

**SUBSTITUTE FOR
HOUSE BILL NO. 4169**

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 16188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 16188. (1) The occupational therapy licensure compact is**
2 **enacted into law and entered into by this state as a party with all**
3 **jurisdictions that legally join in the compact, in the form**
4 **substantially as follows:**

5 **OCCUPATIONAL THERAPY LICENSURE COMPACT**

6 **SECTION 1. PURPOSE**

7 **The purpose of this Compact is to facilitate interstate**
8 **practice of Occupational Therapy with the goal of improving public**
9 **access to Occupational Therapy services. The Practice of**

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

5 This Compact is designed to achieve the following objectives:

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

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

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

13 D. Support spouses of relocating military members;

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

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

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

21 SECTION 2. DEFINITIONS

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

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

28 B. "Adverse Action" means any administrative, civil,
29 equitable, or criminal action permitted by a State's laws which is

1 imposed by a Licensing Board or other authority against an
2 Occupational Therapist or Occupational Therapy Assistant, including
3 actions against an individual's license or Compact Privilege such
4 as censure, revocation, suspension, probation, monitoring of the
5 Licensee, or restriction on the Licensee's practice.

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

8 D. "Compact Privilege" means the authorization, which is
9 equivalent to a license, granted by a Remote State to allow a
10 Licensee from another Member State to practice as an Occupational
11 Therapist or practice as an Occupational Therapy Assistant in the
12 Remote State under its laws and rules. The Practice of Occupational
13 Therapy occurs in the Member State where the patient/client is
14 located at the time of the patient/client encounter.

15 E. "Continuing Competence/Education" means a requirement, as a
16 condition of license renewal, to provide evidence of participation
17 in, and/or completion of, educational and professional activities
18 relevant to practice or area of work.

19 F. "Current Significant Investigative Information" means
20 Investigative Information that a Licensing Board, after an inquiry
21 or investigation that includes notification and an opportunity for
22 the Occupational Therapist or Occupational Therapy Assistant to
23 respond, if required by State law, has reason to believe is not
24 groundless and, if proved true, would indicate more than a minor
25 infraction.

26 G. "Data System" means a repository of information about
27 Licensees, including but not limited to license status,
28 Investigative Information, Compact Privileges, and Adverse Actions.

29 H. "Encumbered License" means a license in which an Adverse

1 Action restricts the Practice of Occupational Therapy by the
2 Licensee or said Adverse Action has been reported to the National
3 Practitioners Data Bank (NPDB).

4 I. "Executive Committee" means a group of directors elected or
5 appointed to act on behalf of, and within the powers granted to
6 them by, the Commission.

7 J. "Home State" means the Member State that is the Licensee's
8 Primary State of Residence.

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

12 L. "Investigative Information" means information, records,
13 and/or documents received or generated by an Occupational Therapy
14 Licensing Board pursuant to an investigation.

15 M. "Jurisprudence Requirement" means the assessment of an
16 individual's knowledge of the laws and rules governing the Practice
17 of Occupational Therapy in a State.

18 N. "Licensee" means an individual who currently holds an
19 authorization from the State to practice as an Occupational
20 Therapist or as an Occupational Therapy Assistant.

21 O. "Member State" means a State that has enacted the Compact.

22 P. "Occupational Therapist" means an individual who is
23 licensed by a State to practice Occupational Therapy.

24 Q. "Occupational Therapy Assistant" means an individual who is
25 licensed by a State to assist in the Practice of Occupational
26 Therapy.

27 R. "Occupational Therapy," "Occupational Therapy Practice,"
28 and the "Practice of Occupational Therapy" mean the care and
29 services provided by an Occupational Therapist or an Occupational

1 Therapy Assistant as set forth in the Member State's statutes and
2 regulations.

3 S. "Occupational Therapy Compact Commission" or "Commission"
4 means the national administrative body whose membership consists of
5 all States that have enacted the Compact.

6 T. "Occupational Therapy Licensing Board" or "Licensing Board"
7 means the agency of a State that is authorized to license and
8 regulate Occupational Therapists and Occupational Therapy
9 Assistants.

10 U. "Primary State of Residence" means the state (also known as
11 the Home State) in which an Occupational Therapist or Occupational
12 Therapy Assistant who is not Active Duty Military declares a
13 primary residence for legal purposes as verified by: driver's
14 license, federal income tax return, lease, deed, mortgage or voter
15 registration or other verifying documentation as further defined by
16 Commission Rules.

17 V. "Remote State" means a Member State other than the Home
18 State, where a Licensee is exercising or seeking to exercise the
19 Compact Privilege.

20 W. "Rule" means a regulation promulgated by the Commission
21 that has the force of law.

22 X. "State" means any state, commonwealth, district, or
23 territory of the United States of America that regulates the
24 Practice of Occupational Therapy.

25 Y. "Single-State License" means an Occupational Therapist or
26 Occupational Therapy Assistant license issued by a Member State
27 that authorizes practice only within the issuing State and does not
28 include a Compact Privilege in any other Member State.

29 Z. "Telehealth" means the application of telecommunication

1 technology to deliver Occupational Therapy services for assessment,
2 intervention and/or consultation.

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
6 Assistants;

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

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

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

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

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

28 b. Communication between a Member State, the Commission and
29 among Member States regarding the verification of eligibility for

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

5 6. Comply with the Rules of the Commission;

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

9 8. Have Continuing Competence/Education requirements as a
10 condition for license renewal.

11 B. A Member State shall grant the Compact Privilege to a
12 Licensee holding a valid unencumbered license in another Member
13 State in accordance with the terms of the Compact and Rules.

14 C. Member States may charge a fee for granting a Compact
15 Privilege.

16 D. A Member State shall provide for the State's delegate to
17 attend all Occupational Therapy Compact Commission meetings.

18 E. Individuals not residing in a Member State shall continue
19 to be able to apply for a Member State's Single-State License as
20 provided under the laws of each Member State. However, the Single-
21 State License granted to these individuals shall not be recognized
22 as granting the Compact Privilege in any other Member State.

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

26 SECTION 4. COMPACT PRIVILEGE

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

29 1. Hold a license in the Home State;

- 1 2. Have a valid United States Social Security Number or
2 National Practitioner Identification number;
- 3 3. Have no encumbrance on any State license;
- 4 4. Be eligible for a Compact Privilege in any Member State in
5 accordance with Section 4D, F, G, and H;
- 6 5. Have paid all fines and completed all requirements
7 resulting from any Adverse Action against any license or Compact
8 Privilege, and two years have elapsed from the date of such
9 completion;
- 10 6. Notify the Commission that the Licensee is seeking the
11 Compact Privilege within a Remote State(s);
- 12 7. Pay any applicable fees, including any State fee, for the
13 Compact Privilege;
- 14 8. Complete a criminal background check in accordance with
15 Section 3A(5);
 - 16 a. The Licensee shall be responsible for the payment of any
17 fee associated with the completion of a criminal background check.
- 18 9. Meet any Jurisprudence Requirements established by the
19 Remote State(s) in which the Licensee is seeking a Compact
20 Privilege; and
- 21 10. Report to the Commission Adverse Action taken by any non-
22 Member State within 30 days from the date the Adverse Action is
23 taken.
 - 24 B. The Compact Privilege is valid until the expiration date of
25 the Home State license. The Licensee must comply with the
26 requirements of Section 4A to maintain the Compact Privilege in the
27 Remote State.
 - 28 C. A Licensee providing Occupational Therapy in a Remote State
29 under the Compact Privilege shall function within the laws and

1 regulations of the Remote State.

2 D. Occupational Therapy Assistants practicing in a Remote
3 State shall be supervised by an Occupational Therapist licensed or
4 holding a Compact Privilege in that Remote State.

5 E. A Licensee providing Occupational Therapy in a Remote State
6 is subject to that State's regulatory authority. A Remote State
7 may, in accordance with due process and that State's laws, remove a
8 Licensee's Compact Privilege in the Remote State for a specific
9 period of time, impose fines, and/or take any other necessary
10 actions to protect the health and safety of its citizens. The
11 Licensee may be ineligible for a Compact Privilege in any State
12 until the specific time for removal has passed and all fines are
13 paid.

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

- 17 1. The Home State license is no longer encumbered; and
- 18 2. Two years have elapsed from the date on which the Home
19 State license is no longer encumbered in accordance with Section
20 4F(1).

21 G. Once an Encumbered License in the Home State is restored to
22 good standing, the Licensee must meet the requirements of Section
23 4A to obtain a Compact Privilege in any Remote State.

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

- 27 1. The specific period of time for which the Compact Privilege
28 was removed has ended;
- 29 2. All fines have been paid and all conditions have been met;

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

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

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

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

11 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT
12 PRIVILEGE

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

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

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

24 2. Upon receipt of an application for obtaining a new Home
25 State license by virtue of compact privilege, the new Home State
26 shall verify that the Occupational Therapist or Occupational
27 Therapy Assistant meets the pertinent criteria outlined in Section
28 4 via the Data System, without need for primary source verification
29 except for:

1 a. An FBI fingerprint based criminal background check if not
2 previously performed or updated pursuant to applicable Rules
3 adopted by the Commission in accordance with Public Law 92-544;

4 b. Other criminal background check as required by the new Home
5 State; and

6 c. Submission of any requisite Jurisprudence Requirements of
7 the new Home State.

8 3. The former Home State shall convert the former Home State
9 license into a Compact Privilege once the new Home State has
10 activated the new Home State license in accordance with applicable
11 Rules adopted by the Commission.

12 4. Notwithstanding any other provision of this Compact, if the
13 Occupational Therapist or Occupational Therapy Assistant cannot
14 meet the criteria in Section 4, the new Home State shall apply its
15 requirements for issuing a new Single-State License.

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

19 C. If an Occupational Therapist or Occupational Therapy
20 Assistant changes Primary State of Residence by moving from a
21 Member State to a non-Member State, or from a non-Member State to a
22 Member State, the State criteria shall apply for issuance of a
23 Single-State License in the new State.

24 D. Nothing in this Compact shall interfere with a Licensee's
25 ability to hold a Single-State License in multiple States; however,
26 for the purposes of this Compact, a Licensee shall have only one
27 Home State license.

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

1 License.

2 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

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

10 SECTION 7. ADVERSE ACTIONS

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

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

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

20 2. Issue subpoenas for both hearings and investigations that
21 require the attendance and testimony of witnesses as well as the
22 production of evidence. Subpoenas issued by a Licensing Board in a
23 Member State for the attendance and testimony of witnesses or the
24 production of evidence from another Member State shall be enforced
25 in the latter State by any court of competent jurisdiction,
26 according to the practice and procedure of that court applicable to
27 subpoenas issued in proceedings pending before it. The issuing
28 authority shall pay any witness fees, travel expenses, mileage and
29 other fees required by the service statutes of the State in which

1 the witnesses or evidence are located.

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

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

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

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

24 G. Joint Investigations

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

29 2. Member States shall share any investigative, litigation, or

1 compliance materials in furtherance of any joint or individual
2 investigation initiated under the Compact.

3 H. If an Adverse Action is taken by the Home State against an
4 Occupational Therapist's or Occupational Therapy Assistant's
5 license, the Occupational Therapist's or Occupational Therapy
6 Assistant's Compact Privilege in all other Member States shall be
7 deactivated until all encumbrances have been removed from the State
8 license. All Home State disciplinary orders that impose Adverse
9 Action against an Occupational Therapist's or Occupational Therapy
10 Assistant's license shall include a Statement that the Occupational
11 Therapist's or Occupational Therapy Assistant's Compact Privilege
12 is deactivated in all Member States during the pendency of the
13 order.

14 I. If a Member State takes Adverse Action, it shall promptly
15 notify the administrator of the Data System. The administrator of
16 the Data System shall promptly notify the Home State of any Adverse
17 Actions by Remote States.

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

21 SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT
22 COMMISSION.

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

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

27 2. Venue is proper and judicial proceedings by or against the
28 Commission shall be brought solely and exclusively in a court of
29 competent jurisdiction where the principal office of the Commission

1 is located. The Commission may waive venue and jurisdictional
2 defenses to the extent it adopts or consents to participate in
3 alternative dispute resolution proceedings.

4 3. Nothing in this Compact shall be construed to be a waiver
5 of sovereign immunity.

6 B. Membership, Voting, and Meetings

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

9 2. The delegate shall be either:

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

13 b. An administrator of the Licensing Board.

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

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

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

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

29 7. The Commission shall establish by Rule a term of office for

1 delegates.

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

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

4 2. Establish the fiscal year of the Commission;

5 3. Establish bylaws;

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

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

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

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

18 8. Purchase and maintain insurance and bonds;

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

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

27 11. Accept any and all appropriate donations and grants of
28 money, equipment, supplies, materials and services, and receive,
29 utilize and dispose of the same; provided that at all times the

1 Commission shall avoid any appearance of impropriety and/or
2 conflict of interest;

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

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

9 14. Establish a budget and make expenditures;

10 15. Borrow money;

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

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

18 18. Establish and elect an Executive Committee; and

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

23 D. The Executive Committee

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

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

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

29 b. One ex-officio, nonvoting member from a recognized national

1 Occupational Therapy professional association; and

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

4 2. The ex-officio members will be selected by their respective
5 organizations.

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

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

9 5. The Executive Committee shall have the following Duties and
10 responsibilities:

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

15 b. Ensure Compact administration services are appropriately
16 provided, contractual or otherwise;

17 c. Prepare and recommend the budget;

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

19 e. Monitor Compact compliance of Member States and provide
20 compliance reports to the Commission;

21 f. Establish additional committees as necessary; and

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

23 E. Meetings of the Commission

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

27 2. The Commission or the Executive Committee or other
28 committees of the Commission may convene in a closed, non-public
29 meeting if the Commission or Executive Committee or other

1 committees of the Commission must discuss:

2 a. Non-compliance of a Member State with its obligations under
3 the Compact;

4 b. The employment, compensation, discipline or other matters,
5 practices or procedures related to specific employees or other
6 matters related to the Commission's internal personnel practices
7 and procedures;

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

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

11 e. Accusing any person of a crime or formally censuring any
12 person;

13 f. Disclosure of trade secrets or commercial or financial
14 information that is privileged or confidential;

15 g. Disclosure of information of a personal nature where
16 disclosure would constitute a clearly unwarranted invasion of
17 personal privacy;

18 h. Disclosure of investigative records compiled for law
19 enforcement purposes;

20 i. Disclosure of information related to any investigative
21 reports prepared by or on behalf of or for use of the Commission or
22 other committee charged with responsibility of investigation or
23 determination of compliance issues pursuant to the Compact; or

24 j. Matters specifically exempted from disclosure by federal or
25 Member State statute.

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

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

10 F. Financing of the Commission

11 1. The Commission shall pay, or provide for the payment of,
12 the reasonable expenses of its establishment, organization, and
13 ongoing activities.

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

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

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

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

8 G. Qualified Immunity, Defense, and Indemnification

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

21 2. The Commission shall defend any member, officer, executive
22 director, employee, or representative of the Commission in any
23 civil action seeking to impose liability arising out of any actual
24 or alleged act, error, or omission that occurred within the scope
25 of Commission employment, duties, or responsibilities, or that the
26 person against whom the claim is made had a reasonable basis for
27 believing occurred within the scope of Commission employment,
28 duties, or responsibilities; provided that nothing herein shall be
29 construed to prohibit that person from retaining his or her own

1 counsel; and provided further, that the actual or alleged act,
 2 error, or omission did not result from that person's intentional or
 3 willful or wanton misconduct.

4 3. The Commission shall indemnify and hold harmless any
 5 member, officer, executive director, employee, or representative of
 6 the Commission for the amount of any settlement or judgment
 7 obtained against that person arising out of any actual or alleged
 8 act, error or omission that occurred within the scope of Commission
 9 employment, duties, or responsibilities, or that such person had a
 10 reasonable basis for believing occurred within the scope of
 11 Commission employment, duties, or responsibilities, provided that
 12 the actual or alleged act, error, or omission did not result from
 13 the intentional or willful or wanton misconduct of that person.

14 SECTION 9. DATA SYSTEM

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

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

- 24 1. Identifying information;
- 25 2. Licensure data;
- 26 3. Adverse Actions against a license or Compact Privilege;
- 27 4. Non-confidential information related to Alternative Program
 28 participation;
- 29 5. Any denial of application for licensure, and the reason(s)

1 for such denial;

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

4 7. Current Significant Investigative Information.

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

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

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

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

20 SECTION 10. RULEMAKING

21 A. The Commission shall exercise its Rulemaking powers
22 pursuant to the criteria set forth in this Section and the Rules
23 adopted thereunder. Rules and amendments shall become binding as of
24 the date specified in each Rule or amendment.

25 B. The Commission shall promulgate reasonable rules in order
26 to effectively and efficiently achieve the purposes of the Compact.
27 Notwithstanding the foregoing, in the event the Commission
28 exercises its rulemaking authority in a manner that is beyond the
29 scope of the purposes of the Compact, or the powers granted

1 hereunder, then such an action by the Commission shall be invalid
2 and have no force and effect.

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

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

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

14 1. On the website of the Commission or other publicly
15 accessible platform; and

16 2. On the website of each Member State Occupational Therapy
17 Licensing Board or other publicly accessible platform or the
18 publication in which each State would otherwise publish proposed
19 Rules.

20 F. The Notice of Proposed Rulemaking shall include:

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

23 2. The text of the proposed Rule or amendment and the reason
24 for the proposed Rule;

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

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

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

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

- 7 1. At least twenty five (25) persons;
- 8 2. A State or federal governmental subdivision or agency; or
- 9 3. An association or organization having at least twenty five
10 (25) members.

11 I. If a hearing is held on the proposed Rule or amendment, the
12 Commission shall publish the place, time, and date of the scheduled
13 public hearing. If the hearing is held via electronic means, the
14 Commission shall publish the mechanism for access to the electronic
15 hearing.

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

21 2. Hearings shall be conducted in a manner providing each
22 person who wishes to comment a fair and reasonable opportunity to
23 comment orally or in writing.

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

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

29 J. Following the scheduled hearing date, or by the close of

1 business on the scheduled hearing date if the hearing was not held,
2 the Commission shall consider all written and oral comments
3 received.

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

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

11 M. Upon determination that an emergency exists, the Commission
12 may consider and adopt an emergency Rule without prior notice,
13 opportunity for comment, or hearing, provided that the usual
14 Rulemaking procedures provided in the Compact and in this section
15 shall be retroactively applied to the Rule as soon as reasonably
16 possible, in no event later than ninety (90) days after the
17 effective date of the Rule. For the purposes of this provision, an
18 emergency Rule is one that must be adopted immediately in order to:

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

21 2. Prevent a loss of Commission or Member State funds;

22 3. Meet a deadline for the promulgation of an administrative
23 Rule that is established by federal law or Rule; or

24 4. Protect public health and safety.

25 N. The Commission or an authorized committee of the Commission
26 may direct revisions to a previously adopted Rule or amendment for
27 purposes of correcting typographical errors, errors in format,
28 errors in consistency, or grammatical errors. Public notice of any
29 revisions shall be posted on the website of the Commission. The

1 revision shall be subject to challenge by any person for a period
2 of thirty (30) days after posting. The revision may be challenged
3 only on grounds that the revision results in a material change to a
4 Rule. A challenge shall be made in writing and delivered to the
5 chair of the Commission prior to the end of the notice period. If
6 no challenge is made, the revision will take effect without further
7 action. If the revision is challenged, the revision may not take
8 effect without the approval of the Commission.

9 SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

10 A. Oversight

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

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

20 3. The Commission shall be entitled to receive service of
21 process in any such proceeding, and shall have standing to
22 intervene in such a proceeding for all purposes. Failure to provide
23 service of process to the Commission shall render a judgment or
24 order void as to the Commission, this Compact, or promulgated
25 Rules.

26 B. Default, Technical Assistance, and Termination

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

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

5 b. Provide remedial training and specific technical assistance
6 regarding the default.

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

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

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

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

28 6. The defaulting State may appeal the action of the
29 Commission by petitioning the United States District Court for the

1 District of Columbia or the federal district where the Commission
2 has its principal offices. The prevailing member shall be awarded
3 all costs of such litigation, including reasonable attorney's fees.

4 C. Dispute Resolution

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

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

11 D. Enforcement

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

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

23 3. The remedies herein shall not be the exclusive remedies of
24 the Commission. The Commission may pursue any other remedies
25 available under federal or State law.

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

28 AMENDMENT

29 A. The Compact shall come into effect on the date on which the

1 Compact statute is enacted into law in the tenth Member State. The
2 provisions, which become effective at that time, shall be limited
3 to the powers granted to the Commission relating to assembly and
4 the promulgation of Rules. Thereafter, the Commission shall meet
5 and exercise Rulemaking powers necessary to the implementation and
6 administration of the Compact.

7 B. Any State that joins the Compact subsequent to the
8 Commission's initial adoption of the Rules shall be subject to the
9 Rules as they exist on the date on which the Compact becomes law in
10 that State. Any Rule that has been previously adopted by the
11 Commission shall have the full force and effect of law on the day
12 the Compact becomes law in that State.

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

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

17 2. Withdrawal shall not affect the continuing requirement of
18 the withdrawing State's Occupational Therapy Licensing Board to
19 comply with the investigative and Adverse Action reporting
20 requirements of this act prior to the effective date of withdrawal.

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

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

1 SECTION 13. CONSTRUCTION AND SEVERABILITY

2 This Compact shall be liberally construed so as to effectuate
3 the purposes thereof. The provisions of this Compact shall be
4 severable and if any phrase, clause, sentence or provision of this
5 Compact is declared to be contrary to the constitution of any
6 Member State or of the United States or the applicability thereof
7 to any government, agency, person, or circumstance is held invalid,
8 the validity of the remainder of this Compact and the applicability
9 thereof to any government, agency, person, or circumstance shall
10 not be affected thereby. If this Compact shall be held contrary to
11 the constitution of any Member State, the Compact shall remain in
12 full force and effect as to the remaining Member States and in full
13 force and effect as to the Member State affected as to all
14 severable matters.

15 SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

16 A. A Licensee providing Occupational Therapy in a Remote State
17 under the Compact Privilege shall function within the laws and
18 regulations of the Remote State.

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

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

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

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

28 F. In the event any provision of the Compact exceeds the
29 constitutional limits imposed on the legislature of any Member

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

4 (2) As used in this article, subsection (1) may be cited as
5 the "occupational therapy licensure compact".

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act does not take effect
9 unless House Bill No. 4170 of the 102nd Legislature is enacted into
10 law.