

2024 -- H 7945

=====
LC005058
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

—————
A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- OCCUPATIONAL THERAPY
LICENSURE COMPACT

Introduced By: Representatives McNamara, Bennett, Alzate, Edwards, Potter, and
Ackerman

Date Introduced: March 05, 2024

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 93

4 OCCUPATIONAL THERAPY LICENSURE COMPACT

5 **5-93-1. Short title.**

6 This chapter shall be known and may be cited as the "Occupational Therapy Licensure
7 Compact"

8 **5-93-2. Legislative purpose.**

9 The purpose of this compact is to facilitate interstate practice of occupational therapy with
10 the goal of improving public access to occupational therapy services. The practice of occupational
11 therapy occurs in the state where the patient/client is located at the time of the patient/client
12 encounter. The compact preserves the regulatory authority of states to protect public health and
13 safety through the current system of state licensure. This compact is designed to achieve the
14 following objectives:

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

17 (2) Enhance the states' ability to protect the public's health and safety;

18 (3) Encourage the cooperation of member states in regulating multi-state occupational

1 therapy practice;

2 (4) Support spouses of relocating military members;

3 (5) Enhance the exchange of licensure, investigative, and disciplinary information between
4 member states;

5 (6) Allow a remote state to hold a provider of services with a compact privilege in that state
6 accountable to that state's practice standards; and

7 (7) Facilitate the use of telehealth technology in order to increase access to occupational
8 therapy services.

9 **5-93-3. Definitions.**

10 As used in this chapter, the following words and terms shall have the following meanings
11 unless the context shall clearly indicate another or different meaning or intent:

12 (1) "Active duty military" means full-time duty status in the active uniformed service of
13 the United States, including members of the National Guard and Reserve on active duty orders
14 pursuant to 10 U.S.C. ch. 1209 and 1211.

15 (2) "Adverse action" means any administrative, civil, equitable, or criminal action
16 permitted by a state's laws which is imposed by a licensing board or other authority against an
17 occupational therapist or occupational therapy assistant, including actions against an individual's
18 license or compact privilege such as censure, revocation, suspension, probation, monitoring of the
19 licensee, or restriction on the licensee's practice.

20 (3) "Alternative program" means a non-disciplinary monitoring process approved by an
21 occupational therapy licensing board.

22 (4) "Compact privilege" means the authorization, which is equivalent to a license, granted
23 by a remote state to allow a licensee from another member state to practice as an occupational
24 therapist or practice as an occupational therapy assistant in the remote state under its laws and rules.
25 The practice of occupational therapy occurs in the member state where the patient/client is located
26 at the time of the patient/client encounter.

27 (5) "Continuing competence" or "continuing education" means a requirement, as a
28 condition of license renewal, to provide evidence of participation in, or completion of, educational
29 and professional activities relevant to practice or area of work.

30 (6) "Current significant investigative information" means investigative information that a
31 licensing board, after an inquiry or investigation that includes notification and an opportunity for
32 the occupational therapist or occupational therapy assistant to respond, if required by Rhode Island
33 law, has reason to believe is not groundless and, if proved true, would indicate more than a minor
34 infraction.

1 (7) "Data system" means a repository of information about licensees including, but not
2 limited to, license status, investigative information, compact privileges, and adverse actions.

3 (8) "Encumbered license" means a license in which an adverse action restricts the practice
4 of occupational therapy by the licensee or said adverse action has been reported to the National
5 Practitioner Data Bank (NPDB).

6 (9) "Executive committee" means a group of directors elected or appointed to act on behalf
7 of, and within the powers granted to them by, the commission.

8 (10) "Home state" means the member state that is the licensee's primary state of residence.

9 (11) "Impaired practitioner" means individuals whose professional practice is adversely
10 affected by substance abuse, addiction, or other health-related conditions.

11 (12) "Investigative information" means information, records, or documents received or
12 generated by an occupational therapy licensing board pursuant to an investigation.

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

15 (14) "Licensee" means an individual who currently holds an authorization from the state to
16 practice as an occupational therapist or as an occupational therapy assistant.

17 (15) "Member state" means a state that has enacted the compact.

18 (16) "Occupational therapist" means an individual who is licensed by a state to practice
19 occupational therapy.

20 (17) "Occupational therapy assistant" means an individual who is licensed by a state to
21 assist in the practice of occupational therapy.

22 (18) "Occupational therapy," "occupational therapy practice," and the "practice of
23 occupational therapy" mean the care and services provided by an occupational therapist or an
24 occupational therapy assistant as set forth in the member state's statutes and regulations.

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

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

30 (21) "Primary state of residence" means the State of Rhode Island (also known as the home
31 state) in which an occupational therapist or occupational therapy assistant who is not active duty
32 military declares a primary residence for legal purposes as verified by: driver's license, federal
33 income tax return, lease, deed, mortgage or voter registration or other verifying documentation as
34 further defined by commission rules.

1 (22) "Remote state" means a member state other than the home state, where a licensee is
2 exercising or seeking to exercise the compact privilege.

3 (23) "Rule" means a regulation promulgated by the commission that has the force of law.

4 (24) "State" means any state, commonwealth, district, or territory of the United States of
5 America that regulates the practice of occupational therapy.

6 (25) "Single-state license" means an occupational therapist or occupational therapy
7 assistant license issued by a member state that authorizes practice only within the issuing state and
8 does not include a compact privilege in any other member state.

9 (26) "Telehealth" means the application of telecommunication technology to deliver
10 occupational therapy services for assessment, intervention and/or consultation.

11 **5-93-4. State participation in the compact.**

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

13 (1) License occupational therapists and occupational therapy assistants;

14 (2) Participate fully in the commission's data system including, but not limited to, using the
15 commission's unique identifier as defined in rules of the commission;

16 (3) Have a mechanism in place for receiving and investigating complaints about licensees;

17 (4) Notify the commission, in compliance with the terms of the compact and rules, of any
18 adverse action or the availability of investigative information regarding a licensee;

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

24 (i) A member state shall, within a time frame established by the commission, require a
25 criminal background check for a licensee seeking/applying for a compact privilege whose primary
26 state of residence is that member state, by receiving the results of the Federal Bureau of
27 Investigation criminal record search, and shall use the results in making licensure decisions.

28 (ii) Communication between a member state, the commission and among member states
29 regarding the verification of eligibility for licensure through the compact shall not include any
30 information received from the Federal Bureau of Investigation relating to a federal criminal records
31 check performed by a member state under federal Public Law 92-544;

32 (6) Comply with the rules of the commission;

33 (7) Utilize only a recognized national examination as a requirement for licensure pursuant
34 to the rules of the commission; and

1 (8) Have continuing competence or continuing education requirements as a condition for
2 license renewal.

3 (b) A member state shall grant the compact privilege to a licensee holding a valid
4 unencumbered license in another member state in accordance with the terms of the compact and
5 rules.

6 (c) Member states may charge a fee for granting a compact privilege.

7 (d) A member state shall provide for the state's delegate to attend all occupational therapy
8 compact commission meetings.

9 (e) Individuals not residing in a member state shall continue to be able to apply for a
10 member state's single-state license as provided under the laws of each member state. However, the
11 single-state license granted to these individuals shall not be recognized as granting the compact
12 privilege in any other member state.

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

15 **5-93-5. Compact privilege.**

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

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

19 (2) Have a valid United States social security number or national practitioner identification
20 number;

21 (3) Have no encumbrance on any state license;

22 (4) Be eligible for a compact privilege in any member state in accordance with subsections
23 (d), (f), (g) and (h) of this section;

24 (5) Have paid all fines and completed all requirements resulting from any adverse action
25 against any license or compact privilege, and two (2) years have elapsed from the date of such
26 completion;

27 (6) Notify the commission that the licensee is seeking the compact privilege within a
28 remote state(s);

29 (7) Pay any applicable fees, including any state fee, for the compact privilege;

30 (8) Complete a criminal background check in accordance with § 5-93-4(a)(5) and pay any
31 fee associated with the completion of a criminal background check;

32 (9) Meet any jurisprudence requirements established by the remote state(s) in which the
33 licensee is seeking a compact privilege; and

34 (10) Report to the commission adverse action taken by any non-member state within thirty

1 (30) days from the date the adverse action is taken.

2 (b) The compact privilege is valid until the expiration date of the home state license. The
3 licensee shall comply with the requirements of subsection (a) of this section to maintain the
4 compact privilege in the remote state.

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

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

9 (e) A licensee providing occupational therapy in a remote state is subject to that state's
10 regulatory authority. A remote state may, in accordance with due process and that state's laws,
11 remove a licensee's compact privilege in the remote state for a specific period of time, impose fines,
12 and/or take any other necessary actions to protect the health and safety of its citizens. The licensee
13 may be ineligible for a compact privilege in any state until the specific time for removal has passed
14 and all fines are paid.

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

17 (1) The home state license is no longer encumbered; and
18 (2) Two (2) years have elapsed from the date on which the home state license is no longer
19 encumbered in accordance with subsection (f)(1) of this section.

20 (g) Once an encumbered license in the home state is restored to good standing, the licensee
21 shall meet the requirements of subsection (a) of this section to obtain a compact privilege in any
22 remote state.

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

25 (1) The specific period of time for which the compact privilege was removed has ended;
26 (2) All fines have been paid and all conditions have been met;
27 (3) Two (2) years have elapsed from the date of completing requirements for subsections
28 (h)(1) and (h)(2) of this section; and

29 (4) The compact privileges are reinstated by the commission, and the compact data system
30 is updated to reflect reinstatement.

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

33 (j) Once the requirements of subsection (h) of this section have been met, the licensee shall
34 meet the requirements in subsection (a) of this section to obtain a compact privilege in a remote

1 state.

2 **5-93-6. Obtaining a new home state license by virtue of compact privilege.**

3 (a) An occupational therapist or occupational therapy assistant may hold a home state
4 license, which allows for compact privileges in member states, in only one-member state at a time.

5 (b) If an occupational therapist or occupational therapy assistant changes primary state of
6 residence by moving between two (2) member states:

7 (1) The occupational therapist or occupational therapy assistant shall file an application for
8 obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and
9 notify the current and new home state in accordance with applicable rules adopted by the
10 commission.

11 (2) Upon receipt of an application for obtaining a new home state license by virtue of
12 compact privilege, the new home state shall verify that the occupational therapist or occupational
13 therapy assistant meets the pertinent criteria outlined in § 5-93-5 via the data system, without need
14 for primary source verification except for:

15 (i) An FBI fingerprint based criminal background check if not previously performed or
16 updated pursuant to applicable rules adopted by the commission in accordance with federal Public
17 Law 92-544;

18 (ii) Other criminal background check as required by the new home state; and

19 (iii) Submission of any requisite jurisprudence requirements of the new home state.

20 (3) The former home state shall convert the former home state license into a compact
21 privilege once the new home state has activated the new home state license in accordance with
22 applicable rules adopted by the commission.

23 (4) Notwithstanding any other provision of this compact, if the occupational therapist or
24 occupational therapy assistant cannot meet the criteria in § 5-93-5, the new home state shall apply
25 its requirements for issuing a new single-state license.

26 (5) The occupational therapist or the occupational therapy assistant shall pay all applicable
27 fees to the new home state in order to be issued a new home state license.

28 (c) If an occupational therapist or occupational therapy assistant changes primary state of
29 residence by moving from a member state to a non-member state, or from a non-member state to a
30 member state, the state criteria shall apply for issuance of a single-state license in the new state.

31 (d) Nothing in this compact shall interfere with a licensee's ability to hold a single-state
32 license in multiple states; however, for the purposes of this compact, a licensee shall have only one
33 home state license.

34 (e) Nothing in this compact shall affect the requirements established by a member state.

1 **5-93-7. Active duty military personnel or their spouses.**

2 Active duty military personnel, or their spouses, shall designate a home state where the
3 individual has a current license in good standing, the individual may retain the home state
4 designation during the period the service member is on active duty, subsequent to designating a
5 home state, the individual shall only change their home state through application for licensure in
6 the new state or through the process described in § 5-93-6.

7 **5-93-8. Adverse actions.**

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

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

12 (1) Take adverse action against an occupational therapist's or occupational therapy
13 assistant's compact privilege within that member state.

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

21 (c) For purposes of taking adverse action, the home state shall give the same priority and
22 effect to reported conduct received from a member state as it would if the conduct had occurred
23 within the home state, in so doing, the home state shall apply its own state laws to determine
24 appropriate action.

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

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

1 therapy assistant.

2 (f) A member state may take adverse action based on the factual findings of the remote
3 state; provided that, the member state follows its own procedures for taking the adverse action.

4 (g) Joint investigations.

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

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

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

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

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

22 **5-93-9. Establishment of the occupational therapy compact commission.**

23 (a) The compact member states hereby create and establish a joint public agency known as
24 the occupational therapy compact commission:

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

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

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

31 (b) Membership, voting, and meetings.

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

34 (2) The delegate shall be either:

- 1 (i) A current member of the licensing board, who is an occupational therapist, occupational
2 therapy assistant, or public member; or
- 3 (ii) An administrator of the licensing board.
- 4 (3) Any delegate may be removed or suspended from office as provided by the law of the
5 state from which the delegate is appointed.
- 6 (4) The member state board shall fill any vacancy occurring in the commission within
7 ninety (90) days.
- 8 (5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and
9 creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs
10 of the commission. A delegate shall vote in person or by such other means as provided in the
11 bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other
12 means of communication.
- 13 (6) The commission shall meet at least once during each calendar year. Additional meetings
14 shall be held as set forth in the bylaws.
- 15 (7) The commission shall establish by rule a term of office for delegates.
- 16 (c) The commission shall have the following powers and duties:
- 17 (1) Establish a code of ethics for the commission;
- 18 (2) Establish the fiscal year of the commission;
- 19 (3) Establish bylaws;
- 20 (4) Maintain its financial records in accordance with the bylaws;
- 21 (5) Meet and take such actions as are consistent with the provisions of this compact and
22 the bylaws;
- 23 (6) Promulgate uniform rules to facilitate and coordinate implementation and
24 administration of this compact. The rules shall have the force and effect of law and shall be binding
25 in all member states;
- 26 (7) Bring and prosecute legal proceedings or actions in the name of the commission;
27 provided that, the standing of any state occupational therapy licensing board to sue or be sued under
28 applicable law shall not be affected;
- 29 (8) Purchase and maintain insurance and bonds;
- 30 (9) Borrow, accept, or contract for services of personnel including, but not limited to,
31 employees of a member state;
- 32 (10) Hire employees, elect or appoint officers, fix compensation, define duties, grant such
33 individuals appropriate authority to carry out the purposes of the compact, and establish the
34 commission's personnel policies and programs relating to conflicts of interest, qualifications of

- 1 personnel, and other related personnel matters;
- 2 (11) Accept any and all appropriate donations and grants of money, equipment, supplies,
3 materials and services, and receive, utilize and dispose of the same; provided that, at all times the
4 commission shall avoid any appearance of impropriety or conflict of interest;
- 5 (12) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold,
6 improve or use, any property, real, personal or mixed; provided that, at all times the commission
7 shall avoid any appearance of impropriety;
- 8 (13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
9 property real, personal, or mixed;
- 10 (14) Establish a budget and make expenditures;
- 11 (15) Borrow money;
- 12 (16) Appoint committees, including standing committees composed of members, state
13 regulators, state legislators or their representatives, and consumer representatives, and such other
14 interested persons as may be designated in this compact and the bylaws;
- 15 (17) Provide and receive information from, and cooperate with, law enforcement agencies;
- 16 (18) Establish and elect an executive committee; and
- 17 (19) Perform such other functions as may be necessary or appropriate to achieve the
18 purposes of this compact consistent with the state regulation of occupational therapy licensure and
19 practice.
- 20 (d) The executive committee. The executive committee shall have the power to act on
21 behalf of the commission according to the terms of this compact.
- 22 (1) The executive committee shall be composed of nine members:
- 23 (i) Seven (7) voting members who are elected by the commission from the current
24 membership of the commission;
- 25 (ii) One ex officio, nonvoting member from a recognized national occupational therapy
26 professional association; and
- 27 (iii) One ex officio, nonvoting member from a recognized national occupational therapy
28 certification organization.
- 29 (2) The ex officio members will be selected by their respective organizations.
- 30 (3) The commission may remove any member of the executive committee as provided in
31 the bylaws.
- 32 (4) The executive committee shall meet at least annually.
- 33 (5) The executive committee shall have the following duties and responsibilities:
- 34 (i) Recommend to the entire commission changes to the rules or bylaws, changes to this

1 compact legislation, fees paid by compact member states such as annual dues, and any commission
2 compact fee charged to licensees for the compact privilege;

3 (ii) Ensure compact administration services are appropriately provided, contractual or
4 otherwise;

5 (iii) Prepare and recommend the budget;

6 (iv) Maintain financial records on behalf of the commission;

7 (v) Monitor compact compliance of member states and provide compliance reports to the
8 commission;

9 (vi) Establish additional committees as necessary; and

10 (vii) Perform other duties as provided in rules or bylaws.

11 (e) Meetings of the commission.

12 (1) All meetings shall be open to the public, and public notice of meetings shall be given
13 in the same manner as required under the rulemaking provisions in § 5-93-11.

14 (2) The commission or the executive committee or other committees of the commission
15 may convene in a closed, non-public meeting if the commission or executive committee or other
16 committees of the commission must discuss:

17 (i) Non-compliance of a member state with its obligations under the compact;

18 (ii) The employment, compensation, discipline or other matters, practices or procedures
19 related to specific employees or other matters related to the commission's internal personnel
20 practices and procedures;

21 (iii) Current, threatened, or reasonably anticipated litigation;

22 (iv) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
23 estate;

24 (v) Accusing any person of a crime or formally censuring any person;

25 (vi) Disclosure of trade secrets or commercial or financial information that is privileged or
26 confidential;

27 (vii) Disclosure of information of a personal nature where disclosure would constitute a
28 clearly unwarranted invasion of personal privacy;

29 (viii) Disclosure of investigative records compiled for law enforcement purposes;

30 (ix) Disclosure of information related to any investigative reports prepared by or on behalf
31 of or for use of the commission or other committee charged with responsibility of investigation or
32 determination of compliance issues pursuant to the compact; or

33 (x) Matters specifically exempted from disclosure by federal or member state statute.

34 (3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the

1 commission's legal counsel, or designee shall certify that the meeting may be closed and shall
2 reference each relevant exempting provision.

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

9 (f) Financing of the commission.

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

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

14 (3) The commission may levy on and collect an annual assessment from each member state
15 or impose fees on other parties to cover the cost of the operations and activities of the commission
16 and its staff, which must be in a total amount sufficient to cover its annual budget as approved by
17 the commission each year for which revenue is not provided by other sources. The aggregate annual
18 assessment amount shall be allocated based upon a formula to be determined by the commission,
19 which shall promulgate a rule binding upon all member states.

20 (4) The commission shall not incur obligations of any kind prior to securing the funds
21 adequate to meet the same; nor shall the commission pledge the credit of any of the member states,
22 except by and with the authority of the member state.

23 (5) The commission shall keep accurate accounts of all receipts and disbursements. The
24 receipts and disbursements of the commission shall be subject to the audit and accounting
25 procedures established under its bylaws. However, all receipts and disbursements of funds handled
26 by the commission shall be audited yearly by a certified or licensed public accountant, and the
27 report of the audit shall be included in and become part of the annual report of the commission.

28 (g) Qualified immunity, defense, and indemnification.

29 (1) The members, officers, executive director, employees and representatives of the
30 commission shall be immune from suit and liability, either personally or in their official capacity,
31 for any claim for damage to or loss of property or personal injury or other civil liability caused by
32 or arising out of any actual or alleged act, error or omission that occurred, or that the person against
33 whom the claim is made had a reasonable basis for believing occurred within the scope of
34 commission employment, duties or responsibilities; provided that, nothing in this subsection shall

1 be construed to protect any such person from suit and/or liability for any damage, loss, injury, or
2 liability caused by the intentional or willful or wanton misconduct of that person.

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

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

18 **5-93-10. Data system.**

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

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

25 (1) Identifying information;

26 (2) Licensure data;

27 (3) Adverse actions against a license or compact privilege;

28 (4) Non-confidential information related to alternative program participation;

29 (5) Any denial of application for licensure, and the reason for such denial;

30 (6) Other information that may facilitate the administration of this compact, as determined
31 by the rules of the commission; and

32 (7) Current significant investigative information.

33 (c) Current significant investigative information and other investigative information
34 pertaining to a licensee in any member state will only be available to other member states.

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

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

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

9 **5-93-11. Rulemaking.**

10 (a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth
11 in this section and the rules adopted thereunder. Rules and amendments shall become binding as of
12 the date specified in each rule or amendment.

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

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

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

23 (e) Prior to promulgation and adoption of a final rule or rules by the commission, and at
24 least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon,
25 the commission shall file a notice of proposed rulemaking:

26 (1) On the website of the commission or other publicly accessible platform; and

27 (2) On the website of each member state occupational therapy licensing board or other
28 publicly accessible platform or the publication in which each state would otherwise publish
29 proposed rules.

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

31 (1) The proposed time, date, and location of the meeting in which the rule will be
32 considered and voted upon;

33 (2) The text of the proposed rule or amendment and the reason for the proposed rule;

34 (3) A request for comments on the proposed rule from any interested person; and

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

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

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

7 (1) At least twenty-five (25) persons;

8 (2) A state or federal governmental subdivision or agency; or

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

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

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

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

18 (3) All hearings will be recorded. A copy of the recording will be made available on
19 request.

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

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

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

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

31 (m) Upon determination that an emergency exists, the commission may consider and adopt
32 an emergency rule without prior notice, opportunity for comment, or hearing; provided that, the
33 usual rulemaking procedures provided in the compact and in this section shall be retroactively
34 applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the

1 effective date of the rule. For the purposes of this provision, an emergency rule is one that must be
2 adopted immediately in order to:

3 (1) Meet an imminent threat to public health, safety, or welfare;

4 (2) Prevent a loss of commission or member state funds;

5 (3) Meet a deadline for the promulgation of an administrative rule that is established by
6 federal law or rule; or

7 (4) Protect public health and safety.

8 (n) The commission or an authorized committee of the commission may direct revisions to
9 a previously adopted rule or amendment for purposes of correcting typographical errors, errors in
10 format, errors in consistency, or grammatical errors, public notice of any revisions shall be posted
11 on the website of the commission. The revision shall be subject to challenge by any person for a
12 period of thirty (30) days after posting. The revision may be challenged only on grounds that the
13 revision results in a material change to a rule. A challenge shall be made in writing and delivered
14 to the chair of the commission prior to the end of the notice period. If no challenge is made, the
15 revision will take effect without further action. If the revision is challenged, the revision may not
16 take effect without the approval of the commission.

17 **5-93-12. Oversight, dispute resolution, and enforcement.**

18 (a) Oversight.

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

23 (2) All courts shall take judicial notice of the compact and the rules in any judicial or
24 administrative proceeding in a member state pertaining to the subject matter of this compact which
25 may affect the powers, responsibilities, or actions of the commission.

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

30 (b) Default, technical assistance, and termination.

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

34 (i) Provide written notice to the defaulting state and other member states of the nature of

1 the default, the proposed means of curing the default and/or any other action to be taken by the
2 commission; and

3 (i) Provide remedial training and specific technical assistance regarding the default.

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

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

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

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

19 (6) The defaulting state may appeal the action of the commission by petitioning the U.S.
20 District Court for the District of Columbia or the federal district where the commission has its
21 principal offices. The prevailing member shall be awarded all costs of such litigation, including
22 reasonable attorneys' fees.

23 (c) Dispute resolution.

24 (1) Upon request by a member state, the commission shall attempt to resolve disputes
25 related to the compact that arise among member states and between member and non-member
26 states.

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

29 (d) Enforcement.

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

32 (2) By majority vote, the commission may initiate legal action in the United States District
33 Court for the District of Columbia or the federal district where the commission has its principal
34 offices against a member state in default to enforce compliance with the provisions of the compact

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

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

6 **5-93-13. Date of implementation of the interstate commission for occupational**
7 **therapy practice and associated rules, withdrawal, and amendment.**

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

13 (b) Any state that joins the compact subsequent to the commission's initial adoption of the
14 rules shall be subject to the rules as they exist on the date on which the compact becomes law in
15 that state. Any rule that has been previously adopted by the commission shall have the full force
16 and effect of law on the day the compact becomes law in that state.

17 (c) Any member state may withdraw from this compact by enacting a statute repealing the
18 same.

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

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

24 (d) Nothing contained in this compact shall be construed to invalidate or prevent any
25 occupational therapy licensure agreement or other cooperative arrangement between a member
26 state and a non-member state that does not conflict with the provisions of this compact.

27 (e) This compact may be amended by the member states, no amendment to this compact
28 shall become effective and binding upon any member state until it is enacted into the laws of all
29 member states.

30 **5-93-14. Construction and severability.**

31 This compact shall be liberally construed so as to effectuate the purposes thereof. The
32 provisions of this compact shall be severable and if any phrase, clause, sentence or provision of
33 this compact is declared to be contrary to the constitution of any member state or of the United
34 States or the applicability thereof to any government, agency, person, or circumstance is held

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

6 **5-93-15. Binding effect of compact and other laws.**

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

9 (b) Nothing herein prevents the enforcement of any other law of a member state that is not
10 inconsistent with the compact.

11 (c) Any laws in a member state in conflict with the compact are superseded to the extent
12 of the conflict.

13 (d) Any lawful actions of the commission, including all rules and bylaws promulgated by
14 the commission, are binding upon the member states.

15 (e) All agreements between the commission and the member states are binding in
16 accordance with their terms.

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

20 SECTION 2. This act shall take effect upon passage.

=====
LC005058
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- OCCUPATIONAL THERAPY
LICENSURE COMPACT

1 This act would create the occupational therapy licensure compact, that would allow
2 licensed occupational therapists and occupational therapy assistants to practice in all states that join
3 the compact. This act would also remove the need for practitioners to get an individual license in
4 each state where they want to practice.

5 This act would take effect upon passage.

=====
LC005058
=====