

1 AN ACT relating to occupational therapists.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 319A IS CREATED TO
4 READ AS FOLLOWS:

5 **SECTION 1. PURPOSE**

6 *The purpose of this Compact is to facilitate interstate practice of occupational therapy*
7 *with the goal of improving public access to occupational therapy services. The practice*
8 *of occupational therapy occurs in the state where the patient or client is located at the*
9 *time of the patient or client encounter. The Compact preserves the regulatory authority*
10 *of states to protect public health and safety through the current system of state*
11 *licensure.*

12 *This Compact is designed to achieve the following objectives:*

13 *A. Increase public access to occupational therapy services by providing for the*
14 *mutual recognition of other member state licenses;*

15 *B. Enhance the states' ability to protect the public's health and safety;*

16 *C. Encourage the cooperation of member states in regulating multistate*
17 *occupational therapy practice;*

18 *D. Support spouses of relocating military members;*

19 *E. Enhance the exchange of licensure, investigative, and disciplinary information*
20 *between member states;*

21 *F. Allow a remote state to hold a provider of services with a Compact privilege in*
22 *that state accountable to that state's practice standards; and*

23 *G. Facilitate the use of telehealth technology in order to increase access to*
24 *occupational therapy services.*

25 **SECTION 2. DEFINITIONS**

26 *As used in this Compact, and except as otherwise provided, the following definitions*
27 *shall apply:*

- 1 A. "Active duty military" means full-time duty status in the active uniformed service
2 of the United States, including members of the National Guard and Reserve on
3 active duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C. Chapter
4 1211;
- 5 B. "Adverse action" means any administrative, civil, equitable, or criminal action
6 permitted by a state's laws which is imposed by a licensing board or other
7 authority against an occupational therapist or occupational therapy assistant,
8 including actions against an individual's license or Compact privilege such as
9 censure, revocation, suspension, probation, monitoring of the licensee, or
10 restriction on the licensee's practice;
- 11 C. "Alternative program" means a nondisciplinary monitoring process approved by
12 an occupational therapy licensing board;
- 13 D. "Compact privilege" means the authorization, which is equivalent to a license,
14 granted by a remote state to allow a licensee from another member state to
15 practice as an occupational therapist or practice as an occupational therapy
16 assistant in the remote state under its laws and rules. The practice of
17 occupational therapy occurs in the member state where the patient or client is
18 located at the time of the patient or client encounter;
- 19 E. "Continuing competence or continuing education" means a requirement, as a
20 condition of license renewal, to provide evidence of participation in, completion
21 of, or any combination of these actions regarding educational and professional
22 activities relevant to practice or area of work;
- 23 F. "Current significant investigative information" means investigative information
24 that a licensing board, after an inquiry or investigation that includes notification
25 and an opportunity for the occupational therapist or occupational therapy
26 assistant to respond, if required by state law, has reason to believe is not
27 groundless and, if proved true, would indicate more than a minor infraction;

- 1 G. "Data system" means a repository of information about licensees, including but
2 not limited to license status, investigative information, Compact privileges, and
3 adverse actions;
- 4 H. "Encumbered license" means a license in which an adverse action restricts the
5 practice of occupational therapy by the licensee or said adverse action has been
6 reported to the National Practitioners Data Bank (NPDB);
- 7 I. "Executive committee" means a group of directors elected or appointed to act on
8 behalf of, and within the powers granted to them by, the commission;
- 9 J. "Home state" means the member state that is the licensee's primary state of
10 residence;
- 11 K. "Impaired practitioner" means an individual whose professional practice is
12 adversely affected by substance abuse, addiction, or other health-related
13 conditions;
- 14 L. "Investigative information" means information, records, documents, or any
15 combination of these items received or generated by an occupational therapy
16 licensing board pursuant to an investigation;
- 17 M. "Jurisprudence requirement" means the assessment of an individual's
18 knowledge of the laws and rules governing the practice of occupational therapy
19 in a state;
- 20 N. "Licensee" means an individual who currently holds an authorization from the
21 state to practice as an occupational therapist or as an occupational therapy
22 assistant;
- 23 O. "Member state" means a state that has enacted the Compact;
- 24 P. "Occupational therapist" means an individual who is licensed by a state to
25 practice occupational therapy;
- 26 Q. "Occupational therapy assistant" means an individual who is licensed by a state
27 to assist in the practice of occupational therapy;

- 1 R. "Occupational therapy," "occupational therapy practice," and the "practice of
2 occupational therapy" mean the care and services provided by an occupational
3 therapist or an occupational therapy assistant as set forth in the member state's
4 statutes and regulations;
- 5 S. "Occupational Therapy Compact Commission" or "commission" means the
6 national administrative body whose membership consists of all states that have
7 enacted the Compact;
- 8 T. "Occupational therapy licensing board" or "licensing board" means the agency
9 of a state that is authorized to license and regulate occupational therapists and
10 occupational therapy assistants;
- 11 U. "Primary state of residence" means the state (also known as the home state) in
12 which an occupational therapist or occupational therapy assistant who is not
13 active duty military declares a primary residence for legal purposes as verified by
14 a driver's license, federal income tax return, lease, deed, mortgage, voter
15 registration, or other verifying documentation as further defined by commission
16 rules;
- 17 V. "Remote state" means a member state other than the home state, where a
18 licensee is exercising or seeking to exercise the Compact privilege;
- 19 W. "Rule" means a regulation promulgated by the commission that has the force of
20 law;
- 21 X. "State" means any state, commonwealth, district, or territory of the United States
22 of America that regulates the practice of occupational therapy;
- 23 Y. "Single-state license" means an occupational therapist or occupational therapy
24 assistant license issued by a member state that authorizes practice only within the
25 issuing state and does not include a Compact privilege in any other member state;
26 and
- 27 Z. "Telehealth" means the application of telecommunication technology to deliver

1 occupational therapy services for assessment, intervention, consultation, or any
2 combination of these actions.

3 **SECTION 3. STATE PARTICIPATION IN THE COMPACT**

4 **A. To participate in the Compact, a member state shall:**

5 **1. License occupational therapists and occupational therapy assistants;**

6 **2. Participate fully in the commission's data system, including but not limited**
7 **to using the commission's unique identifier as defined in rules of the**
8 **commission;**

9 **3. Have a mechanism in place for receiving and investigating complaints**
10 **about licensees;**

11 **4. Notify the commission, in compliance with the terms of the Compact and**
12 **rules, of any adverse action or the availability of investigative information**
13 **regarding a licensee;**

14 **5. Implement or utilize procedures for considering the criminal history records**
15 **of applicants for an initial Compact privilege. These procedures shall**
16 **include the submission of fingerprints or other biometric-based information**
17 **by applicants for the purpose of obtaining an applicant's criminal history**
18 **record information from the Federal Bureau of Investigation and the**
19 **agency responsible for retaining that state's criminal records.**

20 **a. A member state shall, within a time frame established by the**
21 **commission, require a criminal background check for a licensee**
22 **seeking or applying for a Compact privilege whose primary state of**
23 **residence is that member state, by receiving the results of the Federal**
24 **Bureau of Investigation criminal record search, and shall use the**
25 **results in making licensure decisions.**

26 **b. Communication between a member state, the commission, and among**
27 **member states regarding the verification of eligibility for licensure**

1 through the Compact shall not include any information received from
2 the Federal Bureau of Investigation relating to a federal criminal
3 records check performed by a member state under Public Law 92-544;

4 6. Comply with the rules of the commission;

5 7. Utilize only a recognized national examination as a requirement for
6 licensure pursuant to the rules of the commission; and

7 8. Have continuing competence or continuing education requirements as a
8 condition for license renewal.

9 B. A member state shall grant the Compact privilege to a licensee holding a valid
10 unencumbered license in another member state in accordance with the terms of
11 the Compact and rules.

12 C. Member states may charge a fee for granting a Compact privilege.

13 D. A member state shall provide for the state's delegate to attend all Occupational
14 Therapy Compact Commission meetings.

15 E. Individuals not residing in a member state shall continue to be able to apply for a
16 member state's single-state license as provided under the laws of each member
17 state. However, the single-state license granted to these individuals shall not be
18 recognized as granting the Compact privilege in any other member state.

19 F. Nothing in this Compact shall affect the requirements established by a member
20 state for the issuance of a single-state license.

21 SECTION 4. COMPACT PRIVILEGE

22 A. To exercise the Compact privilege under the terms and provisions of the
23 Compact, the licensee shall:

24 1. Hold a license in the home state;

25 2. Have a valid United States Social Security number or National Practitioner
26 Identification number;

27 3. Have no encumbrance on any state license;

- 1 4. Be eligible for a Compact privilege in any member state in accordance with
- 2 Section 4D, F, G, and H;
- 3 5. Have paid all fines and completed all requirements resulting from any
- 4 adverse action against any license or Compact privilege, and two (2) years
- 5 have elapsed from the date of such completion;
- 6 6. Notify the commission that the licensee is seeking the Compact privilege
- 7 within a remote state or states;
- 8 7. Pay any applicable fees, including any state fee, for the Compact privilege;
- 9 8. Complete a criminal background check in accordance with Section 3A.5.
- 10 The licensee shall be responsible for the payment of any fee associated with
- 11 the completion of a criminal background check;
- 12 9. Meet any jurisprudence requirements established by the remote state or
- 13 states in which the licensee is seeking a Compact privilege; and
- 14 10. Report to the commission adverse action taken by any nonmember state
- 15 within thirty (30) days from the date the adverse action is taken.
- 16 B. The Compact privilege is valid until the expiration date of the home state license.
- 17 The licensee shall comply with the requirements of Section 4A to maintain the
- 18 Compact privilege in the remote state.
- 19 C. A licensee providing occupational therapy in a remote state under the Compact
- 20 privilege shall function within the laws and regulations of the remote state.
- 21 D. Occupational therapy assistants practicing in a remote state shall be supervised
- 22 by an occupational therapist licensed or holding a Compact privilege in that
- 23 remote state.
- 24 E. A licensee providing occupational therapy in a remote state is subject to that
- 25 state's regulatory authority. A remote state may, in accordance with due process
- 26 and that state's laws, remove a licensee's Compact privilege in the remote state
- 27 for a specific period of time, impose fines, or take a combination of these or any

1 other necessary actions to protect the health and safety of its citizens. The
2 licensee may be ineligible for a Compact privilege in any state until the specific
3 time for removal has passed and all fines are paid.

4 F. If a home state license is encumbered, the licensee shall lose the Compact
5 privilege in any remote state until the following occur:

6 1. The home state license is no longer encumbered; and

7 2. Two (2) years have elapsed from the date on which the home state license is
8 no longer encumbered in accordance with Section 4F.1.

9 G. Once an encumbered license in the home state is restored to good standing, the
10 licensee shall meet the requirements of Section 4A to obtain a Compact privilege
11 in any remote state.

12 H. If a licensee's Compact privilege in any remote state is removed, the individual
13 may lose the Compact privilege in any other remote state until the following
14 occur:

15 1. The specific period of time for which the Compact privilege was removed
16 has ended;

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

18 3. Two (2) years have elapsed from the date of completing requirements for
19 4H.1. and 2.; and

20 4. The Compact privileges are reinstated by the commission, and the Compact
21 data system is updated to reflect reinstatement.

22 I. If a licensee's Compact privilege in any remote state is removed due to an
23 erroneous charge, privileges shall be restored through the Compact data system.

24 J. Once the requirements of Section 4H have been met, the license shall meet the
25 requirements in Section 4A to obtain a Compact privilege in a remote state.

26 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF
27 COMPACT PRIVILEGE

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

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

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

10 2. Upon receipt of an application for obtaining a new home state license by
11 virtue of Compact privilege, the new home state shall verify that the
12 occupational therapist or occupational therapy assistant meets the pertinent
13 criteria outlined in Section 4 via the data system, without need for primary
14 source verification except for:

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

18 b. Other criminal background check as required by the new home state;
19 and

20 c. Submission of any requisite jurisprudence requirements of the new
21 home state;

22 3. The former home state shall convert the former home state license into a
23 Compact privilege once the new home state has activated the new home
24 state license in accordance with applicable rules adopted by the
25 commission;

26 4. Notwithstanding any other provision of this Compact, if the occupational
27 therapist or occupational therapy assistant cannot meet the criteria in

1 Section 4, the new home state shall apply its requirements for issuing a new
2 single-state license; and

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

6 C. If an occupational therapist or occupational therapy assistant changes primary
7 state of residence by moving from a member state to a nonmember state, or from
8 a nonmember state to a member state, the state criteria shall apply for issuance of
9 a single-state license in the new state.

10 D. Nothing in this Compact shall interfere with a licensee's ability to hold a single-
11 state license in multiple states; however, for the purposes of this Compact, a
12 licensee shall have only one (1) home state license.

13 E. Nothing in this Compact shall affect the requirements established by a member
14 state for the issuance of a single-state license.

15 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

21 SECTION 7. ADVERSE ACTIONS

22 A. A home state shall have exclusive power to impose adverse action against an
23 occupational therapist's or occupational therapy assistant's license issued by the
24 home state.

25 B. In addition to the other powers conferred by state law, a remote state shall have
26 the authority, in accordance with existing state due process law, to:

27 1. Take adverse action against an occupational therapist's or occupational

1 therapy assistant's Compact privilege within that member state; and

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

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

16 D. The home state shall complete any pending investigations of an occupational
17 therapist or occupational therapy assistant who changes primary state of
18 residence during the course of the investigations. The home state, where the
19 investigations were initiated, shall also have the authority to take appropriate
20 action or actions and shall promptly report the conclusions of the investigations
21 to the Occupational Therapy Compact Commission data system. The
22 Occupational Therapy Compact Commission data system administrator shall
23 promptly notify the new home state of any adverse actions.

24 E. A member state, if otherwise permitted by state law, may recover from the affected
25 occupational therapist or occupational therapy assistant the costs of
26 investigations and disposition of cases resulting from any adverse action taken
27 against that occupational therapist or occupational therapy assistant.

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

4 G. Joint investigations

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

9 2. Member states shall share any investigative, litigation, or compliance
10 materials in furtherance of any joint or individual investigation initiated
11 under the Compact.

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

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

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

26 SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT
27 COMMISSION

1 A. The Compact member states hereby create and establish a joint public agency
2 known as the Occupational Therapy Compact Commission.

3 1. The commission is an instrumentality of the Compact states.

4 2. Venue is proper and judicial proceedings by or against the commission
5 shall be brought solely and exclusively in a court of competent jurisdiction
6 where the principal office of the commission is located. The commission
7 may waive venue and jurisdictional defenses to the extent it adopts or
8 consents to participate in alternative dispute resolution proceedings.

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

11 B. Membership, voting, and meetings

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

14 2. The delegate shall be either:

15 a. A current member of the licensing board, who is an occupational
16 therapist, occupational therapy assistant, or public member; or

17 b. An administrator of the licensing board.

18 3. Any delegate may be removed or suspended from office as provided by the
19 law of the state from which the delegate is appointed.

20 4. The member state board shall fill any vacancy occurring in the commission
21 within ninety (90) days.

22 5. Each delegate shall be entitled to one (1) vote with regard to the
23 promulgation of rules and creation of bylaws and shall otherwise have an
24 opportunity to participate in the business and affairs of the commission. A
25 delegate shall vote in person or by such other means as provided in the
26 bylaws. The bylaws may provide for delegates' participation in meetings by
27 telephone or other means of communication.

1 6. The commission shall meet at least once during each calendar year.

2 Additional meetings shall be held as set forth in the bylaws.

3 7. The commission shall establish by rule a term of office for delegates.

4 C. The commission shall have the following powers and duties:

5 1. Establish a code of ethics for the commission;

6 2. Establish the fiscal year of the commission;

7 3. Establish bylaws;

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

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

11 6. Promulgate uniform rules to facilitate and coordinate implementation and
12 administration of this Compact. The rules shall have the force and effect of
13 law and shall be binding in all member states;

14 7. Bring and prosecute legal proceedings or actions in the name of the
15 commission, provided that the standing of any state occupational therapy
16 licensing board to sue or be sued under applicable law shall not be affected;

17 8. Purchase and maintain insurance and bonds;

18 9. Borrow, accept, or contract for services of personnel, including, but not
19 limited to, employees of a member state;

20 10. Hire employees, elect or appoint officers, fix compensation, define duties,
21 grant such individuals appropriate authority to carry out the purposes of the
22 Compact, and establish the commission's personnel policies and programs
23 relating to conflicts of interest, qualifications of personnel, and other
24 related personnel matters;

25 11. Accept any and all appropriate donations and grants of money, equipment,
26 supplies, materials, and services, and receive, utilize, and dispose of the
27 same; provided that at all times the commission shall avoid any appearance

1 of impropriety or conflict of interest;

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

5 13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
6 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 members,
10 state regulators, state legislators or their representatives, consumer
11 representatives, and such other interested persons as may be designated in
12 this Compact and the bylaws;

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

15 18. Establish and elect an executive committee; and

16 19. Perform such other functions as may be necessary or appropriate to achieve
17 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 commission
21 according to the terms of this Compact.

22 1. The executive committee shall be composed of nine (9) members:

23 a. Seven (7) voting members who are elected by the commission from the
24 current membership of the commission;

25 b. One (1) ex officio, nonvoting member from a recognized national
26 occupational therapy professional association; and

27 c. One (1) ex officio, nonvoting member from a recognized national

1 occupational therapy certification organization.

2 2. The ex officio members shall be selected by their respective organizations.

3 3. The commission may remove any member of the executive committee as
4 provided in bylaws.

5 4. The executive committee shall meet at least annually.

6 5. The executive committee shall have the following duties and
7 responsibilities:

8 a. Recommend to the entire commission changes to the rules or bylaws,
9 changes to this Compact legislation, fees paid by Compact member
10 states such as annual dues, and any commission Compact fee charged
11 to licensees for the Compact privilege;

12 b. Ensure Compact administration services are appropriately provided,
13 contractual or otherwise;

14 c. Prepare and recommend the budget;

15 d. Maintain financial records on behalf of the commission;

16 e. Monitor Compact compliance of member states and provide
17 compliance reports to the commission;

18 f. Establish additional committees as necessary; and

19 g. Perform other duties as provided in rules or bylaws.

20 E. Meetings of the commission

21 1. All meetings shall be open to the public, and public notice of meetings shall
22 be given in the same manner as required under the rulemaking provisions
23 in Section 10.

24 2. The commission or the executive committee or other committees of the
25 commission may convene in a closed, nonpublic meeting if the commission
26 or executive committee or other committees of the commission is required to
27 discuss:

- 1 a. Noncompliance of a member state with its obligations under the
- 2 Compact;
- 3 b. The employment, compensation, discipline, or other matters, practices,
- 4 or procedures related to specific employees or other matters related to
- 5 the commission's internal personnel practices and procedures;
- 6 c. Current, threatened, or reasonably anticipated litigation;
- 7 d. Negotiation of contracts for the purchase, lease, or sale of goods,
- 8 services, or real estate;
- 9 e. Accusing any person of a crime or formally censuring any person;
- 10 f. Disclosure of trade secrets or commercial or financial information
- 11 that is privileged or confidential;
- 12 g. Disclosure of information of a personal nature where disclosure
- 13 would constitute a clearly unwarranted invasion of personal privacy;
- 14 h. Disclosure of investigative records compiled for law enforcement
- 15 purposes;
- 16 i. Disclosure of information related to any investigative reports prepared
- 17 by or on behalf of or for use of the commission or other committee
- 18 charged with responsibility of investigation or determination of
- 19 compliance issues pursuant to the Compact; or
- 20 j. Matters specifically exempted from disclosure by federal or member
- 21 state statute.
- 22 3. If a meeting, or portion of a meeting, is closed pursuant to this provision,
- 23 the commission's legal counsel or designee shall certify that the meeting
- 24 may be closed and shall reference each relevant exempting provision.
- 25 4. The commission shall keep minutes that fully and clearly describe all
- 26 matters discussed in a meeting and shall provide a full and accurate
- 27 summary of actions taken, and the reasons for the actions, including a

1 description of the views expressed. All documents considered in connection
2 with an action shall be identified in such minutes. All minutes and
3 documents of a closed meeting shall remain under seal, subject to release by
4 a majority vote of the commission or order of a court of competent
5 jurisdiction.

6 **F. Financing of the commission**

7 1. The commission shall pay, or provide for the payment of, the reasonable
8 expenses of its establishment, organization, and ongoing activities.

9 2. The commission may accept any and all appropriate revenue sources,
10 donations, and grants of money, equipment, supplies, materials, and
11 services.

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

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

24 5. The commission shall keep accurate accounts of all receipts and
25 disbursements. The receipts and disbursements of the commission shall be
26 subject to the audit and accounting procedures established under its bylaws.
27 However, all receipts and disbursements of funds handled by the

1 commission shall be audited yearly by a certified or licensed public
2 accountant, and the report of the audit shall be included in and become part
3 of the annual report of the commission.

4 G. Qualified immunity, defense, and indemnification

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

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

26 3. The commission shall indemnify and hold harmless any member, officer,
27 executive director, employee, or representative of the commission for the

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

8 **SECTION 9. DATA SYSTEM**

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

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

15 **1. Identifying information;**

16 **2. Licensure data;**

17 **3. Adverse actions against a license or Compact privilege;**

18 **4. Non-confidential information related to alternative program participation;**

19 **5. Any denial of application for licensure, and the reason or reasons for such**
20 **denial;**

21 **6. Other information that may facilitate the administration of this Compact, as**
22 **determined by the rules of the commission; and**

23 **7. Current significant investigative information.**

24 **C. Current significant investigative information and other investigative information**
25 **pertaining to a licensee in any member state shall only be available to other**
26 **member states.**

27 **D. The commission shall promptly notify all member states of any adverse action**

1 taken against a licensee or an individual applying for a license. Adverse action
2 information pertaining to a licensee in any member state shall be available to any
3 other member state.

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

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

10 SECTION 10. RULEMAKING

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

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

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

24 D. Rules or amendments to the rules shall be adopted at a regular or special meeting
25 of the commission.

26 E. Prior to promulgation and adoption of a final rule or rules by the commission,
27 and at least thirty (30) days in advance of the meeting at which the rule shall be

1 considered and voted upon, the commission shall file a notice of proposed
2 rulemaking:

3 1. On the Web site of the commission or other publicly accessible platform;

4 and

5 2. On the Web site of each member state occupational therapy licensing board
6 or other publicly accessible platform or the publication in which each state
7 would otherwise publish proposed rules.

8 F. The notice of proposed rulemaking shall include:

9 1. The proposed time, date, and location of the meeting in which the rule shall
10 be considered and voted upon;

11 2. The text of the proposed rule or amendment and the reason for the
12 proposed rule;

13 3. A request for comments on the proposed rule from any interested person;
14 and

15 4. The manner in which interested persons may submit notice to the
16 commission of their intention to attend the public hearing and any written
17 comments.

18 G. Prior to adoption of a proposed rule, the commission shall allow persons to
19 submit written data, facts, opinions, and arguments, which shall be made
20 available to the public.

21 H. The commission shall grant an opportunity for a public hearing before it adopts a
22 rule or amendment if a hearing is requested by:

23 1. At least twenty-five (25) persons;

24 2. A state or federal governmental subdivision or agency; or

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

26 I. If a hearing is held on the proposed rule or amendment, the commission shall
27 publish the place, time, and date of the scheduled public hearing. If the hearing

1 is held via electronic means, the commission shall publish the mechanism for
2 access to the electronic hearing.

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 (5) business
6 days before the scheduled date of the hearing.

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

10 3. All hearings shall be recorded. A copy of the recording shall be made
11 available on request.

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

15 J. Following the scheduled hearing date, or by the close of business on the
16 scheduled hearing date if the hearing was not held, the commission shall
17 consider all written and oral comments received.

18 K. If no written notice of intent to attend the public hearing by interested parties is
19 received, the commission may proceed with promulgation of the proposed rule
20 without a public hearing.

21 L. The commission shall, by majority vote of all members, take final action on the
22 proposed rule and shall determine the effective date of the rule, if any, based on
23 the rulemaking record and the full text of the rule.

24 M. Upon determination that an emergency exists, the commission may consider and
25 adopt an emergency rule without prior notice, opportunity for comment, or
26 hearing, provided that the usual rulemaking procedures provided in the Compact
27 and in this section shall be retroactively applied to the rule as soon as reasonably

1 possible, in no event later than ninety (90) days after the effective date of the rule.

2 For the purposes of this provision, an emergency rule is a rule that requires
3 immediate adoption in order to:

4 1. Meet an imminent threat to public health, safety, or welfare;

5 2. Prevent a loss of commission or member state funds;

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

8 4. Protect public health and safety.

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

20 SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

21 A. Oversight

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

27 2. All courts shall take judicial notice of the Compact and the rules in any

1 judicial or administrative proceeding in a member state pertaining to the
2 subject matter of this Compact which may affect the powers,
3 responsibilities, or actions of the commission.

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

9 B. Default, technical assistance, and termination

10 1. If the commission determines that a member state has defaulted in the
11 performance of its obligations or responsibilities under this Compact or the
12 promulgated rules, the commission shall:

13 a. Provide written notice to the defaulting state and other member states
14 of the nature of the default, the proposed means of curing the default,
15 and any other actions to be taken by the commission; and

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

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

24 3. Termination of membership in the Compact shall be imposed only after all
25 other means of securing compliance have been exhausted. Notice of intent
26 to suspend or terminate shall be given by the commission to the governor,
27 the majority and minority leaders of the defaulting state's legislature, and

1 each of the member states.

2 4. A state that has been terminated is responsible for all assessments,
3 obligations, and liabilities incurred through the effective date of
4 termination, including obligations that extend beyond the effective date of
5 termination.

6 5. The commission shall not bear any costs related to a state that is found to be
7 in default or that has been terminated from the Compact, unless agreed
8 upon in writing between the commission and the defaulting state.

9 6. The defaulting state may appeal the action of the commission by petitioning
10 the United States District Court for the District of Columbia or the federal
11 district where the commission has its principal offices. The prevailing
12 member shall be awarded all costs of such litigation, including reasonable
13 attorney's fees.

14 C. Dispute resolution

15 1. Upon request by a member state, the commission shall attempt to resolve
16 disputes related to the Compact that arise among member states and
17 between member and nonmember states.

18 2. The commission shall promulgate a rule providing for both mediation and
19 binding dispute resolution for disputes as appropriate.

20 D. Enforcement

21 1. The commission, in the reasonable exercise of its discretion, shall enforce
22 the provisions and rules of this Compact.

23 2. By majority vote, the commission may initiate legal action in the United
24 States District Court for the District of Columbia or the federal district
25 where the commission has its principal offices against a member state in
26 default to enforce compliance with the provisions of the Compact and its
27 promulgated rules and bylaws. The relief sought may include both

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

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

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

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

B. Any state that joins the Compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the Compact.

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

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the

1 effective date of withdrawal.

2 D. Nothing contained in this Compact shall be construed to invalidate or prevent
3 any occupational therapy licensure agreement or other cooperative arrangement
4 between a member state and a nonmember state that does not conflict with the
5 provisions of this Compact.

6 E. This Compact may be amended by the member states. No amendment to this
7 Compact shall become effective and binding upon any member state until it is
8 enacted into the laws of all member states.

9 SECTION 13. CONSTRUCTION AND SEVERABILITY

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

20 SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

21 A. A licensee providing occupational therapy in a remote state under the Compact
22 privilege shall function within the laws and regulations of the remote state.

23 B. Nothing herein prevents the enforcement of any other law of a member state that
24 is not inconsistent with the Compact.

25 C. Any laws in a member state in conflict with the Compact are superseded to the
26 extent of the conflict.

27 D. Any lawful actions of the commission, including all rules and bylaws

1 promulgated by the commission, are binding upon the member states.

2 E. All agreements between the commission and the member states are binding in
3 accordance with their terms.

4 F. In the event any provision of the Compact exceeds the constitutional limits
5 imposed on the legislature of any member state, the provision shall be ineffective
6 to the extent of the conflict with the constitutional provision in question in that
7 member state.

8 **SECTION 15. APPLICABILITY TO KENTUCKY STATE GOVERNMENT**

9 In order to clarify the effect of certain provisions of this Compact and to ensure that
10 the rights and responsibilities of the various branches of government are maintained,
11 the following shall be in effect in this state:

12 A. By entering into this Compact, this state authorizes the state licensing board as
13 defined in Section 2 of this Compact and as created by KRS Chapter 319A to
14 implement the provisions of this Compact.

15 B. Notwithstanding any provision of this Compact to the contrary:

16 1. When a rule is adopted pursuant to Section 10 of this Compact, the
17 licensing board as defined by Section 2 of this Compact shall have sixty (60)
18 days to review the rule for the purpose of filing the rule as an emergency
19 administrative regulation pursuant to KRS 13A.190 and for filing the rule
20 as an accompanying ordinary administrative regulation, following the
21 requirements of KRS Chapter 13A. Failure by the licensing board as
22 defined by Section 2 of this Compact to promulgate a rule adopted by the
23 Occupational Therapy Compact Commission as an administrative
24 regulation pursuant to KRS Chapter 13A shall result in the initiation of the
25 process for withdrawal as set forth in Section 12 of this Compact. Nothing
26 in these provisions shall negate the applicability and effect of Section 10 of
27 this Compact to this state.

1 2. If the proposed administrative regulation is found deficient and the
2 deficiency is not resolved pursuant to KRS 13A.330 or 13A.335, the
3 provisions of Section 11 of this Compact shall apply. If the procedures
4 under Section 11 of this Compact fail to resolve an issue, the provisions of
5 Section 12 of this Compact shall apply.

6 3. If the Occupational Therapy Compact Commission created by Section 8 of
7 this Compact exercises its rulemaking authority in a manner that is beyond
8 the scope of the purposes of this Compact, or the powers granted under this
9 Compact, then such an action by the commission shall be invalid and have
10 no force or effect.

11 C. Section 8F of this Compact pertaining to the financing of the commission shall
12 not be interpreted to obligate the general fund of this state. Any funds used to
13 finance this Compact shall be from money collected pursuant to KRS 319A.060.

14 D. This Compact shall apply only to those occupational therapists and occupational
15 therapy assistants who practice or work under a Compact privilege.

16 ➔Section 2. KRS 319A.140 is amended to read as follows:

17 On the payment to the board of fees required by this chapter and on submission of a
18 written application on forms provided by the board, the board shall issue a license to:

19 (1) A person who presents evidence satisfactory to the board of being a registered
20 occupational therapist or a certified occupational therapy assistant through the
21 National Board for Certification in Occupational Therapy or its equivalent, and who
22 has met the academic and fieldwork requirements of KRS 319A.110 and the
23 examination requirement of KRS 319A.120;~~{or}~~

24 (2) A person who presents evidence satisfactory to the board of being currently
25 licensed, certified, or registered as an occupational therapist or occupational therapy
26 assistant by another state, territory of the United States, or the District of Columbia,
27 where the requirements for licensure, registration, or certification are equal to or

1 greater than the requirements set forth in this chapter; or

2 (3) A person who is eligible to practice or work through a Compact privilege granted
3 under Section 1 of this Act.

4 ➔Section 3. KRS 319A.180 is amended to read as follows:

5 ~~[Foreign-trained]~~Occupational therapists and occupational therapy assistants trained in
6 other jurisdictions who apply to be licensed by the board shall:

7 (1) Furnish proof of good moral character and shall present proof indicating the
8 completion of educational requirements equal to or greater than those contained in
9 KRS 319A.110 and examination requirements of KRS 319A.120; or

10 (2) Establish eligibility to practice or work through a Compact privilege granted
11 under Section 1 of this Act.