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SB 1468: occupational therapists; compact

Sponsor: Senator Barto, LD 15

Committee on Health & Human Services

Overview

Adopts the Occupational Therapy Licensure Compact (Compact) to allow licensed occupational therapists and occupational therapy assistants to obtain licensure in other Compact states. Creates the Occupational Therapy Compact Commission (Commission).

History

Occupational therapy is the use of therapeutic activities or modalities to promote engagement in activities with individuals who are limited by physical or cognitive injury or illness, psychosocial dysfunction, developmental or learning disabilities, sensory processing or modulation deficits or the aging process in order to achieve optimum functional performance, maximize independence, prevent disability and maintain health. This includes evaluation, treatment and consultation based on the client's temporal, spiritual, cultural values and needs ([A.R.S. § 32-3401](#)).

The Board of Occupational Therapy Examiners (Board) licenses and regulates occupational therapists and occupational therapy assistants. Board duties include: 1) administering, coordinating and enforcing laws governing occupational therapy; 2) evaluate applicant qualifications; 3) prescribe examination requirements for licensure; 4) adopt rules necessary to carry out occupational therapy statutes; 5) conduct informal meetings, formal interviews and hearings and keep necessary records and minutes; and 6) prescribe educational programs required for licensure ([A.R.S. 32-3404](#)).

Statue further outlines the standards, qualifications and education requirements for occupational therapists and occupational therapy assistants (A.R.S. §§ [32-3423](#) and [32-3424](#)).

Provisions

Purpose

1. Declares that the purpose of this Compact is to facilitate the interstate practice of occupational therapy with the goal of improving public access to occupational services. (Sec. 1)
2. Specifies that the practice of occupational therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. (Sec. 1)
3. Deems that this Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. (Sec. 1)
4. Outlines the objectives the Compact is designed to achieve. (Sec. 1)
5. Defines terms. (Sec. 2)

State Participation in the Compact

6. Outlines requirements that a state must meet in order to participate in the Compact. (Sec. 3)

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7. Directs a member state to grant the Compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with rules and terms of Compact. (Sec. 3)
8. Allows member states to charge a fee for granting Compact privilege. (Sec. 3)
9. Requires member states to provide for the state's delegate to attend all Commission meetings. (Sec. 3)
10. Specifies that individuals that do not reside in a member state must still be able to apply for a member's state's single state license and that a single-state license granted to these individuals cannot be recognized as granting Compact privilege in any other member state. (Sec. 3)
11. Stipulates that this Compact does not affect the requirements established by a member state for the issuance of a single-state license. (Sec. 3)

Compact Privilege

12. Outlines requirements that a licensee must meet to exercise Compact privilege. (Sec. 4)
13. States that Compact privilege is valid until the expiration date of the home state license. (Sec. 4)
14. Requires licensees to comply with the requirements of the Compact to maintain Compact privilege in the remote state. (Sec. 4)
15. Directs a licensee providing occupational therapy in a remote state under Compact privilege to function within the laws and regulations of the remote state. (Sec. 4)
16. Requires occupational therapy assistants practicing in a remote state to be supervised by an occupational therapist who is licensed or holding a Compact privilege in that remote state. (Sec. 4)
17. Subjects a licensee providing occupational therapy in a remote state to that state's regulatory authority. (Sec. 4)
18. Authorizes a remote state in accordance with due process and their state laws to:
 - a) Remove a licensee's compact privilege in their state for a specific period of time;
 - b) Impose fines; or
 - c) Take any other necessary action to protect the health and safety of its citizens. (Sec. 4)
19. Specifies that licensees that have lost Compact privileges in a remote state are ineligible for Compact privilege in any other state until the specified time for removal has passed and all fines are paid. (Sec. 4)
20. Specifies that if a home state license is encumbered, the licensee loses the Compact privilege in any remote state until both of the following occur:
 - a) The home state license is no longer encumbered; and
 - b) Two years have elapsed from the date on which the home state license is no longer encumbered. (Sec. 4)
21. Stipulates that once an encumbered license in a licensee's home state is restored to good standing, the licensee must once again meet Compact licensure requirement in order to obtain Compact privilege in any remote state. (Sec. 4)
22. Asserts that if a license's Compact privilege in any remote state is removed, the licensee loses the Compact privilege in any other remote state until the following occurs:
 - a) The specific period of time for which the Compact privilege was removed has ended;
 - b) All fines have been paid and all conditions have been met;

- c) Two years have elapsed from the date the Compact privilege was removed and all fines were paid; and
- d) The Compact privileges are reinstated by the Commission and the compact data system is updated to reflect reinstatement. (Sec. 4)

- 23. Specifies that if a licensee's Compact privilege in any remote state is removed due to an erroneous charge, privileges must be restored through the Compact data system. (Sec. 4)
- 24. Requires a licensee that lost Compact privileges to once again meet all Compact requirements to obtain a new license compact privilege in a remote state. (Sec. 4)

Obtaining a New Home State License by Virtue of Compact Privilege

- 25. Restricts occupational therapy or occupational therapy assistant home state licensure to only one member state at a time. (Sec. 5)
- 26. Provides procedures for when an occupational therapist or occupational therapist assistant changes their primary state of residence by moving between two member states. (Sec. 5)
- 27. Specifies that if an occupational therapists or occupational therapists assistant changes primary state of residence by moving from a member state to a nonmember state or from a nonmember state to a member state then the new home state criteria for issuance of a single-state license applies. (Sec. 5)
- 28. States that this Compact does not interfere with a licensee's ability to hold a single-state license in multiple states or affect the requirements established by a member state for the issuance of a single-state license. (Sec. 5)
- 29. Clarifies that for the purposes of this Compact, a licensee must have only one home state license. (Sec. 5)

Active-Duty Military Personnel and Spouses

- 30. Directs active-duty military personnel or military spouses to designate a home state where the individual has a current license in good standing. (Sec. 6)
- 31. Permits active-duty military personnel or military spouses to retain the home state designation during the period the service member is on active duty. (Sec. 6)
- 32. Allows an active-duty service member or military spouse to change home state only through application for licensure in a new state or through the Compact process. (Sec. 6)

Adverse Actions

- 33. Gives home states exclusive power to impose adverse action against an occupational therapist's or occupational therapy assistant's license issued by home state. (Sec. 7)
- 34. Gives remote states the authority, in accordance with existing state due process law, to:
 - a) Take adverse action against an occupational therapist's or occupational therapy assistant's Compact privilege within that member state; and
 - b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. (Sec. 7)
- 35. Specifies that subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court. (Sec. 7)
- 36. Directs an authority that issues subpoena to pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witness or evidence is located. (Sec. 7)

37. Specifies that for purposes of taking adverse action, a home state must give the same priority and effect to reported conduct received from a member state as it would if the conduct has occurred within the home state. (Sec. 7)
38. Specifies that for the purposes of taking adverse action, the home state must apply its own states laws to determine appropriate action. (Sec. 7)
39. Instructs a home state to complete any pending investigations of an occupational therapist or occupational therapist assistant who changes primary state of residence during the course of the investigations. (Sec. 7)
40. Enables a home state to take any appropriate action and promptly report the conclusions of the investigations to the Commission data system. (Sec. 7)
41. Requires the Commission data system administrator to promptly notify the new home state of any adverse action. (Sec. 7)
42. Permits a member state to recover the costs of investigations and disposition of cases from the affected occupational therapists or occupational therapy assistants. (Sec. 7)
43. Allows member states to take adverse actions based on factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action. (Sec. 7)
44. States that joint investigations are as follows:
 - a) In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, any member state may participate with other member states in joint investigations of licenses; and
 - b) Member states must share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under this Compact. (Sec. 7)
45. Deactivates occupational therapists or occupational therapy assistant's Compact privileges in all member states if any adverse action is taken by the home state against the licensee until all encumbrances have been removed from the state license. (Sec. 7)
46. Mandates that all home state disciplinary orders imposing adverse action against an occupational therapist's or occupational therapy assistant's license must include a statement that the licensee's Compact privilege is deactivated in all member states during the pendency of the order. (Sec. 7)
47. Directs a member state that takes adverse action to promptly notify the data system administrator. (Sec. 7)
48. Requires the data system administrator to promptly notify the home state of any adverse actions by remote states. (Sec. 7)
49. Asserts that the Compact does not override a member state's decision that participates in an alternative program to be used in lieu of adverse action. (Sec. 7)

Occupational Therapy Compact Commission

50. Creates the Commission as an instrumentality of Compact states. (Sec. 8)
51. Requires judicial proceedings by or against the Commission to be brought solely in court of competent jurisdiction where the Commission's principal office is located. (Sec. 8)
52. Forbids any provision of the Compact from being construed as a waiver of sovereign immunity. (Sec. 8)
53. Outlines membership, authorities and duties of the Commission. (Sec. 8)

54. Creates an executive committee with the power to act on behalf of the Commission. (Sec. 8)
55. Outlines membership, duties and authorities of the executive committee. (Sec. 8)
56. Requires Commission meetings to be open to the public and provide proper public notice. (Sec. 8)
57. Allows the Commission or executive committee or other committees of the Commission to convene in a closed, nonpublic meeting if they discuss certain topics. (Sec. 8)
58. Specifies that, if a meeting or portion of the meeting is closed, the Commission's legal counsel or designee must certify that a meeting is closed and reference each relevant exemption provision. (Sec. 8)
59. Requires the Commission to keep minutes of the meetings and outlines how the meeting minutes and documents should be kept. (Sec. 8)
60. Outlines financial requirements and authorities of the Commission. (Sec. 8)
61. Holds harmless from liability the members, officers, executive director, employee or Commission representative in any civil action seeking to impose liability for an act, error or omission that occurred within the scope of Commission employment, duties or responsibilities if the act was not a result of intentional, willful or wanton misconduct. (Sec. 8)
62. Directs the Commission to defend any member, officer, executive director, employee or Commission representative in any civil action seeking to impose liability for an act, error or omission that occurred within the Commission employment, duties or responsibilities. (Sec. 8)
63. Permits a person to retain private counsel in any action against the person. (Sec. 8)
64. Directs the Commission to indemnify and hold harmless any member, officer, executive director, employee or Commission representative for the amount of any settlement or judgement obtained against that person arising out of an act, error or omission that occurred within the Commission employment, duties or responsibilities. (Sec. 8)

Data System

65. Instructs the Commission to provide for the development, maintenance and utilization of a coordinated database and reporting system containing licensure, adverse action and investigative information on all licensed individuals in member states. (Sec. 9)
66. Outlines the uniformed data set that a member state must submit to the data system regarding all Compact individuals. (Sec. 9)
67. Specifies that the uniform data set submitted to the data system on all Compact individuals must use a unique identifier. (Sec. 9)
68. Limits the availability of current significant investigative information and other investigative information pertaining to a licensee in any member state to only other member states. (Sec. 9)
69. Directs the Commission to notify all member states of any adverse action taken against a licensee or applicant. (Sec. 9)
70. Allows member states contributing information to the data system to designate information that may not be shared without expressed permission. (Sec. 9)
71. Specifies that any information submitted to the data system that is required to be expunged must be removed from data system. (Sec. 9)

Rulemaking

72. Authorizes the Commission to exercise its rulemaking powers and adopt reasonable rules in order to achieve the purposes of this Compact effectively and efficiently. (Sec. 10)
73. Specifies that rules and amendments become binding on the date specified in each rule or amendment and that rules or amendments to the rules must be adopted at a regular or special meeting of the Commission. (Sec. 10)
74. Specifies that any rulemaking action of the Commission that is beyond the scope of the Compact is invalid and has no force or effect. (Sec. 10)
75. Stipulates that a rule has no further force or effect in any member state if a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the Compact, within four years of the adoption of the rule. (Sec. 10)
76. Directs the Commission, at least 30 days before a meeting to consider and vote on rules, to file a notice of proposed rulemaking on the website of:
 - a) The Commission or other publicly accessible platform; and
 - b) Each member state's occupational therapy licensing board or other publicly accessible platform in which each state would otherwise publish proposed rules. (Sec. 10)
77. Outlines what must be included in the notice of proposed rulemaking. (Sec. 10)
78. Allows individuals to submit written data, facts, opinions and arguments to be available to the public before the adoption of a proposed rule. (Sec. 10)
79. Authorizes the Commission to grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following:
 - a) At least 25 people;
 - b) A state or federal government subdivision or agency;
 - c) An association or organization having at least 25 members. (Sec. 10)
80. Directs the Commission to:
 - a) Publish notice of the place, time and date of a scheduled public hearing on a proposed rule or amendment and outlines additional requirements;
 - b) Consider all written and oral comments received on a proposed rule or amendment; and
 - c) Take final action on a proposed rule by majority vote and determine the effective date of the rule, if any. (Sec. 10)
81. Allows the Commission to proceed with adopting a proposed rule without a public hearing if no written notice of intent to attend the public hearing by interested parties is received. (Sec. 10)
82. Allows the Commission to consider and adopt an emergency rule without prior notice, an opportunity for comment or a hearing if the Commission determines that there is an emergency and usual rulemaking procedures provided in the Compact are retroactively applied as soon as reasonably possible, within 90 days. (Sec. 10)
83. Requires an emergency rule to be adopted immediately in order to do any of the following:
 - a) Meet an imminent threat to public health, safety or welfare;
 - b) Prevent a loss of commission or member state funds;
 - c) Meet a deadline for the adoption of an administrative rule established by federal or state law; or
 - d) Protect public health and safety. (Sec. 10)

84. Permits the Commission or an authorized committee to direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. (Sec. 10)
85. Requires public notice of any revisions to be posted on the Commissions website. (Sec. 10)
86. Stipulates that revisions are subject to challenge by any person for 30 days on grounds that the revision results in a material change to rule. (Sec.10)
87. Requires any challenge to be made in writing and delivered to the Chairperson of the Commission before the end of the notice period. (Sec. 10)
88. Specifies that revisions take effect without further action if no challenge is made. (Sec. 10)
89. Specifies that if the revision is challenged the revision may not take effect without the approval of the Commission. (Sec. 10)

Oversight, Dispute Resolution and Enforcement

90. Enables the executive, legislative and judicial branch of state government in each members state to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. (Sec. 11)
91. States that the Compact's provisions and adopted rules have standing as statutory law. (Sec. 11)
92. Requires all courts to take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state that pertain to the Compact that may affect the powers, responsibilities or actions of the Commission. (Sec. 11)
93. Entitles the Commission to receive service of process as well as standing to intervene in a proceeding for all purposes. (Sec. 11)
94. Stipulates that failure to provide service of process to the Commission renders a judgement or order void. (Sec. 11)
95. Directs the Commission, if a member state has defaulted in the performance of its obligations or responsibilities under the Compact, to:
 - a) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any other action to be taken by the Commission; and
 - b) Provide remedial training and specific technical assistance regarding the default. (Sec. 11)
96. Permits a defaulting state that fails to cure a default to be terminated from the Compact, upon a majority vote of member states. (Sec. 11)
97. Terminates Compact membership only after all other means of securing compliance have been exhausted. (Sec. 11)
98. Requires notice of intent to suspend or terminate to be given by the Commission to the Governor, the majority and minority leaders of the state's legislatures and each of the member states. (Sec. 11)
99. Specifies that a terminated state is responsible for all assessments, obligations and liabilities incurred, including obligations that extend beyond the effective date of termination. (Sec. 11)
100. Prohibits the Commission from bearing any costs related to a defaulting or terminated state, unless agreed to in writing between the Commission and the defaulting state. (Sec. 11)

101. Permits a defaulting state to appeal the Commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. (Sec. 11)
102. Grants all costs of litigation, including reasonable attorney fees, to the prevailing party. (Sec. 11)
103. Requires the Commission to attempt to resolve disputes arising among member states and between member and nonmember states upon request by a member state. (Sec. 11)
104. Directs the Commission to adopt a rule providing for both mediation and binding dispute resolution as appropriate. (Sec. 11)
105. Enables the Commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of the Compact. (Sec. 11)
106. Enables the Commission, by majority vote, to initiate legal action in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices against a defaulting member state to enforce Compact compliance, including seeking both injunctive relief and damages. (Sec. 11)
107. Stipulates that if judicial enforcement is necessary the prevailing member is awarded all costs of litigation, including reasonable attorney fees. (Sec. 11)
108. States that remedies in this Compact are not exclusive remedies of the Commission. (Sec. 11)
109. Allows the Commission to pursue any other remedies available under federal or state law. (Sec. 11)

Date of Implementation, Withdrawals and Amendments

110. Enacts the Compact on the date that the Compact is adopted by a 10th member state. (Sec. 12)
111. Limits the powers granted to the Commission relating to assembly and the adoption of rules to only the provisions of the Compact. (Sec. 12)
112. Requires the Commission to meet and exercise rulemaking powers necessary to implement and administer the Compact upon the effective date. (Sec. 12)
113. Stipulates that any state that joins the Compact subsequent to the Commission's initial adoption of rules is subject to the rules in place on the effective date of the Compact. (Sec. 12)
114. States that any rule previously adopted by the Commission has the full force and effect of law on the effective date of the Compact. (Sec. 12)
115. Allows any member state to withdraw from the Compact by enacting statute repealing the Compact. (Sec. 12)
116. Stipulates that a member state's withdrawal does not:
 - a) Take effect until six months after repealing the enacting statute; or
 - b) Affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of the Compact before the date of withdrawal. (Sec. 12)
117. Asserts that the Compact does not invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with Compact provisions. (Sec. 12)
118. Allows the Compact to be amended by the member states. (Sec. 12)

119. Stipulates that a Compact membership amendment does not become effective until it is enacted by all member states. (Sec. 12)

Construction and Severability

120. Requires the Compact to be liberally construed so as to effectuate its purposes. (Sec. 13)

121. Requires the provisions of the Compact to be severable. (Sec. 13)

122. Specifies that if any phrase, clause, sentence or provision of the Compact is declared to be contrary to the constitution of a member state or of the United States, the validity of the remainder of the Compact and the applicability to any government, agency, person or circumstance is not affected. (Sec. 13)

123. Specifies that if the Compact violates the constitution of a member state, the Compact remains in full force and effect for:

- a) The remaining member states; and
- b) All severable matters of the affected member state. (Sec. 13)

Binding Effect of Compact and Other Laws

124. Directs occupational therapy licenses in a remote state with Compact privileges to function within the laws and regulations of the remote state. (Sec. 14)

125. Stipulates that the Compact does not prevent the enforcement of any other law of a member state that is not inconsistent with the Compact. (Sec. 14)

126. Declares that any laws in a member state that are in conflict with the Compact are superseded to the extent of the Conflict. (Sec. 14)

127. Specifies that any lawful actions of the Commission, including all rules and bylaws adopted by the Commission are binding on the member states. (Sec. 14)

128. States that all agreements between the Commission and member states are binding in accordance with their terms. (Sec. 14)

129. Specifies that if any provision of the Compact exceeds the legislative constitutional limits of a member state, the provision is ineffective to the extent of the conflict. (Sec. 14)