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SENATE BILL DRS35067-NBf-44A*

Short Title: Occupational Therapy Interstate Compact. (Public)

Sponsors: Senators Krawiec, Burgin, and Perry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AND ENTER INTO AN INTERSTATE COMPACT FOR THE
3 PRACTICE OF OCCUPATIONAL THERAPY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 18I.

8 "Occupational Therapy Licensure Compact.

9 **"§ 90-270.180. Purpose.**

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

- 16 (1) Increase public access to occupational therapy services by providing for the
17 mutual recognition of other member state licenses.
18 (2) Enhance the states' ability to protect the public's health and safety.
19 (3) Encourage the cooperation of member states in regulating multistate
20 occupational therapy practice.
21 (4) Support spouses of relocating military members.
22 (5) Enhance the exchange of licensure, investigative, and disciplinary information
23 between member states.
24 (6) Allow a remote state to hold a provider of services with a compact privilege
25 in that state accountable to that state's practice standards.
26 (7) Facilitate the use of telehealth technology in order to increase access to
27 occupational therapy services.

28 **"§ 90-270.181. Definitions.**

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

- 31 (1) Active duty military. – Full-time duty status in the active uniformed service
32 of the United States, including members of the National Guard and Reserve
33 on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C.
34 Chapter 1211.
35 (2) Adverse action. – Any administrative, civil, equitable, or criminal action
36 permitted by a state's laws which is imposed by a licensing board or other



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- 1 authority against an occupational therapist or occupational therapy assistant,
2 including actions against an individual's license or Compact privilege, such as
3 censure, revocation, suspension, probation, monitoring of the licensee, or
4 restriction on the licensee's practice.
- 5 (3) Alternative program. – A nondisciplinary monitoring process approved by an
6 occupational therapy licensing board.
- 7 (4) Compact privilege. – The authorization which is the equivalent to a license,
8 granted by a remote state to allow a licensee from another member state to
9 practice as an occupational therapist or practice as an occupational therapy
10 assistant in the remote state under its laws and rules. The practice of
11 occupational therapy occurs in the member state where the patient or client is
12 located at the time of the patient-client encounter.
- 13 (5) Continuing competence/education. – A requirement, as a condition of license
14 renewal, to provide evidence of participation in, or completion of, educational
15 and professional activities relevant to practice or area of work.
- 16 (6) Current significant investigative information. – Investigative information that
17 a licensing board, after an inquiry or investigation that includes notification
18 and an opportunity for the occupational therapist or occupational therapy
19 assistant to respond, if required by state law, has reason to believe is not
20 groundless and, if proved true, would indicate more than a minor infraction.
- 21 (7) Data system. – A repository of information about licensees, including, but not
22 limited to, license status, investigative information, Compact privileges, and
23 adverse actions.
- 24 (8) Encumbered license. – A license in which an adverse action restricts the
25 practice of occupational therapy by the licensee or said adverse action has
26 been reported to the National Practitioners Data Bank (NPDB).
- 27 (9) Executive Committee. – A group of directors elected or appointed to act on
28 behalf of, and within the powers granted to them by, the Commission.
- 29 (10) Home state. – The member state that is the licensee's primary state of
30 residence.
- 31 (11) Impaired practitioner. – Individuals whose professional practice is adversely
32 affected by substance abuse, addiction, or other health-related conditions.
- 33 (12) Investigative information. – Information, records, or documents received or
34 generated by an occupational therapy licensing board pursuant to an
35 investigation.
- 36 (13) Jurisprudence requirement. – The assessment of an individual's knowledge of
37 the laws and rules governing the practice of occupational therapy in a state.
- 38 (14) Licensee. – An individual who currently holds an authorization from the state
39 to practice as an occupational therapist or as an occupational therapy assistant.
- 40 (15) Member state. – A state that has enacted the Compact.
- 41 (16) Occupational therapist. – An individual who is licensed by a state to practice
42 occupational therapy.
- 43 (17) Occupational therapy assistant. – An individual who is licensed by a state to
44 assist in the practice of occupational therapy.
- 45 (18) Occupational therapy; occupational therapy practice; practice of occupational
46 therapy. – The care and services provided by an occupational therapist or an
47 occupational therapy assistant as set forth in the member state's statutes and
48 regulations.
- 49 (19) Occupational Therapy Compact Commission or Commission. – The national
50 administrative body whose membership consists of all states that have enacted
51 the Compact.

- 1 (20) Occupational therapy licensing board or licensing board. – The agency of a
2 state that is authorized to license and regulate occupational therapists and
3 occupational therapy assistants.
- 4 (21) Primary state of residence. – The state, also known as the home state, in which
5 an occupational therapist or occupational therapy assistant who is not active
6 duty military, declares a primary residence for legal purposes as verified by
7 any of the following:
- 8 a. Drivers license.
9 b. Federal income tax return.
10 c. Lease.
11 d. Deed.
12 e. Mortgage.
13 f. Voter registration.
14 g. Other verifying documentation as defined by Commission rules.
- 15 (22) Remote state. – A member state other than the home state where a licensee is
16 exercising or seeking to exercise the Compact privilege.
- 17 (23) Rule. – A regulation promulgated by the Commission that has the force of
18 law.
- 19 (24) State. – Any state, commonwealth, district, or territory of the United States of
20 America that regulates the practice of occupational therapy.
- 21 (25) Single-state license. – An occupational therapist or occupational therapy
22 assistant license issued by a member state that authorizes practice only within
23 the issuing state and does not include a Compact privilege in any other
24 member state.
- 25 (26) Telehealth. – The application of telecommunication technology to deliver
26 occupational therapy services for assessment, intervention, or consultation.

27 **"§ 90-270.182. State participation in the Compact.**

- 28 (a) To participate in the Compact, a member state shall do all of the following:
- 29 (1) License occupational therapists and occupational therapy assistants.
- 30 (2) Participate fully in the Commission's data system, including, but not limited
31 to, using the Commission's unique identifier as defined by rules of the
32 Commission.
- 33 (3) Have a mechanism in place for receiving and investigating complaints about
34 licensees.
- 35 (4) Notify the Commission, in compliance with the terms of the Compact and
36 rules, of any adverse action or the availability of investigative information
37 regarding a licensee.
- 38 (5) Implement or utilize procedures for considering the criminal history records
39 of applicants for an initial Compact privilege. These procedures shall include
40 the submission of fingerprints or other biometric-based information by
41 applicants for the purpose of obtaining an applicant's criminal history record
42 information from the Federal Bureau of Investigation and the agency
43 responsible for retaining the state's criminal records. The procedures must
44 comply with the following:
- 45 a. The member state shall, within a time frame established by the
46 Commission, require a criminal background check for a licensee
47 seeking or applying for a Compact privilege whose primary state of
48 residence is that member state, by receiving the results of the Federal
49 Bureau of Investigation criminal record search, and shall use the
50 results in making licensure decisions.

- 1 b. All communication between a member state, the Commission, and
2 among member states regarding the verification of eligibility for
3 licensure through the Compact shall not include any information
4 received from the Federal Bureau of Investigation relating to a federal
5 criminal records check performed by a member state under P.L.
6 92-544.
- 7 (6) Comply with the rules of the Commission.
8 (7) Utilize only a recognized national examination as a requirement for licensure
9 pursuant to the rules of the Commission.
- 10 (8) Having continuing competence/education requirements as a condition for
11 license renewal.
- 12 (b) A member state shall grant the Compact privilege to a licensee holding a valid
13 unencumbered license in another member state in accordance with the terms of the Compact and
14 rules.
- 15 (c) Member states may charge a fee for granting a Compact privilege.
- 16 (d) A member state shall provide for the state's delegate to attend all Occupational
17 Therapy Compact Commission meetings.
- 18 (e) Individuals not residing in a member state shall continue to be able to apply for a
19 member state's single-state license as provided under the laws of each member state. However,
20 the single-state license granted to these individuals shall not be recognized as granting the
21 Compact privilege in any other member state.
- 22 (f) Nothing in this Compact shall affect the requirements established by a member state
23 for the issuance of a single-state license.
- 24 **§ 90-270.183. Compact privilege.**
- 25 (a) To exercise the Compact privilege under the terms and provisions of the Compact,
26 the licensee shall meet all of the following requirements:
- 27 (1) Hold a license in the home state.
28 (2) Have a valid United States social security number or National Practitioner
29 Identification number.
30 (3) Have no encumbrance on any state license.
31 (4) Be eligible for a Compact privilege in any member state in accordance with
32 subsections (d) through (h) of this section.
33 (5) Have paid all fines and completed all requirements resulting from any adverse
34 action against any license or Compact privilege, and two years have elapsed
35 from the date of such completion.
36 (6) Notify the Commission that the licensee is seeking the Compact privilege
37 within a remote state.
38 (7) Pay any applicable, including any state, fee for the Compact privilege.
39 (8) Complete a criminal background check in accordance with
40 G.S. 90-270.182(a)(5), and pay any fee associated with the completion of the
41 criminal background check.
42 (9) Meet any jurisprudence requirements established by the remote state in which
43 the licensee is seeking a Compact privilege.
44 (10) Report to the Commission adverse action taken by any nonmember state
45 within 30 days from the date the adverse action is taken.
- 46 (b) The Compact privilege is valid until the expiration date of the home state license. The
47 licensee must comply with the requirements of subsection (a) of this section to maintain the
48 Compact privilege in the remote state.
- 49 (c) A licensee providing occupational therapy in a remote state under the Compact
50 privilege shall function within the laws and regulations of the remote state.

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

3 (e) A licensee providing occupational therapy in a remote state is subject to that state's
4 regulatory authority. A remote state may, in accordance with due process and that state's laws,
5 remove a licensee's Compact privilege in the remote state for a specific period of time, impose
6 finances, and take any other necessary actions to protect the health and safety of its citizens. The
7 licensee may be ineligible for a Compact privilege in any state until the specific time for removal
8 has passed and all fines are paid.

9 (f) If a home state license is encumbered, the licensee shall lose the Compact privilege
10 in any remote state until all of the following occur:

11 (1) The home state license is no longer encumbered.

12 (2) Two years have elapsed from the date on which the home state license is no
13 longer encumbered in accordance with subdivision (1) of this subsection.

14 (g) Once an encumbered license in the home state is restored in good standing, the
15 licensee must meet the requirements of subsection (a) of this section to obtain a Compact
16 privilege in any remote state.

17 (h) If a licensee's Compact privilege in any remote state is removed, the individual may
18 lose the Compact privilege in any other remote state until all of the following occur:

19 (1) The specific period of time for which the Compact privilege was removed has
20 ended.

21 (2) All fines have been paid, and all conditions have been met.

22 (3) Two years have elapsed from the date of completing requirements for
23 subdivisions (1) and (2) of this subsection.

24 (4) The Compact privileges are reinstated by the Commission, and the compact
25 data system is updated to reflect reinstatement.

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

28 (j) Once the requirements of subsection (h) of this section have been met, the licensee
29 must meet the requirements in subsection (a) of this section to obtain a Compact privilege in a
30 remote state.

31 **"§ 90-270.184. Obtaining a new home state license by virtue of Compact privilege.**

32 (a) An occupational therapist or occupational therapy assistant may hold a home state
33 license, which allows for Compact privileges in member states, in only one member state at a
34 time.

35 (b) If an occupational therapist or occupational therapy assistant changes primary state
36 of residence by moving between two member states, the occupational therapist or occupational
37 therapy assistant shall do all of the following:

38 (1) File an application for obtaining a new home state license by virtue of a
39 Compact privilege.

40 (2) Pay all applicable fees.

41 (3) Notify the current and new home state in accordance with applicable rules
42 adopted by the Commission.

43 (c) Upon receipt of an application for obtaining a new home state license by virtue of
44 Compact privilege, the new home state shall verify that the occupational therapist or occupational
45 therapy assistant meets the pertinent criteria outlined in G.S. 90-270.183 via the data system,
46 without need for primary source verification, except for the following:

47 (1) A Federal Bureau of Investigation fingerprint-based criminal background
48 check, if not previously performed or updated, pursuant to applicable rules
49 adopted by the Commission in accordance with P.L. 92-544.

50 (2) Other criminal background checks, as required by the new home state.

1 (3) Submission of any requisite jurisprudence requirements of the new home
2 state.

3 (d) The former home state shall convert the former home state license into a Compact
4 privilege once the new home state has activated the new home state license in accordance with
5 applicable rules adopted by the Commission.

6 (e) Notwithstanding any other provision of this Compact, if the occupational therapist or
7 occupational therapy assistant cannot meet the criteria in G.S. 90-270.183, the new home state
8 shall apply its requirements for issuing a new single-state license.

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

11 (g) If an occupational therapist or occupational therapy assistant changes primary state
12 of residence by moving from a member state to a nonmember state, or from a nonmember state
13 to a member state, the state criteria shall apply for issuance of a single-state license in the new
14 state.

15 (h) Nothing in this Compact shall interfere with a licensee's ability to hold a single-state
16 license in multiple states; however, for the purposes of this Compact, a licensee shall have only
17 one home state license.

18 (i) Nothing in this Compact shall affect the requirements established by a member state
19 for the issuance of a single-state license.

20 **"§ 90-270.185. Active duty military personnel or their spouses.**

21 Active duty military personnel, or their spouses, shall designate a home state where the
22 individual has a current license in good standing. The individual may retain the home state
23 designation during the period the service member is on active duty. Subsequent to designating a
24 home state, the individual shall only change his or her home state through application for
25 licensure in the new state or through the process described in G.S. 90-270.184.

26 **"§ 90-270.186. Adverse actions.**

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

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

31 (1) Take adverse action against an occupational therapist's or occupational
32 therapy assistant's Compact privilege within that member state.

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

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

47 (d) The home state shall complete any pending investigations of an occupational therapist
48 or occupational therapy assistant who changes primary state of residence during the course of the
49 investigations. The home state, where the investigations were initiated, shall also have the
50 authority to take appropriate action and shall promptly report the conclusions of the

1 investigations to the data system. The data system administrator shall promptly notify the new
2 home state of any adverse actions.

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

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

9 (g) In addition to the authority granted to a member state by its respective state
10 occupational therapy laws and regulations or other applicable state law, any member state may
11 participate with other member states in joint investigations of licensees. Member states shall
12 share any investigative, litigation, or compliance materials in furtherance of any joint or
13 individual investigation initiated under the Compact.

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

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

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

26 **"§ 90-270.187. Establishment of the Occupational Therapy Compact Commission.**

27 (a) Establishment. – The Compact member states hereby create and establish a joint
28 public agency known as the Occupational Therapy Compact Commission.

29 (1) The Commission is an instrumentality of the Compact states.

30 (2) Venue is proper, and judicial proceedings by or against the Commission shall
31 be brought solely and exclusively in a court of competent jurisdiction where
32 the principal office of the Commission is located. The Commission may waive
33 venue and jurisdictional defenses to the extent it adopts or consents to
34 participate in alternative dispute resolution proceedings.

35 (3) Nothing in this Compact shall be construed to be a waiver of sovereign
36 immunity.

37 (b) Membership; Voting; Meetings. – Each member state shall have and be limited to one
38 delegate selected by that member state's licensing board. The delegate shall be either (i) a current
39 member of the licensing board, who is an occupational therapist, occupational therapy assistant,
40 or public member or (ii) an administrator of the licensing board. Any delegate may be removed
41 or suspended from office as provided by the law of the state from which the delegate is appointed.
42 The member state board shall fill any vacancy occurring in the Commission within 90 days. Each
43 delegate shall be entitled to one vote with regard to the promulgation of rules and creation of
44 bylaws and shall otherwise have an opportunity to participate in the business and affairs of the
45 Commission. A delegate shall vote in person or by such other means as provided in the bylaws.
46 The bylaws may provide for delegates' participation in meetings by telephone or other means of
47 communication. The Commission shall meet at least once during each calendar year. Additional
48 meetings shall be held as set forth in the bylaws. The Commission shall establish by rule a term
49 of office for delegates.

50 (c) Powers; Duties. – The Commission shall have the following powers and duties:

51 (1) Establish a code of ethics for the Commission.

- 1 (2) Establish the fiscal year of the Commission.
- 2 (3) Establish bylaws.
- 3 (4) Maintain its financial records in accordance with the bylaws.
- 4 (5) Meet and take such actions as are consistent with the provisions of this
5 Compact and the bylaws.
- 6 (6) Promulgate uniform rules to facilitate and coordinate implementation and
7 administration of this Compact. The rules shall have the force and effect of
8 law and shall be binding in all member states.
- 9 (7) Bring and prosecute legal proceedings or actions in the name of the
10 Commission, provided that the standing of any state occupational therapy
11 licensing board to sue or be sued under applicable law shall not be affected.
- 12 (8) Purchase and maintain insurance and bonds.
- 13 (9) Borrow, accept, or contract for services of personnel, including, but not
14 limited to, employees of a member state.
- 15 (10) Hire employees, elect or appoint officers, fix compensation, define duties,
16 grant such individuals appropriate authority to carry out the purposes of the
17 Compact, and establish the Commission's personnel policies and programs
18 relating to conflicts of interest, qualifications of personnel, and other related
19 personnel matters.
- 20 (11) Accept any and all appropriate donations and grants of money, equipment,
21 supplies, materials and services, and receive, utilize, and dispose of the same,
22 provided that at all times the Commission shall avoid any appearance of
23 impropriety and conflict of interest.
- 24 (12) Lease, purchase, accept appropriate gifts or donations of, or otherwise own,
25 hold, improve, or use, any property, real, personal, or mixed, provided that at
26 all times the Commission shall avoid any appearance of impropriety.
- 27 (13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
28 dispose of any property, real, personal, or mixed.
- 29 (14) Establish a budget and make expenditures.
- 30 (15) Borrow money.
- 31 (16) Appoint committees, including standing committees composed of members,
32 state regulators, state legislators or their representatives, and consumer
33 representatives, and such other interested persons as may be designated in this
34 Compact and the bylaws.
- 35 (17) Provide and receive information from, and cooperate with, law enforcement
36 agencies.
- 37 (18) Establish and elect an Executive Committee.
- 38 (19) Perform such other functions as may be necessary or appropriate to achieve
39 the purposes of this Compact consistent with the state regulation of
40 occupational therapy licensure and practice.
- 41 (d) Executive Committee. – The Executive Committee shall have the power to act on
42 behalf of the Commission according to the terms of this Compact.
- 43 (1) The Executive Committee shall be composed of nine members, as follows:
44 a. Seven voting members who are elected by the Commission from the
45 current membership of the Commission.
- 46 b. One ex officio, nonvoting member from a recognized national
47 occupational therapy professional association.
- 48 c. One ex officio, nonvoting member from a recognized national
49 occupational therapy certification organization.
- 50 (2) The ex officio members will be selected by their respective organizations.

- 1 (3) The Commission may remove any member of the Executive Committee as
2 provided in bylaws.
- 3 (4) The Executive Committee shall meet at least annually.
- 4 (5) The Executive Committee shall have the following duties and responsibilities:
- 5 a. Recommend to the entire Commission changes to the rules or bylaws,
6 changes to this Compact legislation, fees paid by Compact member
7 states such as annual dues, and any Commission Compact fee charged
8 to licensees for the Compact privilege.
- 9 b. Ensure Compact administration services are appropriately provided,
10 contractual or otherwise.
- 11 c. Prepare and recommend the budget.
- 12 d. Maintain financial records on behalf of the Commission.
- 13 e. Monitor Compact compliance of member states and provide
14 compliance reports to the Commission.
- 15 f. Establish additional committees as necessary.
- 16 g. Perform other duties as provided in rules or bylaws.

17 (e) Meetings of the Commission. – All meetings shall be open to the public, and public
18 notice of meetings shall be given in the same manner as required under the rulemaking provisions
19 in G.S. 90-270.189. The Commission or the Executive Committee or other committees of the
20 Commission may convene in a closed, nonpublic meeting if the Commission or Executive
21 Committee or other committees of the Commission must discuss any of the following:

- 22 (1) Noncompliance of a member state with its obligations under the Compact.
- 23 (2) The employment, compensation, discipline or other matters, practices or
24 procedures related to specific employees or other matters related to the
25 Commission's internal personnel practices and procedures.
- 26 (3) Current, threatened, or reasonably anticipated litigation.
- 27 (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or
28 real estate.
- 29 (5) Accusation of any person of a crime or formally censuring any person.
- 30 (6) Disclosure of trade secrets or commercial or financial information that is
31 privileged or confidential.
- 32 (7) Disclosure of information of a personal nature where disclosure would
33 constitute a clearly unwarranted invasion of personal privacy.
- 34 (8) Disclosure of investigative records compiled for law enforcement purposes.
- 35 (9) Disclosure of information related to any investigative reports prepared by or
36 on behalf of or for use of the Commission or other committee charged with
37 responsibility of investigation or determination of compliance issues pursuant
38 to the Compact.
- 39 (10) Matters specifically exempted from disclosure by federal or member state
40 statute.

41 If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's
42 legal counsel or designee shall certify that the meeting may be closed and shall reference each
43 relevant exempting provision. The Commission shall keep minutes that fully and clearly describe
44 all matters discussed in a meeting and shall provide a full and accurate summary of actions taken,
45 and the reasons therefor, including a description of the views expressed. All documents
46 considered in connection with an action shall be identified in such minutes. All minutes and
47 documents of a closed meeting shall remain under seal, subject to release by a majority vote of
48 the Commission or order of a court of competent jurisdiction.

49 (f) Financing of the Commission. – The Commission shall pay, or provide for the
50 payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

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

3 The Commission may levy on and collect an annual assessment from each member state or
4 impose fees on other parties to cover the cost of the operations and activities of the Commission
5 and its staff, which must be in a total amount sufficient to cover its annual budget as approved
6 by the Commission each year for which revenue is not provided by other sources. The aggregate
7 annual assessment amount shall be allocated based upon a formula to be determined by the
8 Commission, which shall promulgate a rule binding upon all member states. The Commission
9 shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor
10 shall the Commission pledge the credit of any of the member states, except by and with the
11 authority of the member state.

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

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

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

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

41 **"§ 90-270.188. Data system.**

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

45 (b) A member state shall submit a uniform data set to the data system on all individuals
46 to whom this Compact is applicable, utilizing a unique identifier, as required by the rules of the
47 Commission, including all of the following:

48 (1) Identifying information.

49 (2) Licensure data.

50 (3) Adverse actions against a license or Compact privilege.

51 (4) Nonconfidential information related to alternative program participation.

1 (5) Any denial of application for licensure and the reasons for such denial.
2 (6) Other information that may facilitate the administration of this Compact, as
3 determined by the rules of the Commission.

4 (7) Current significant investigative information.

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

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

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

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

15 **"§ 90-270.189. Rulemaking.**

16 (a) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth
17 in this section and the rules adopted herein. Rules and amendments shall become binding as of
18 the date specified in each rule or amendment.

19 (b) The Commission shall promulgate reasonable rules in order to effectively and
20 efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the
21 Commission exercises its rulemaking authority in a manner that is beyond the scope of the
22 purposes of the Compact, or the powers granted thereunder, then such an action by the
23 Commission shall be invalid and have no force and effect.

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

27 (d) Rules or amendments to the rules shall be adopted at a regular or special meeting of
28 the Commission.

29 (e) Prior to promulgation and adoption of a final rule by the Commission, and at least 30
30 days in advance of the meeting at which the rule will be considered and voted upon, the
31 Commission shall file a notice of proposed rulemaking on the website of the Commission or
32 other publicly accessible platform and on the website of each member state occupational therapy
33 licensing board or other publicly accessible platform or the publication in which each state would
34 otherwise publish proposed rules.

35 (f) The notice of proposed rulemaking shall include all of the following:

36 (1) The proposed time, date, and location of the meeting in which the rule will be
37 considered and voted upon.

38 (2) The text of the proposed rule or amendment and the reason for the proposed
39 rule.

40 (3) A request for comments on the proposed rule from any interested person.

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

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

45 (h) The Commission shall grant an opportunity for a public hearing before it adopts a rule
46 or amendment if a hearing is requested by any of the following:

47 (1) At least 25 persons.

48 (2) A state or federal government subdivision or agency.

49 (3) An association or organization having at least 25 members.

50 (i) If a hearing is held on the proposed rule or amendment, the Commission shall publish
51 the place, time, and date of the scheduled public hearing. If the hearing is held via electronic

1 means, the Commission shall publish the mechanism for access to the electronic hearing.
2 Hearings shall be conducted as follows:

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

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

9 (3) All hearings will be recorded. A copy of the recording shall be made available
10 on request.

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

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

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

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

23 (m) Upon determination that an emergency exists, the Commission may consider and
24 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that
25 the usual rulemaking procedures provided in the Compact and in this section shall be
26 retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days
27 after the effective date of the rule. For the purposes of this provision, an emergency rule is one
28 that must be adopted immediately in order to (i) meet an imminent threat to public health, safety,
29 or welfare, (ii) prevent a loss of Commission or member state funds, (iii) meet a deadline for the
30 promulgation of an administrative rule that is established by federal law or rule, or (iv) protect
31 public health and safety.

32 (n) The Commission or an authorized committee of the Commission may direct revisions
33 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors
34 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be
35 posted on the website of the Commission. The revision shall be subject to challenge by any
36 person for a period of 30 days after posting. The revision may be challenged only on grounds
37 that the revision results in a material change to a rule. A challenge shall be made in writing and
38 delivered to the chair of the Commission prior to the end of the notice period. If no challenge is
39 made, the revision will take effect without further action. If the revision is challenged, the
40 revision may not take effect without the approval of the Commission.

41 **"§ 90-270.190. Oversight; dispute resolution; enforcement.**

42 (a) Oversight. – The executive, legislative, and judicial branches of state government in
43 each member state shall enforce this Compact and take all actions necessary and appropriate to
44 effectuate the Compact's purposes and intent. The provisions of this Compact and the rules
45 promulgated hereunder shall have standing as statutory law.

46 All courts shall take judicial notice of the Compact and the rules in any judicial or
47 administrative proceeding in a member state pertaining to the subject matter of this Compact
48 which may affect the powers, responsibilities, or actions of the Commission.

49 The Commission shall be entitled to receive service of process in any such proceeding and
50 shall have standing to intervene in such a proceeding for all purposes. Failure to provide service

1 of process to the Commission shall render a judgment or order void as to the Commission, this
2 Compact, or promulgated rules.

3 (b) Default; Technical Assistance; Termination. – If the Commission determines that a
4 member state has defaulted in the performance of its obligations or responsibilities under this
5 Compact or the promulgated rules, the Commission shall do all of the following:

6 (1) Provide written notice to the defaulting state and other member states of the
7 nature of default, the proposed means of curing the default, and any other
8 action to be taken by the Commission.

9 (2) Provide remedial training and specific technical assistance regarding the
10 default.

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

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

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

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

26 The defaulting state may appeal the action of the Commission by petitioning the U.S. District
27 Court for the District of Columbia or the federal district where the Commission has its principal
28 offices. The prevailing member shall be awarded all costs of such litigation, including reasonable
29 attorneys' fees.

30 (c) Dispute Resolution. – Upon request by a member state, the Commission shall attempt
31 to resolve disputes related to the Compact that arise among member states and between member
32 and nonmember states. The Commission shall promulgate a rule providing for both mediation
33 and binding dispute resolution for disputes as appropriate.

34 (d) Enforcement. – The Commission, in the reasonable exercise of its discretion, shall
35 enforce the provisions and rules of this Compact. By majority vote, the Commission may initiate
36 legal action in the U.S. District Court for the District of Columbia or the federal district where
37 the Commission has its principal offices against a member state in default to enforce compliance
38 with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may
39 include both injunctive relief and damages. In the event judicial enforcement is necessary, the
40 prevailing member shall be awarded all costs of such litigation, including reasonable attorneys'
41 fees. The remedies herein shall not be the exclusive remedies of the Commission. The
42 Commission may pursue any other remedies available under federal or state law.

43 **"§ 90-270.191. Date of implementation of the Interstate Commission for occupational**
44 **therapy practice and associated rules; withdrawal; amendment.**

45 (a) The Compact shall come into effect on the date on which the Compact statute is
46 enacted into law in the tenth member state. The provisions, which become effective at that time,
47 shall be limited to the powers granted to the Commission relating to assembly and the
48 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers
49 necessary to the implementation and administration of the Compact.

50 (b) Any state that joins the Compact subsequent to the Commission's initial adoption of
51 the rules shall be subject to the rules as they exist on the date on which the Compact becomes

1 law in that state. Any rule that has been previously adopted by the Commission shall have the
2 full force and effect of law on the day the Compact becomes law in that state.

3 (c) Any member state may withdraw from this Compact by enacting a statute repealing
4 the same. A member state's withdrawal shall not take effect until six months after enactment of
5 the repealing statute. Withdrawal shall not affect the continuing requirement of the withdrawing
6 state's occupational therapy licensing board to comply with the investigative and adverse action
7 reporting requirements of this act prior to the effective date of withdrawal.

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

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

14 **"§ 90-270.192. Construction and severability.**

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

24 **"§ 90-270.193. Binding effect of Compact and other laws.**

25 (a) A licensee providing occupational therapy in a remote state under the Compact
26 privilege shall function within the laws and regulations of the remote state.

27 (b) Nothing herein prevents the enforcement of any other law of a member state that is
28 not inconsistent with the Compact.

29 (c) Any laws in a member state in conflict with the Compact are superseded to the extent
30 of the conflict.

31 (d) Any lawful actions of the Commission, including all rules and bylaws promulgated
32 by the Commission, are binding upon the member states.

33 (e) All agreements between the Commission and the member states are binding in
34 accordance with their terms.

35 (f) In the event any provision of the Compact exceeds the constitutional limits imposed
36 on the legislature of any member state, the provision shall be ineffective to the extent of the
37 conflict with the constitutional provision in question in that member state."

38 **SECTION 2.** Section 1 of this act becomes effective when at least 10 states have
39 enacted the Occupational Therapy Licensure Compact set forth in Section 1 of this act. The North
40 Carolina Board of Occupational Therapy shall report to the Revisor of Statutes when the
41 Occupational Therapy Licensure Compact set forth in Section 1 of this act has been enacted by
42 the 10 member states. The remainder of this act is effective when it becomes law.