

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 15

Introduced by Blood, 3.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to occupational therapy; to amend section
- 2 38-2516, Reissue Revised Statutes of Nebraska; to adopt the
- 3 Occupational Therapy Practice Interstate Compact; to authorize
- 4 practice as an occupational therapist or occupational therapy
- 5 assistant as prescribed; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-2516, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 38-2516 (1) No person may represent himself or herself to be a
4 licensed occupational therapist or occupational therapy assistant unless
5 the person he or she is licensed in accordance with the Occupational
6 Therapy Practice Act or has a compact privilege to practice in accordance
7 with the Occupational Therapy Practice Interstate Compact.

8 (2) Nothing in the Occupational Therapy Practice Act ~~Nothing in such~~
9 ~~act~~ shall be construed to prevent:

10 (a) (1) Any person licensed in this state pursuant to the Uniform
11 Credentialing Act from engaging in the profession or occupation for which
12 he or she is licensed;

13 (b) (2) The activities and services of any person employed as an
14 occupational therapist or occupational therapy assistant who serves in
15 the armed forces of the United States or the United States Public Health
16 Service or who is employed by the United States Department of Veterans
17 Affairs or other federal agencies, if their practice is limited to that
18 service or employment;

19 (c) (3) The activities and services of any person pursuing an
20 accredited course of study leading to a degree or certificate in
21 occupational therapy if such activities and services constitute a part of
22 a supervised course of study and if such a person is designated by a
23 title which clearly indicates his or her status as a student or trainee;

24 (d) (4) The activities and services of any person fulfilling the
25 supervised fieldwork experience requirements of sections 38-2518 and
26 38-2519 if such activities and services constitute a part of the
27 experience necessary to meet the requirements of such sections; or

28 (e) (5) Qualified members of other professions or occupations,
29 including, but not limited to, recreation specialists or therapists,
30 special education teachers, independent living specialists, work
31 adjustment trainers, caseworkers, and persons pursuing courses of study

1 leading to a degree or certification in such fields, from doing work
2 similar to occupational therapy which is consistent with their training
3 if they do not represent themselves by any title or description to be
4 occupational therapists.

5 Sec. 2. The State of Nebraska adopts the Occupational Therapy
6 Practice Interstate Compact in the form substantially as follows:

7 ARTICLE 1. PURPOSE.

8 The purpose of the Occupational Therapy Practice Interstate Compact
9 is to facilitate interstate practice of occupational therapy with the
10 goal of improving public access to occupational therapy services. The
11 practice of occupational therapy occurs in the state where the patient or
12 client is located at the time of the patient or client encounter. This
13 Compact preserves the regulatory authority of states to protect public
14 health and safety through the current system of state licensure.

15 This Compact is designed to achieve the following objectives:

16 A. Increase public access to occupational therapy services by
17 providing for the mutual recognition of other Member State licenses;

18 B. Enhance the states' ability to protect the public health and
19 safety;

20 C. Encourage the cooperation of Member States in regulating
21 multistate occupational therapy practice;

22 D. Support spouses of relocating military members;

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

25 F. Allow a Remote State to hold a provider of services with a
26 Compact Privilege in that state accountable to that state's practice
27 standards; and

28 G. Facilitate the use of telehealth technology in order to increase
29 access to occupational therapy services.

30 ARTICLE 2. DEFINITIONS.

31 As used in the Occupational Therapy Practice Interstate Compact, and

1 except as otherwise provided, the following definitions apply:

2 A. Active duty military means full-time duty status in the active
3 uniformed service of the United States, including members of the National
4 Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter
5 1209 and 10 U.S.C. 1211.

6 B. Adverse action means any administrative, civil, equitable, or
7 criminal action permitted by a state's laws which is imposed by a
8 licensing board or other authority against an occupational therapist or
9 occupational therapy assistant, including actions against an individual's
10 license or Compact Privilege such as revocation, suspension, probation,
11 monitoring of the Licensee, or restriction on the Licensee's practice.

12 C. Alternative program means a nondisciplinary monitoring process
13 approved by an occupational therapy licensing board to address Impaired
14 Practitioners.

15 D. Compact Privilege means the authorization, which is equivalent to
16 a license, granted by a Remote State to allow a Licensee from another
17 Member State to practice as an occupational therapist or practice as an
18 occupational therapy assistant in the Remote State under its laws and
19 rules. The practice of occupational therapy occurs in the Member State
20 where the patient or client is located at the time of the patient or
21 client encounter.

22 E. Continuing Competence/Education means a requirement, as a
23 condition of license renewal, to provide evidence of participation in,
24 and completion of, educational and professional activities relevant to
25 practice or area of work.

26 F. Current significant investigative information means investigative
27 information that a licensing board, after an inquiry or investigation
28 that includes notification and an opportunity for the occupational
29 therapist or occupational therapy assistant to respond, if required by
30 state law, has reason to believe is not groundless and, if proved true,
31 would indicate more than a minor infraction.

1 G. Data system means a repository of information about Licensees,
2 including, but not limited to, licensure, investigative information,
3 Compact Privilege, and adverse action.

4 H. Encumbered License means a license in which an adverse action
5 restricts the practice of occupational therapy by the Licensee and the
6 adverse action has been reported to the National Practitioner Data Bank.

7 I. Executive Committee means a group of directors elected or
8 appointed to act on behalf of, and within the powers granted to them by,
9 the Commission.

10 J. Home State means the Member State that is the Licensee's primary
11 state of residence.

12 K. Impaired Practitioner means an individual whose professional
13 practice is adversely affected by substance abuse, addiction, or other
14 health-related conditions.

15 L. Investigative information means information, records, or
16 documents received or generated by an occupational therapy licensing
17 board pursuant to an investigation.

18 M. Jurisprudence requirement means the assessment of an individual's
19 knowledge of the laws and rules governing the practice of occupational
20 therapy in a state.

21 N. Licensee means an individual who currently holds an authorization
22 from the state to practice as an occupational therapist or as an
23 occupational therapy assistant.

24 O. Member State means a state that has enacted this Compact.

25 P. Occupational therapist means an individual who is licensed by a
26 state to practice occupational therapy.

27 Q. Occupational therapy assistant means an individual who is
28 licensed by a state to assist in the practice of occupational therapy.

29 R. Occupational therapy, occupational therapy practice, and the
30 practice of occupational therapy mean the care and services provided by
31 an occupational therapist or an occupational therapy assistant as set

1 forth in the Member State's statutes and regulations.

2 S. Occupational Therapy Interstate Compact Commission or Commission
3 means the national administrative body whose membership consists of all
4 states that have enacted this Compact.

5 T. Occupational therapy licensing board or licensing board means the
6 agency of a state that is responsible for the licensing and regulation of
7 occupational therapists and occupational therapy assistants.

8 U. Remote State means a Member State other than the Home State,
9 where a Licensee is exercising or seeking to exercise the Compact
10 Privilege.

11 V. Rule means a regulation promulgated by the Commission that has
12 the force of law.

13 W. State means any state, commonwealth, district, or territory of
14 the United States of America that regulates the practice of occupational
15 therapy.

16 X. Single-State License means an occupational therapist or
17 occupational therapy assistant license issued by a Member State that
18 authorizes practice only within the issuing state and does not include a
19 Compact Privilege in any other Member State.

20 Y. Telehealth means the application of telecommunication technology
21 to deliver occupational therapy services for assessment, intervention, or
22 consultation.

23 ARTICLE 3. STATE PARTICIPATION IN THIS COMPACT.

24 A. To participate in this Compact, a Member State shall:

25 1. License occupational therapists and occupational therapy
26 assistants;

27 2. Participate fully in the data system, including using the
28 Commission's unique identifier as defined in Rules;

29 3. Have a mechanism in place for receiving and investigating
30 complaints about Licensees;

31 4. Notify the Commission, in compliance with the terms of this

1 Compact and Rules, of any adverse action or the availability of
2 investigative information regarding a Licensee;

3 5. Implement or utilize procedures for considering the criminal
4 history records of applicants for an initial Compact Privilege. These
5 procedures shall include the submission of fingerprints or other
6 biometric-based information by applicants for the purpose of obtaining an
7 applicant's criminal history record information from the Federal Bureau
8 of Investigation and the agency responsible for retaining that state's
9 criminal records.

10 a. A Member State shall fully implement a criminal background check
11 requirement, within a timeframe established by Rule, by receiving the
12 results of the Federal Bureau of Investigation record search on criminal
13 background checks and use the results in making licensure decisions.

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

19 6. Comply with the Rules of the Commission;

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

22 8. Have Continuing Competence/Education requirements as a condition
23 for license renewal.

24 B. A Member State shall grant the Compact Privilege to a Licensee
25 holding a valid unencumbered license in another Member State in
26 accordance with the terms of this Compact and Rules.

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

28 D. A Member State shall provide for the state's delegate to attend
29 all Commission meetings.

30 E. Individuals not residing in a Member State shall continue to be
31 able to apply for a Member State's Single-State License as provided under

1 the laws of each Member State. However, the Single-State License granted
2 to these individuals shall not be recognized as granting the Compact
3 Privilege in any other Member State.

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

6 ARTICLE 4. COMPACT PRIVILEGE.

7 A. To exercise the Compact Privilege under the terms and provisions
8 of this Compact, the Licensee shall:

9 1. Have a valid United States social security number or national
10 practitioner identification number;

11 2. Hold a license in the Home State;

12 3. Have no encumbrance on any state license;

13 4. Be eligible for a Compact Privilege in any Member State in
14 accordance with sections D, G, and H of this Article 4;

15 5. Have not had any adverse action against any license or Compact
16 Privilege within the previous two years;

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

19 7. Pay any applicable fees, including any state fee, for the Compact
20 Privilege;

21 8. Meet any jurisprudence requirements established by the Remote
22 State(s) in which the Licensee is seeking a Compact Privilege; and

23 9. Report to the Commission adverse action taken by any nonMember
24 State within thirty days from the date the adverse action is taken.

25 B. The Compact Privilege is valid until the expiration date of the
26 Home State license. The Licensee must comply with the requirements of
27 section A of this Article 4 to maintain this Compact Privilege in the
28 Remote State.

29 C. A Licensee providing occupational therapy in a Remote State under
30 the Compact Privilege shall function within the laws and regulations of
31 the Remote State.

1 D. Occupational therapy assistants practicing in a Remote State
2 shall be supervised by an occupational therapist licensed or holding a
3 Compact Privilege in that Remote State.

4 E. A Licensee providing occupational therapy in a Remote State is
5 subject to that state's regulatory authority. A Remote State may, in
6 accordance with due process and that state's laws, remove a Licensee's
7 Compact Privilege in the Remote State for a specific period of time,
8 impose fines, and take any other necessary actions to protect the health
9 and safety of its citizens. The Licensee is not eligible for a Compact
10 Privilege in any state until the specific time for removal has passed and
11 all fines are paid.

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

- 14 1. The Home State license is no longer encumbered; and
15 2. Two years have elapsed from the date of the adverse action.

16 G. Once an Encumbered License in the Home State is restored to good
17 standing, the Licensee must meet the requirements of section A of this
18 Article 4 to obtain a Compact Privilege in any Remote State.

19 H. If a Licensee's Compact Privilege in any Remote State is removed,
20 the individual shall lose the Compact Privilege in any other Remote State
21 until the following occur:

- 22 1. The specific period of time for which the Compact Privilege was
23 removed has ended;
24 2. All fines have been paid;
25 3. Two years have elapsed from the date of the adverse action; and
26 4. The Compact Privileges are reinstated or restored through a
27 revision to the data system.

28 I. If a Licensee's Compact Privilege in any Remote State is removed
29 due to an erroneous charge, privileges shall be restored through a
30 revision to the data system.

31 J. Once the requirements of section H of this Article 4 have been

1 met, the license must meet the requirements in section A of this Article
2 4 to obtain a Compact Privilege in a Remote State.

3 ARTICLE 5. CONVERTING COMPACT PRIVILEGES.

4 A. An occupational therapist and an occupational therapy assistant
5 may hold a license, issued by the Home State which allows for Compact
6 Privileges, in only one Member State at a time.

7 B. If an occupational therapist or occupational therapy assistant
8 changes primary state of residence by moving between two Member States:

9 1. The occupational therapist or occupational therapy assistant
10 shall notify the current and new Member States in accordance with
11 applicable Rules adopted by the Commission.

12 2. The current Home State shall deactivate the current license and
13 the new Home State shall activate the new license in accordance with
14 applicable Rules adopted by the Commission.

15 3. The activation of the license in the new Home State shall be
16 based upon the same criteria as in Article 4, which allows an
17 occupational therapist or an occupational therapy assistant to have
18 Compact Privileges to work in a Member State.

19 4. If the occupational therapist or occupational therapy assistant
20 cannot meet the criteria in Article 4, the new Home State shall apply its
21 requirements for issuing a new Single-State License.

22 5. The occupational therapist or the occupational therapy assistant
23 shall pay all applicable fees to the new Home State in order to be issued
24 a new Home State license.

25 C. If an occupational therapist or occupational therapy assistant
26 changes primary state of residence by moving from a Member State to a
27 nonMember State, or from a nonMember State to a Member State, the state
28 criteria shall apply for issuance of a Single-State License in the new
29 state.

30 D. Nothing in this Compact shall interfere with a Licensee's ability
31 to hold a Single-State License in multiple states, however, for the

1 purposes of this Compact, a Licensee shall have only one Home State
2 license.

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

5 ARTICLE 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES.

6 Active duty military personnel, or their spouse, shall designate a
7 Home State where the individual has a current license in good standing.
8 The individual may retain the Home State designation during the period
9 the service member is on active duty. Subsequent to designating a Home
10 State, the individual shall only change their Home State through
11 application for licensure in the new state.

12 ARTICLE 7. ADVERSE ACTIONS.

13 A. A Home State shall have exclusive power to impose adverse action
14 against a license issued by the Home State.

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

18 1. Take adverse action against an occupational therapist's or
19 occupational therapy assistant's Compact Privilege within that Member
20 State.

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

31 3. Only the Home State shall have the power to take adverse action

1 against an occupational therapist's or occupational therapy assistant's
2 license issued by the Home State.

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

8 D. The Home State shall complete any pending investigations of an
9 occupational therapist or occupational therapy assistant who changes
10 primary state of residence during the course of the investigations. The
11 Home State, where the investigations were initiated, shall also have the
12 authority to take appropriate action and shall promptly report the
13 conclusions of the investigations to the data system. The data system
14 administrator of the coordinated licensure information system shall
15 promptly notify the new Home State of any adverse actions.

16 E. A Member State, if otherwise permitted by state law, may recover
17 from the affected occupational therapist or occupational therapy
18 assistant the costs of investigations and disposition of cases resulting
19 from any adverse action taken against that occupational therapist or
20 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 follows its
23 own procedures for taking the adverse action.

24 G. Joint Investigations.

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

29 2. Member States shall share any investigative, litigation, or
30 compliance materials in furtherance of any joint or individual
31 investigation initiated under this Compact.

1 H. If an adverse action is taken by the Home State against an
2 occupational therapist's or occupational therapy assistant's license, the
3 occupational therapist's or occupational therapy assistant's Compact
4 Privilege in all other Member States shall be deactivated until all
5 encumbrances have been removed from the state license. All Home State
6 disciplinary orders that impose adverse action against an occupational
7 therapist's or occupational therapy assistant's license shall include a
8 statement that the occupational therapist's or occupational therapy
9 assistant's Compact Privilege is deactivated in all Member States during
10 the pendency of the order.

11 I. If a Member State takes adverse action, it shall promptly notify
12 the administrator of the data system. The administrator of the data
13 system shall promptly notify the Home State of any adverse actions by
14 Remote States.

15 J. Nothing in this Compact shall override a Member State's decision
16 that participation in an alternative program may be used in lieu of
17 adverse action.

18 ARTICLE 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT
19 COMMISSION.

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

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

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

29 3. Nothing in this Compact shall be construed to be a waiver of
30 sovereign immunity.

31 B. Membership, Voting, and Meetings.

1 1. Each Member State shall have and be limited to one delegate
2 selected by that Member State's licensing board.

3 2. The delegate shall be a current member of the licensing board,
4 who is an occupational therapist, occupational therapy assistant, public
5 member, or the board administrator.

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

8 4. The Member State board shall fill any vacancy occurring in the
9 Commission within sixty days.

10 5. Each delegate shall be entitled to one vote with regard to the
11 promulgation of Rules and creation of bylaws and shall otherwise have an
12 opportunity to participate in the business and affairs of the Commission.
13 A delegate shall vote in person or by such other means as provided in the
14 bylaws. The bylaws may provide for delegates' participation in meetings
15 by telephone or other means of communication.

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

18 7. Terms for delegates shall be three years. Delegates shall not
19 serve more than two terms.

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

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

22 2. Establish the fiscal year of the Commission;

23 3. Establish bylaws;

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

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

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

30 7. Bring and prosecute legal proceedings or actions in the name of
31 the Commission, provided that the standing of any state licensing board

1 to sue or be sued under applicable law shall not be affected;

2 8. Purchase and maintain insurance and bonds;

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

5 10. Hire employees, elect or appoint officers, fix compensation,
6 define duties, grant such individuals appropriate authority to carry out
7 the purposes of this Compact, and to establish the Commission's personnel
8 policies and programs relating to conflicts of interest, qualifications
9 of personnel, and other related personnel matters;

10 11. Accept any and all appropriate donations and grants of money,
11 equipment, supplies, materials, and services, and to receive, utilize,
12 and dispose of the same; provided that at all times the Commission shall
13 avoid any appearance of impropriety or conflict of interest;

14 12. Lease, purchase, accept appropriate gifts or donations of, or
15 otherwise to own, hold, improve, or use, any property, real, personal, or
16 mixed; provided that at all times the Commission shall avoid any
17 appearance of impropriety;

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

20 14. Establish a budget and make expenditures;

21 15. Borrow money;

22 16. Appoint committees, including standing committees composed of
23 members, state regulators, state legislators or their representatives,
24 and consumer representatives, and such other interested persons as may be
25 designated in this Compact and the bylaws;

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

28 18. Establish and elect an executive committee; and

29 19. Perform such other functions as may be necessary or appropriate
30 to achieve the purposes of this Compact consistent with the state
31 regulation of occupational therapy licensure and practice.

1 D. The Executive Committee.

2 The executive committee shall have the power to act on behalf of the
3 Commission according to the terms of this Compact.

4 1. The executive committee shall be composed of nine members:

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

7 b. One ex officio, nonvoting member from a recognized national
8 occupational therapy professional association; and

9 c. One ex officio, nonvoting member from a recognized national
10 occupational therapy certification organization.

11 2. The ex officio members will be selected by their respective
12 organizations.

13 3. The Commission may remove any member of the executive committee
14 as provided in bylaws.

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

16 5. The executive committee shall have the following duties and
17 responsibilities:

18 a. Recommend to the entire Commission changes to the Rules or
19 bylaws, changes to this Compact, fees paid by Member States such as
20 annual dues, and any Commission Compact fee charged to Licensees for the
21 Compact Privilege;

22 b. Ensure Compact administration services are appropriately
23 provided, contractual or otherwise;

24 c. Prepare and recommend the budget;

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

26 e. Monitor Compact compliance of Member States and provide
27 compliance reports to the Commission;

28 f. Establish additional committees as necessary; and

29 g. Other duties as provided in Rules or bylaws.

30 E. Meetings of the Commission.

31 1. All meetings shall be open to the public, and public notice of

1 meetings shall be given in the same manner as required under the
2 Rulemaking provisions in Article 10.

3 2. The Commission or the executive committee or other committees of
4 the Commission may convene in a closed, nonpublic meeting if the
5 Commission or executive committee or other committees of the Commission
6 must discuss:

7 a. Noncompliance of a Member State with its obligations under this
8 Compact;

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

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

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

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

16 f. Disclosure of trade secrets or commercial or financial
17 information that is privileged or confidential;

18 g. Disclosure of information of a personal nature where disclosure
19 would constitute a clearly unwarranted invasion of personal privacy;

20 h. Disclosure of investigative records compiled for law enforcement
21 purposes;

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

26 j. Matters specifically exempted from disclosure by federal or
27 Member State statute.

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

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

9 F. Financing of the Commission.

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

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

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

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

28 5. The Commission shall keep accurate accounts of all receipts and
29 disbursements. The receipts and disbursements of the Commission shall be
30 subject to the audit and accounting procedures established under its
31 bylaws. 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
3 part of the annual report of the Commission.

4 G. Qualified Immunity, Defense, and Indemnification.

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

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

27 3. The Commission shall indemnify and hold harmless any member,
28 officer, executive director, employee, or representative of the
29 Commission for the amount of any settlement or judgment obtained against
30 that person arising out of any actual or alleged act, error, or omission
31 that occurred within the scope of Commission employment, duties, or

1 responsibilities, or that such person had a reasonable basis for
2 believing occurred within the scope of Commission employment, duties, or
3 responsibilities; provided that the actual or alleged act, error, or
4 omission did not result from the intentional or willful or wanton
5 misconduct of that person.

6 ARTICLE 9. DATA SYSTEM.

7 A. The Commission shall provide for the development, maintenance,
8 and utilization of a coordinated data base and reporting system
9 containing licensure, adverse action, and investigative information on
10 all licensed individuals in Member States.

11 B. A Member State shall submit a uniform data set to the data system
12 on all individuals to whom this Compact is applicable as required by the
13 Rules of the Commission, including:

14 1. Identifying information;

15 2. Licensure data;

16 3. Adverse actions against a license or Compact Privilege;

17 4. Nonconfidential information related to alternative program
18 participation;

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

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

23 7. Current significant investigative information.

24 C. Investigative information pertaining to a Licensee in any Member
25 State will only be available to other Member States.

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

30 E. Member States contributing information to the data system may
31 designate information that may not be shared with the public without the

1 express permission of the contributing state.

2 F. Any information submitted to the data system that is subsequently
3 required to be expunged by the laws of the Member State contributing the
4 information shall be removed from the data system.

5 ARTICLE 10. RULEMAKING.

6 A. The Commission shall exercise its Rulemaking powers pursuant to
7 the criteria set forth in this Article and the Rules adopted thereunder.
8 Rules and amendments shall become binding as of the date specified in
9 each Rule or amendment.

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

15 C. Rules or amendments to the Rules shall be adopted at a regular or
16 special meeting of the Commission.

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

21 1. On the web site of the Commission or other publicly accessible
22 platform; and

23 2. On the web site of each Member State occupational therapy
24 licensing board or other publicly accessible platform or the publication
25 in which each State would otherwise publish proposed Rules.

26 E. The Notice of Proposed Rulemaking shall include:

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

29 2. The text of the proposed Rule or amendment and the reason for the
30 proposed Rule;

31 3. A request for comments on the proposed Rule from any interested

1 person; and

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

5 F. Prior to adoption of a proposed Rule, the Commission shall allow
6 persons to submit written data, facts, opinions, and arguments, which
7 shall be made available to the public.

8 G. The Commission shall grant an opportunity for a public hearing
9 before it adopts a Rule or amendment if a hearing is requested by:

10 1. At least twenty-five persons;

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

12 3. An association or organization having at least twenty-five
13 members.

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

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

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

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

28 4. Nothing in this Article shall be construed as requiring a
29 separate hearing on each Rule.

30 Rules may be grouped for the convenience of the Commission at
31 hearings required by this Article.

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

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

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

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

- 19 1. Meet an imminent threat to public health, safety, or welfare;
20 2. Prevent a loss of Commission or Member State funds;
21 3. Meet a deadline for the promulgation of an administrative Rule
22 that is established by federal law or Rule; or
23 4. Protect public health and safety.

24 M. The Commission or an authorized committee of the Commission may
25 direct revisions to a previously adopted Rule or amendment for purposes
26 of correcting typographical errors, errors in format, errors in
27 consistency, or grammatical errors. Public notice of any revisions shall
28 be posted on the web site of the Commission. The revision shall be
29 subject to challenge by any person for a period of thirty days after
30 posting. The revision may be challenged only on grounds that the revision
31 results in a material change to a Rule. A challenge shall be made in

1 writing and delivered to the chair of the Commission prior to the end of
2 the notice period. If no challenge is made, the revision will take effect
3 without further action. If the revision is challenged, the revision may
4 not take effect without the approval of the Commission.

5 ARTICLE 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT.

6 A. Oversight.

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

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

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

21 B. Default, Technical Assistance, and Termination.

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

25 a. Provide written notice to the defaulting state and other Member
26 States of the nature of the default, the proposed means of curing the
27 default, and any other action to be taken by the Commission; and

28 b. Provide remedial training and specific technical assistance
29 regarding the default.

30 2. If a state in default fails to cure the default, the defaulting
31 state may be terminated from this Compact upon an affirmative vote of a

1 majority of the Member States, and all rights, privileges, and benefits
2 conferred by this Compact may be terminated on the effective date of
3 termination. A cure of the default does not relieve the offending state
4 of obligations or liabilities incurred during the period of default.

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

10 4. A state that has been terminated is responsible for all
11 assessments, obligations, and liabilities incurred through the effective
12 date of termination, including obligations that extend beyond the
13 effective date of termination.

14 5. The Commission shall not bear any costs related to a state that
15 is found to be in default or that has been terminated from this Compact,
16 unless agreed upon in writing between the Commission and the defaulting
17 state.

18 6. The defaulting state may appeal the action of the Commission by
19 petitioning the United States District Court for the District of Columbia
20 or the federal district where the Commission has its principal offices.
21 The prevailing member shall be awarded all costs of such litigation,
22 including reasonable attorney's fees.

23 C. Dispute Resolution.

24 1. Upon request by a Member State, the Commission shall attempt to
25 resolve disputes related to this Compact that arise among Member States
26 and between member and nonMember States.

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

29 D. Enforcement.

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

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

9 3. The remedies herein shall not be the exclusive remedies of the
10 Commission. The Commission may pursue any other remedies available under
11 federal or State law.

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

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

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

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

30 1. A Member State's withdrawal shall not take effect until six
31 months after enactment of the repealing statute.

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

5 D. Nothing contained in this Compact shall be construed to
6 invalidate or prevent any occupational therapy licensure agreement or
7 other cooperative arrangement between a Member State and a nonMember
8 State that does not conflict with the provisions of this Compact.

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

12 ARTICLE 13. CONSTRUCTION AND SEVERABILITY.

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

25 ARTICLE 14. BINDING EFFECT OF COMPACT AND OTHER LAWS.

26 A. A Licensee providing occupational therapy in a Remote State under
27 the Compact Privilege shall function within the laws and regulations of
28 the Remote State.

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

31 C. Any laws in a Member State in conflict with this Compact are

1 superseded to the extent of the conflict.

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

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

6 F. In the event any provision of this Compact exceeds the
7 constitutional limits imposed on the legislature of any Member State, the
8 provision shall be ineffective to the extent of the conflict with the
9 constitutional provision in question in that Member State.

10 Sec. 3. Original section 38-2516, Reissue Revised Statutes of
11 Nebraska, is repealed.