a reasonable basis for
26 believing occurred within the scope of commission employment, duties or
27 responsibilities, except that nothing in this paragraph shall be construed to
28 protect any such person from suit or liability for any damage, loss, injury
29 or liability caused by the intentional or willful or wanton misconduct of
30 that person.

31 (2) The commission shall defend any member, officer, executive
32 director, employee or representative of the commission in any civil action
33 seeking to impose liability arising out of any actual or alleged act, error or
34 omission that occurred within the scope of commission employment,
35 duties or responsibilities or that the person against whom the claim is
36 made had a reasonable basis for believing occurred within the scope of
37 commission employment, duties or responsibilities, except that nothing
38 herein shall be construed to prohibit that person from retaining such
39 person's counsel, provided that the actual or alleged act, error or omission
40 did not result from that person's intentional or willful or wanton
41 misconduct.

42 (3) The commission shall indemnify and hold harmless any member,
43 officer, executive director, employee or representative of the commission

1 for the amount of any settlement or judgment obtained against that person
2 arising out of any actual or alleged act, error or omission that occurred
3 within the scope of commission employment, duties or responsibilities or
4 that such person had a reasonable basis for believing occurred within the
5 scope of commission employment, duties or responsibilities if the actual or
6 alleged act, error or omission did not result from the intentional or willful
7 or wanton misconduct of that person.

8 ARTICLE 9 – DATA SYSTEM

9 (a) The commission shall provide for the development, maintenance
10 and utilization of a coordinated database and reporting system containing
11 licensure, adverse action and investigative information on all licensed
12 individuals in member states.

13 (b) A member state shall submit a uniform data set to the data system
14 on all individuals to whom this compact is applicable, utilizing a unique
15 identifier, as required by the rules of the commission, including:

16 (1) Identifying information;

17 (2) licensure data;

18 (3) adverse actions against a license or compact privilege;

19 (4) nonconfidential information relating to alternative program
20 participation;

21 (5) any denial of application for licensure and the reason for such
22 denial;

23 (6) other information that may facilitate the administration of this
24 compact, as determined by the rules of the commission; and

25 (7) current significant investigative information.

26 (c) Current significant investigative information and other
27 investigative information pertaining to a licensee in any member state shall
28 only be available to other member states.

29 (d) The commission shall promptly notify all member states of any
30 adverse action taken against a licensee or an individual applying for a
31 license. Adverse action information pertaining to a licensee in any member
32 state shall be available to any other member state.

33 (e) Member states contributing information to the data system may
34 designate information that shall not be shared with the public without the
35 express permission of the contributing state.

36 (f) Any information submitted to the data system that is subsequently
37 required to be expunged by the laws of the member state contributing the
38 information shall be removed from the data system.

39 ARTICLE 10 – RULEMAKING

40 (a) The commission shall exercise its rulemaking powers pursuant to
41 the criteria set forth in this article and the rules adopted thereunder. Rules
42 and amendments shall become binding as of the date specified in each rule
43 or amendment.

1 (b) The commission shall promulgate reasonable rules in order to
2 effectively and efficiently achieve the purposes of the compact.
3 Notwithstanding the foregoing, in the event that the commission exercises
4 its rulemaking authority in a manner that is beyond the scope of the
5 purposes of the compact, or the powers granted hereunder, then such an
6 action by the commission shall be invalid and have no force and effect.

7 (c) If a majority of the legislatures of the member states rejects a rule,
8 by enactment of a statute or resolution in the same manner used to adopt
9 the compact within 4 years of the date of adoption of the rule, then such
10 rule shall have no further force and effect in any member state.

11 (d) Rules or amendments to the rules shall be adopted at a regular or
12 special meeting of the commission.

13 (e) Prior to promulgation and adoption of a final rule or rules by the
14 commission and at least 30 days in advance of the meeting where the rule
15 will be considered and voted upon, the commission shall file a notice of
16 proposed rulemaking on the websites of:

17 (1) The commission or other publicly accessible platform; and
18 (2) each member state's occupational therapy licensing board or other
19 publicly accessible platform or the publication where each state would
20 otherwise publish proposed rules.

21 (f) The notice of proposed rulemaking shall include:

22 (1) The proposed time, date and location of the meeting where the
23 rule will be considered and voted upon;

24 (2) the text of the proposed rule or amendment and the reason for the
25 proposed rule;

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

28 (4) the manner that interested persons may submit notice to the
29 commission of their intention to attend the public hearing and any written
30 comments.

31 (g) Prior to adoption of a proposed rule, the commission shall allow
32 persons to submit written data, facts, opinions and arguments, which shall
33 be made available to the public.

34 (h) The commission shall grant an opportunity for a public hearing
35 before it adopts a rule or amendment if a hearing is requested by:

36 (1) At least 25 persons;

37 (2) a state or federal governmental subdivision or agency; or

38 (3) an association or organization having at least 25 members.

39 (i) If a hearing is held on the proposed rule or amendment, the
40 commission shall publish the place, time and date of the scheduled public
41 hearing. If the hearing is held via electronic means, the commission shall
42 publish the mechanism for access to the electronic hearing.

43 (1) All persons wishing to be heard at the hearing shall notify in

1 writing the executive director of the commission or other designated
2 member of their desire to appear and testify at the hearing within not less
3 than five business days before the scheduled date of the hearing.

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

7 (3) All hearings shall be recorded. A copy of the recording shall be
8 made available on request.

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

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

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

18 (l) The commission shall, by majority vote of all members, take final
19 action on the proposed rule and determine the effective date of the rule, if
20 any, based on the rulemaking record and the full text of the rule.

21 (m) Upon determination that an emergency exists, the commission
22 may consider and adopt an emergency rule without prior notice,
23 opportunity for comment or hearing, except that the usual rulemaking
24 procedures provided in the compact and in this section shall be
25 retroactively applied to the rule as soon as reasonably possible but in no
26 event later than 90 days after the effective date of the rule. For the
27 purposes of this provision, an emergency rule is one that shall be adopted
28 immediately in order to:

29 (1) Meet an imminent threat to public health, safety or welfare;
30 (2) prevent a loss of commission or member state funds;
31 (3) meet a deadline for the promulgation of an administrative rule that
32 is established by federal law or rule; or
33 (4) protect public health and safety.

34 (n) The commission or an authorized committee of the commission
35 may direct revisions to a previously adopted rule or amendment for
36 purposes of correcting typographical, formatting, consistency or
37 grammatical errors. Public notice of any revisions shall be posted on the
38 website of the commission. The revision shall be subject to challenge by
39 any person for a period of 30 days after posting. The revision may be
40 challenged only on grounds that the revision results in a material change to
41 a rule. A challenge shall be made in writing and delivered to the chair of
42 the commission prior to the end of the notice period. If no challenge is
43 made, the revision shall take effect without further action. If the revision is

1 challenged, the revision shall not take effect without the approval of the
2 commission.

ARTICLE 11 – OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

5 (a) Oversight:

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

11 (2) All courts shall take judicial notice of the compact and the rules in
12 any judicial or administrative proceeding in a member state pertaining to
13 the subject matter of this compact that may affect the powers,
14 responsibilities or actions of the commission.

15 (3) The commission shall be entitled to receive service of process in
16 any such proceeding and shall have standing to intervene in such a
17 proceeding for all purposes. Failure to provide service of process to the
18 commission shall render a judgment or order void as to the commission,
19 this compact or promulgated rules.

20 (b) Default, technical assistance and termination:

21 (1) If the commission determines that a member state has defaulted in
22 the performance of its obligations or responsibilities under this compact or
23 the promulgated rules, the commission shall:

24 (A) Provide written notice to the defaulting state and other member
25 states of the nature of the default, the proposed means of curing the default
26 or any other action to be taken by the commission; and

27 (B) provide remedial training and specific technical assistance
28 regarding the default.

29 (2) If a state in default fails to cure the default, the defaulting state
30 may be terminated from the compact upon an affirmative vote of a
31 majority of the member states, and all rights, privileges and benefits
32 conferred by this compact may be terminated on the effective date of
33 termination. A cure of the default does not relieve the offending state of
34 obligations or liabilities incurred during the period of default.

35 (3) Termination of membership in the compact shall be imposed only
36 after all other means of securing compliance have been exhausted. Notice
37 of intent to suspend or terminate shall be given by the commission to the
38 governor, the majority and minority leaders of the defaulting state's
39 legislature and each of the member states.

40 (4) A state that has been terminated is responsible for all assessments,
41 obligations and liabilities incurred through the effective date of
42 termination, including obligations that extend beyond the effective date of
43 termination.

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

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

9 (c) Dispute resolution:

10 (1) Upon request by a member state, the commission shall attempt to
11 resolve disputes related to the compact that arise among member states and
12 between member and nonmember states.

13 (2) The commission shall promulgate a rule providing for both
14 mediation and binding dispute resolution for disputes as appropriate.

15 (d) Enforcement:

16 (1) The commission, in the reasonable exercise of its discretion, shall
17 enforce the provisions and rules of this compact.

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

26 (3) The remedies herein shall not be the exclusive remedies of the
27 commission. The commission may pursue any other remedies available
28 under federal or state law.

29 ARTICLE 12 – DATE OF IMPLEMENTATION OF THE INTERSTATE
30 COMMISSION FOR OCCUPATIONAL THERAPY PRACTICE AND
31 ASSOCIATED RULES, WITHDRAWAL AND AMENDMENT

32 (a) The compact shall come into effect on the date that the compact
33 statute is enacted into law in the 10th member state. The provisions, which
34 become effective at that time, shall be limited to the powers granted to the
35 commission relating to assembly and the promulgation of rules. Thereafter,
36 the commission shall meet and exercise rulemaking powers necessary to
37 the implementation and administration of the compact.

38 (b) Any state that joins the compact after the commission's initial
39 adoption of the rules shall be subject to the rules as they exist on the date
40 on that the compact becomes law in that state. Any rule that has been
41 previously adopted by the commission shall have the full force and effect
42 of law on the day the compact becomes law in that state.

43 (c) Any member state may withdraw from this compact by enacting a

1 statute repealing the same.

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

4 (2) Withdrawal shall not affect the continuing requirement of the
5 withdrawing state's occupational therapy licensing board to comply with
6 the investigative and adverse action reporting requirements of this act prior
7 to the effective date of withdrawal.

8 (d) Nothing contained in this compact shall be construed to invalidate
9 or prevent any occupational therapy licensure agreement or other
10 cooperative arrangement between a member state and a nonmember state
11 that does not conflict with the provisions of this compact.

12 (e) This compact may be amended by the member states. No
13 amendment to this compact shall become effective and binding upon any
14 member state until it is enacted into the laws of all member states.

15 ARTICLE 13 – CONSTRUCTION AND SEVERABILITY

16 This compact shall be liberally construed so as to effectuate the
17 purposes thereof. The provisions of this compact shall be severable and if
18 any phrase, clause, sentence or provision of this compact is declared to be
19 contrary to the constitution of any member state or of the United States or
20 the applicability thereof to any government, agency, person or
21 circumstance is held invalid, the validity of the remainder of this compact
22 and the applicability thereof to any government, agency, person or
23 circumstance shall not be affected thereby. If this compact shall be held
24 contrary to the constitution of any member state, the compact shall remain
25 in full force and effect as to the remaining member states and in full force
26 and effect as to the member state affected as to all severable matters.

27 ARTICLE 14 – BINDING EFFECT OF COMPACT AND OTHER LAWS

28 (a) A licensee providing occupational therapy in a remote state under
29 the compact privilege shall function within the laws and regulations of the
30 remote state.

31 (b) Nothing herein shall prevent the enforcement of any other law of
32 a member state that is not inconsistent with the compact.

33 (c) Any laws in a member state in conflict with the compact shall be
34 superseded to the extent of the conflict.

35 (d) Any lawful actions of the commission, including all rules and
36 bylaws promulgated by the commission, shall be binding upon the member
37 states.

38 (e) All agreements between the commission and the member states
39 shall be binding in accordance with their terms.

40 (f) In the event that any provision of the compact exceeds the
41 constitutional limits imposed on the legislature of any member state, the
42 provision shall be ineffective to the extent of the conflict with the
43 constitutional provision in question in that member state.

1 Sec. 2. This act shall take effect and be in force from and after its
2 publication in the statute book.