

INTERIM STUDY PROPOSAL 2021-156

State of Arkansas
93rd General Assembly
Third Extraordinary Session, 2022

A Bill

JMB/JMB
HOUSE BILL

By: Representative Pilkington

Filed with: House Committee on Public Health, Welfare, and Labor
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO ESTABLISH THE OCCUPATIONAL THERAPY
LICENSURE COMPACT IN ARKANSAS; AND FOR OTHER
PURPOSES.

Subtitle

TO ESTABLISH THE OCCUPATIONAL THERAPY
LICENSURE COMPACT IN ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 88, is amended to add an
additional subchapter to read as follows

Subchapter 4 – Occupational Therapy Licensure Compact

17-88-401. Text of compact.

The Occupational Therapy Licensure Compact is enacted into law and
entered into by this state with all states legally joining therein and in the
form substantially as follows:

OCCUPATIONAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of
Occupational Therapy with the goal of improving public access to Occupational
Therapy services. The Practice of Occupational Therapy occurs in the State

1 where the patient/client is located at the time of the patient/client
2 encounter. The Compact preserves the regulatory authority of States to
3 protect public health and safety through the current system of State
4 licensure.

5
6 This Compact is designed to achieve the following objectives:

7
8 A. Increase public access to Occupational Therapy services by providing for
9 the mutual recognition of other Member State licenses;

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

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

13 D. Support spouses of relocating military members;

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

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

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

20
21 SECTION 2. DEFINITIONS

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

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

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

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

- 1 D. “Compact Privilege” means the authorization, which is equivalent to a
2 license, granted by a Remote State to allow a Licensee from another Member
3 State to practice as an Occupational Therapist or practice as an Occupational
4 Therapy Assistant in the Remote State under its laws and rules. The Practice
5 of Occupational Therapy occurs in the Member State where the patient/client
6 is located at the time of the patient/client encounter.
- 7 E. “Continuing Competence/Education” means a requirement, as a condition of
8 license renewal, to provide evidence of participation in, and/or completion
9 of, educational and professional activities relevant to practice or area of
10 work.
- 11 F. “Current Significant Investigative Information” means Investigative
12 Information that a Licensing Board, after an inquiry or investigation that
13 includes notification and an opportunity for the Occupational Therapist or
14 Occupational Therapy Assistant to respond, if required by State law, has
15 reason to believe is not groundless and, if proved true, would indicate more
16 than a minor infraction.
- 17 G. “Data System” means a repository of information about Licensees,
18 including but not limited to license status, Investigative Information,
19 Compact Privileges, and Adverse Actions.
- 20 H. “Encumbered License” means a license in which an Adverse Action restricts
21 the Practice of Occupational Therapy by the Licensee or said Adverse Action
22 has been reported to the National Practitioners Data Bank (NPDB).
- 23 I. “Executive Committee” means a group of directors elected or appointed to
24 act on behalf of, and within the powers granted to them by, the Commission.
- 25 J. “Home State” means the Member State that is the Licensee’s Primary State
26 of Residence.
- 27 K. “Impaired Practitioner” means individuals whose professional practice is
28 adversely affected by substance abuse, addiction, or other health-related
29 conditions.
- 30 L. “Investigative Information” means information, records, and/or documents
31 received or generated by an Occupational Therapy Licensing Board pursuant to
32 an investigation.
- 33 M. “Jurisprudence Requirement” means the assessment of an individual’s
34 knowledge of the laws and rules governing the Practice of Occupational
35 Therapy in a State.

- 1 N. "Licensee" means an individual who currently holds an authorization from
2 the State to practice as an Occupational Therapist or as an Occupational
3 Therapy Assistant.
- 4 O. "Member State" means a State that has enacted the Compact.
- 5 P. "Occupational Therapist" means an individual who is licensed by a State
6 to practice Occupational Therapy.
- 7 Q. "Occupational Therapy Assistant" means an individual who is licensed by a
8 State to assist in the Practice of Occupational Therapy.
- 9 R. "Occupational Therapy," "Occupational Therapy Practice," and the
10 "Practice of Occupational Therapy" mean the care and services provided by an
11 Occupational Therapist or an Occupational Therapy Assistant as set forth in
12 the Member State's statutes and regulations.
- 13 S. "Occupational Therapy Compact Commission" or "Commission" means the
14 national administrative body whose membership consists of all States that
15 have enacted the Compact.
- 16 T. "Occupational Therapy Licensing Board" or "Licensing Board" means the
17 agency of a State that is authorized to license and regulate Occupational
18 Therapists and Occupational Therapy Assistants.
- 19 U. "Primary State of Residence" means the state (also known as the Home
20 State) in which an Occupational Therapist or Occupational Therapy Assistant
21 who is not Active Duty Military declares a primary residence for legal
22 purposes as verified by: driver's license, federal income tax return, lease,
23 deed, mortgage or voter registration or other verifying documentation as
24 further defined by Commission Rules.
- 25 V. "Remote State" means a Member State other than the Home State, where a
26 Licensee is exercising or seeking to exercise the Compact Privilege.
- 27 W. "Rule" means a regulation promulgated by the Commission that has the
28 force of law.
- 29 X. "State" means any state, commonwealth, district, or territory of the
30 United States of America that regulates the Practice of Occupational Therapy.
- 31 Y. "Single-State License" means an Occupational Therapist or Occupational
32 Therapy Assistant license issued by a Member State that authorizes practice
33 only within the issuing State and does not include a Compact Privilege in any
34 other Member State.

1 Z. “Telehealth” means the application of telecommunication technology to
2 deliver Occupational Therapy services for assessment, intervention and/or
3 consultation.

4
5 SECTION 3. STATE PARTICIPATION IN THE COMPACT

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

7 1. License Occupational Therapists and Occupational Therapy Assistants

8 2. Participate fully in the Commission’s Data System, including but
9 not limited to using the Commission’s unique identifier as defined in Rules
10 of the Commission;

11 3. Have a mechanism in place for receiving and investigating
12 complaints about Licensees;

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

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

22 a. A Member State shall, within a time frame established by the
23 Commission, require a criminal background check for a Licensee
24 seeking/applying for a Compact Privilege whose Primary State of Residence is
25 that Member State, by receiving the results of the Federal Bureau of
26 Investigation criminal record search, and shall use the results in making
27 licensure decisions.

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

33 6. Comply with the Rules of the Commission;

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

1 8. Have Continuing Competence/Education requirements as a condition
2 for license renewal.

3 B. A Member State shall grant the Compact Privilege to a Licensee holding a
4 valid unencumbered license in another Member State in accordance with the
5 terms of the Compact and 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
8 Occupational Therapy Compact Commission meetings.

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

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

16
17 SECTION 4. COMPACT PRIVILEGE

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

20 1. Hold a license in the Home State;

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

23 3. Have no encumbrance on any State license;

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

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

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

31 7. Pay any applicable fees, including any State fee, for the Compact
32 Privilege;

33 8. Complete a criminal background check in accordance with Section
34 3A(5);

35 a. The Licensee shall be responsible for the payment of any fee
36 associated with the completion of a criminal background check.

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

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

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

8 C. A Licensee providing Occupational Therapy in a Remote State under the
9 Compact Privilege shall function within the laws and regulations of the
10 Remote State.

11 D. Occupational Therapy Assistants practicing in a Remote State shall be
12 supervised by an Occupational Therapist licensed or holding a Compact
13 Privilege in that Remote State.

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

21 F. If a Home State license is encumbered, the Licensee shall lose the
22 Compact Privilege in any Remote State until the following occur:

23 1. The Home State license is no longer encumbered; and

24 2. Two years have elapsed from the date on which the Home State
25 license is no longer encumbered in accordance with Section 4(F)(1).

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

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

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

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

35 3. Two years have elapsed from the date of completing requirements for
36 4(H)(1) and (2); and

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

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

6 J. Once the requirements of Section 4H have been met, the Licensee must meet
7 the requirements in Section 4A to obtain a Compact Privilege in a Remote
8 State.

9
10 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT PRIVILEGE

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

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

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

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

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

28 b. other criminal background check as required by the new Home
29 State; and

30 c. submission of any requisite Jurisprudence Requirements of the
31 new Home State.

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

35 4. Notwithstanding any other provision of this Compact, if the
36 Occupational Therapist or Occupational Therapy Assistant cannot meet the

1 criteria in Section 4, the new Home State shall apply its requirements for
2 issuing a new Single-State License.

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

6 C. If an Occupational Therapist or Occupational Therapy Assistant changes
7 Primary State of Residence by moving from a Member State to a non-Member
8 State, or from a non-Member State to a Member State, the State criteria shall
9 apply for issuance of a Single-State License in the new State.

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

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

15
16 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

23
24 SECTION 7. ADVERSE ACTIONS

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

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

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

33 2. Issue subpoenas for both hearings and investigations that require
34 the attendance and testimony of witnesses as well as the production of
35 evidence. Subpoenas issued by a Licensing Board in a Member State for the
36 attendance and testimony of witnesses or the production of evidence from

1 another Member State shall be enforced in the latter State by any court of
2 competent jurisdiction, according to the practice and procedure of that court
3 applicable to subpoenas issued in proceedings pending before it. The issuing
4 authority shall pay any witness fees, travel expenses, mileage and other fees
5 required by the service statutes of the State in which the witnesses or
6 evidence are located.

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

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

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

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

26 G. Joint Investigations

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

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

34 H. If an Adverse Action is taken by the Home State against an Occupational
35 Therapist's or Occupational Therapy Assistant's license, the Occupational
36 Therapist's or Occupational Therapy Assistant's Compact Privilege in all

1 other Member States shall be deactivated until all encumbrances have been
2 removed from the State license. All Home State disciplinary orders that
3 impose Adverse Action against an Occupational Therapist's or Occupational
4 Therapy Assistant's license shall include a Statement that the Occupational
5 Therapist's or Occupational Therapy Assistant's Compact Privilege is
6 deactivated in all Member States during the pendency of the order.

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

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

13
14 SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COMMISSION.

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

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

18 2. Venue is proper and judicial proceedings by or against the
19 Commission shall be brought solely and exclusively in a court of competent
20 jurisdiction where the principal office of the Commission is located. The
21 Commission may waive venue and jurisdictional defenses to the extent it
22 adopts or consents to participate in alternative dispute resolution
23 proceedings.

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

26 B. Membership, Voting, and Meetings

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

29 2. The delegate shall be either:

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

32 b. An administrator of the Licensing Board.

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

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

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

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

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

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

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

13 2. Establish the fiscal year of the Commission;

14 3. Establish bylaws;

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

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

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

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

24 8. Purchase and maintain insurance and bonds;

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

27 10. Hire employees, elect or appoint officers, fix compensation,
28 define duties, grant such individuals appropriate authority to carry out the
29 purposes of the Compact, and establish the Commission's personnel policies
30 and programs relating to conflicts of interest, qualifications of personnel,
31 and other related personnel matters;

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

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

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

7 14. Establish a budget and make expenditures;

8 15. Borrow money;

9 16. Appoint committees, including standing committees composed of
10 members, State regulators, State legislators or their representatives, and
11 consumer representatives, and such other interested persons as may be
12 designated in this Compact and the bylaws;

13 17. Provide and receive information from, and cooperate with, law
14 enforcement agencies;

15 18. Establish and elect an Executive Committee; and

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

19 D. The Executive Committee

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

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

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

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

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

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

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

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

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

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

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

7 c. Prepare and recommend the budget;

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

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

11 f. Establish additional committees as necessary; and

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

13 E. Meetings of the Commission

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

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

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

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

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

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

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

30 f. Disclosure of trade secrets or commercial or financial
31 information that is privileged or confidential;

32 g. Disclosure of information of a personal nature where
33 disclosure would constitute a clearly unwarranted invasion of personal
34 privacy;

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

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

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

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

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

17 F. Financing of the Commission

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

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

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

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

35 5. The Commission shall keep accurate accounts of all receipts and
36 disbursements. The receipts and disbursements of the Commission shall be

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

6 G. Qualified Immunity, Defense, and Indemnification

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

18 2. The Commission shall defend any member, officer, executive
19 director, employee, or representative of the Commission in any civil action
20 seeking to impose liability arising out of any actual or alleged act, error,
21 or omission that occurred within the scope of Commission employment, duties,
22 or responsibilities, or that the person against whom the claim is made had a
23 reasonable basis for believing occurred within the scope of Commission
24 employment, duties, or responsibilities; provided that nothing herein shall
25 be construed to prohibit that person from retaining his or her own counsel;
26 and provided further, that the actual or alleged act, error, or omission did
27 not result from that person's intentional or willful or wanton misconduct.

28 3. The Commission shall indemnify and hold harmless any member,
29 officer, executive director, employee, or representative of the Commission
30 for the amount of any settlement or judgment obtained against that person
31 arising out of any actual or alleged act, error or omission that occurred
32 within the scope of Commission employment, duties, or responsibilities, or
33 that such person had a reasonable basis for believing occurred within the
34 scope of Commission employment, duties, or responsibilities, provided that
35 the actual or alleged act, error, or omission did not result from the
36 intentional or willful or wanton misconduct of that person.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 9. DATA SYSTEM

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

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

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Compact Privilege;

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

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

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

7. Current Significant Investigative Information.

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

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

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

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

SECTION 10. RULEMAKING

A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules

1 and amendments shall become binding as of the date specified in each Rule or
2 amendment.

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

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

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

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

19 1. On the website of the Commission or other publicly accessible
20 platform; and

21 2. On the website of each Member State Occupational Therapy Licensing
22 Board or other publicly accessible platform or the publication in which each
23 State would otherwise publish proposed Rules.

24 F. The Notice of Proposed Rulemaking shall include:

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

27 2. The text of the proposed Rule or amendment and the reason for the
28 proposed Rule;

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

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

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

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

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

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

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

7 I. If a hearing is held on the proposed Rule or amendment, the Commission
8 shall publish the place, time, and date of the scheduled public hearing. If
9 the hearing is held via electronic means, the Commission shall publish the
10 mechanism for access to the electronic hearing.

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

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

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

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

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

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

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

32 M. Upon determination that an emergency exists, the Commission may consider
33 and adopt an emergency Rule without prior notice, opportunity for comment, or
34 hearing, provided that the usual Rulemaking procedures provided in the
35 Compact and in this section shall be retroactively applied to the Rule as
36 soon as reasonably possible, in no event later than ninety (90) days after

1 the effective date of the Rule. For the purposes of this provision, an
2 emergency Rule is one that must be 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
6 is established by 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
9 revisions to a previously adopted Rule or amendment for purposes of
10 correcting typographical errors, errors in format, errors in consistency, or
11 grammatical errors. Public notice of any revisions shall be posted on the
12 website of the Commission. The revision shall be subject to challenge by any
13 person for a period of thirty (30) days after posting. The revision may be
14 challenged only on grounds that the revision results in a material change to
15 a Rule. A challenge shall be made in writing and delivered to the chair of
16 the Commission prior to the end of the notice period. If no challenge is
17 made, the revision will take effect without further action. If the revision
18 is challenged, the revision may not take effect without the approval of the
19 Commission.

20
21 SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

22 A. Oversight

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

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

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

1 B. Default, Technical Assistance, and Termination

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

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

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

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

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

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

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

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

33 C. Dispute Resolution

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

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

3 D. Enforcement

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

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

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

17
18 SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR
19 OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

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

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

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

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

35 2. Withdrawal shall not affect the continuing requirement of the
36 withdrawing State's Occupational Therapy Licensing Board to comply with the

1 investigative and Adverse Action reporting requirements of this act prior to
2 the effective date of withdrawal.

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

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

10
11 SECTION 13. CONSTRUCTION AND SEVERABILITY

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

23
24 SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

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

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

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

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

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

36 F. In the event any provision of the Compact exceeds the constitutional

1 limits imposed on the legislature of any Member State, the provision shall be
2 ineffective to the extent of the conflict with the constitutional provision
3 in question in that Member State.

4
5 17-88-402. Administration of compact – Rules.

6 (a) The Arkansas State Medical Board is the Occupational Therapy
7 Licensure Compact administrator for this state.

8 (b) The board may adopt rules that are consistent with the
9 Occupational Therapy Licensure Compact necessary to implement this
10 subchapter.

11 (c) The board is not required to adopt the rules of the Occupational
12 Therapy Licensure Compact Commission for the rules of the Occupational
13 Therapy Licensure Compact Commission to be effective in this state.

14
15
16 Referred by Representative Pilkington

17 Prepared by: JMB/JMB

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36