

1 **OCCUPATIONAL THERAPY LICENSURE COMPACT**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gene Davis**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Occupational Therapy Licensure Compact.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ enacts the Occupational Therapy Licensure Compact; and
- 13 ▶ authorizes the Division of Occupational and Professional Licensing to make rules to

14 implement the Occupational Therapy Licensure Compact.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 ENACTS:

21 **58-42b-101**, Utah Code Annotated 1953

22 **58-42b-201**, Utah Code Annotated 1953

23 **58-42b-202**, Utah Code Annotated 1953

24 **58-42b-203**, Utah Code Annotated 1953

25 **58-42b-204**, Utah Code Annotated 1953

26 **58-42b-205**, Utah Code Annotated 1953

27 **58-42b-206**, Utah Code Annotated 1953



- 28 [58-42b-207](#), Utah Code Annotated 1953
- 29 [58-42b-208](#), Utah Code Annotated 1953
- 30 [58-42b-209](#), Utah Code Annotated 1953
- 31 [58-42b-210](#), Utah Code Annotated 1953
- 32 [58-42b-211](#), Utah Code Annotated 1953
- 33 [58-42b-212](#), Utah Code Annotated 1953
- 34 [58-42b-213](#), Utah Code Annotated 1953
- 35 [58-42b-214](#), Utah Code Annotated 1953
- 36 [58-42b-301](#), Utah Code Annotated 1953

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **58-42b-101** is enacted to read:

40 **CHAPTER 42b. OCCUPATIONAL THERAPY LICENSURE COMPACT**

41 **58-42b-101. Title.**

42 This chapter is known as the "Occupational Therapy Licensure Compact."

43 Section 2. Section **58-42b-201** is enacted to read:

44 **Part 2. Compact Text**

45 **58-42b-201. Section 1 -- Purpose.**

46 The purpose of this Compact is to facilitate interstate practice of Occupational Therapy
47 with the goal of improving public access to Occupational Therapy services. The Practice of
48 Occupational Therapy occurs in the State where the patient/client is located at the time of the
49 patient/client encounter. The Compact preserves the regulatory authority of States to protect
50 public health and safety through the current system of State licensure.

51 This Compact is designed to achieve the following objectives:

52 (A) Increase public access to Occupational Therapy services by providing for the
53 mutual recognition of other Member State licenses;

54 (B) Enhance the States' ability to protect the public's health and safety;

55 (C) Encourage the cooperation of Member States in regulating multi-State
56 Occupational Therapy Practice;

57 (D) Support spouses of relocating military members;

58 (E) Enhance the exchange of licensure, investigative, and disciplinary information

59 between Member States;

60 (F) Allow a Remote State to hold a provider of services with a Compact Privilege in
61 that State accountable to that State's practice standards; and

62 (G) Facilitate the use of Telehealth technology in order to increase access to
63 Occupational Therapy services.

64 Section 3. Section **58-42b-202** is enacted to read:

65 **58-42b-202. Section 2 -- Definitions.**

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

68 (A) "Active Duty Military" means full-time duty status in the active uniformed service
69 of the United States, including members of the National Guard and Reserve on active duty
70 orders pursuant to 10 U.S.C. Chapter 1209 and Section 1211.

71 (B) "Adverse Action" means any administrative, civil, equitable, or criminal action
72 permitted by a State's laws which is imposed by a Licensing Board or other authority against an
73 Occupational Therapist or Occupational Therapy Assistant, including actions against an
74 individual's license or Compact Privilege such as censure, revocation, suspension, probation,
75 monitoring of the Licensee, or restriction on the Licensee's practice.

76 (C) "Alternative Program" means a non-disciplinary monitoring process approved by
77 an Occupational Therapy Licensing Board.

78 (D) "Compact Privilege" means the authorization, which is equivalent to a license,
79 granted by a Remote State to allow a Licensee from another Member State to practice as an
80 Occupational Therapist or practice as an Occupational Therapy Assistant in the Remote State
81 under its laws and rules. The Practice of Occupational Therapy occurs in the Member State
82 where the patient/client is located at the time of the patient/client encounter.

83 (E) "Continuing Competence/Education" means a requirement, as a condition of
84 license renewal, to provide evidence of participation in, and/or completion of, educational and
85 professional activities relevant to practice or area of work.

86 (F) "Current Significant Investigative Information" means Investigative Information
87 that a Licensing Board, after an inquiry or investigation that includes notification and an
88 opportunity for the Occupational Therapist or Occupational Therapy Assistant to respond, if
89 required by State law, has reason to believe is not groundless and, if proved true, would

90 indicate more than a minor infraction.

91 (G) "Data System" means a repository of information about Licensees, including but
92 not limited to license status, Investigative Information, Compact Privileges, and Adverse
93 Actions.

94 (H) "Encumbered License" means a license in which an Adverse Action restricts the
95 Practice of Occupational Therapy by the Licensee or said Adverse Action has been reported to
96 the National Practitioners Data Bank (NPDB).

97 (I) "Executive Committee" means a group of directors elected or appointed to act on
98 behalf of, and within the powers granted to them by, the Commission.

99 (J) "Home State" means the Member State that is the Licensee's Primary State of
100 Residence.

101 (K) "Impaired Practitioner" means individuals whose professional practice is adversely
102 affected by substance abuse, addiction, or other health-related conditions.

103 (L) "Investigative Information" means information, records, and/or documents received
104 or generated by an Occupational Therapy Licensing Board pursuant to an investigation.

105 (M) "Jurisprudence Requirement" means the assessment of an individual's knowledge
106 of the laws and rules governing the Practice of Occupational Therapy in a State.

107 (N) "Licensee" means an individual who currently holds an authorization from the
108 State to practice as an Occupational Therapist or as an Occupational Therapy Assistant.

109 (O) "Member State" means a State that has enacted the Compact.

110 (P) "Occupational Therapist" means an individual who is licensed by a State to practice
111 Occupational Therapy.

112 (Q) "Occupational Therapy Assistant" means an individual who is licensed by a State
113 to assist in the Practice of Occupational Therapy.

114 (R) "Occupational Therapy," "Occupational Therapy Practice," and the "Practice of
115 Occupational Therapy" mean the care and services provided by an Occupational Therapist or
116 an Occupational Therapy Assistant as set forth in the Member State's statutes and regulations.

117 (S) "Occupational Therapy Compact Commission" or "Commission" means the
118 national administrative body whose membership consists of all States that have enacted the
119 Compact.

120 (T) "Occupational Therapy Licensing Board" or "Licensing Board" means the agency

121 of a State that is authorized to license and regulate Occupational Therapists and Occupational
122 Therapy Assistants.

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

128 (V) "Remote State" means a Member State other than the Home State, where a
129 Licensee is exercising or seeking to exercise the Compact Privilege.

130 (W) "Rule" means a regulation promulgated by the Commission that has the force of
131 law.

132 (X) "State" means any state, commonwealth, district, or territory of the United States of
133 America that regulates the Practice of Occupational Therapy.

134 (Y) "Single-State License" means an Occupational Therapist or Occupational Therapy
135 Assistant license issued by a Member State that authorizes practice only within the issuing
136 State and does not include a Compact Privilege in any other Member State.

137 (Z) "Telehealth" means the application of telecommunication technology to deliver
138 Occupational Therapy services for assessment, intervention and/or consultation.

139 Section 4. Section **58-42b-203** is enacted to read:

140 **58-42b-203. Section 3 -- State participation in the compact.**

141 (A) To participate in the Compact, a Member State shall:

142 (1) License Occupational Therapists and Occupational Therapy Assistants;

143 (2) Participate fully in the Commission's Data System, including but not limited to
144 using the Commission's unique identifier as defined in Rules of the Commission;

145 (3) Have a mechanism in place for receiving and investigating complaints about
146 Licensees;

147 (4) Notify the Commission, in compliance with the terms of the Compact and Rules, of
148 any Adverse Action or the availability of Investigative Information regarding a Licensee;

149 (5) Implement or utilize procedures for considering the criminal history records of
150 applicants for an initial Compact Privilege. These procedures shall include the submission of
151 fingerprints or other biometric-based information by applicants for the purpose of obtaining an

152 applicant's criminal history record information from the Federal Bureau of Investigation and
153 the agency responsible for retaining that State's criminal records;

154 (a) A Member State shall, within a time frame established by the Commission, require
155 a criminal background check for a Licensee seeking/applying for a Compact Privilege whose
156 Primary State of Residence is that Member State, by receiving the results of the Federal Bureau
157 of Investigation criminal record search, and shall use the results in making licensure decisions.

158 (b) Communication between a Member State, the Commission and among Member
159 States regarding the verification of eligibility for licensure through the Compact shall not
160 include any information received from the Federal Bureau of Investigation relating to a federal
161 criminal records check performed by a Member State under Public Law 92-544.

162 (6) Comply with the Rules of the Commission;

163 (7) Utilize only a recognized national examination as a requirement for licensure
164 pursuant to the Rules of the Commission; and

165 (8) Have Continuing Competence/Education requirements as a condition for license
166 renewal.

167 (B) A Member State shall grant the Compact Privilege to a Licensee holding a valid
168 unencumbered license in another Member State in accordance with the terms of the Compact
169 and Rules.

170 (C) Member States may charge a fee for granting a Compact Privilege.

171 (D) A Member State shall provide for the State's delegate to attend all Occupational
172 Therapy Compact Commission meetings.

173 (E) Individuals not residing in a Member State shall continue to be able to apply for a
174 Member State's Single-State License as provided under the laws of each Member State.
175 However, the Single-State License granted to these individuals shall not be recognized as
176 granting the Compact Privilege in any other Member State.

177 (F) Nothing in this Compact shall affect the requirements established by a Member
178 State for the issuance of a Single-State License.

179 Section 5. Section **58-42b-204** is enacted to read:

180 **58-42b-204. Section 4 -- Compact privilege.**

181 (A) To exercise the Compact Privilege under the terms and provisions of the Compact,
182 the Licensee shall:

- 183 (1) Hold a license in the Home State;
184 (2) Have a valid United States Social Security Number or National Provider Identifier
185 number;
186 (3) Have no encumbrance on any State license;
187 (4) Be eligible for a Compact Privilege in any Member State in accordance with
188 Subsections (D), (F), (G), and (H);
189 (5) Have paid all fines and completed all requirements resulting from any Adverse
190 Action against any license or Compact Privilege, and two years have elapsed from the date of
191 such completion;
192 (6) Notify the Commission that the Licensee is seeking the Compact Privilege within a
193 Remote State(s);
194 (7) Pay any applicable fees, including any State fee, for the Compact Privilege;
195 (8) Complete a criminal background check in accordance with Subsection
196 58-42b-203(A)(5);
197 (a) The Licensee shall be responsible for the payment of any fee associated with the
198 completion of a criminal background check.
199 (9) Meet any Jurisprudence Requirements established by the Remote State(s) in which
200 the Licensee is seeking a Compact Privilege; and
201 (10) Report to the Commission Adverse Action taken by any non-Member State within
202 30 days from the date the Adverse Action is taken.
203 (B) The Compact Privilege is valid until the expiration date of the Home State license.
204 The Licensee must comply with the requirements of Subsection 58-42b-204(A) to maintain the
205 Compact Privilege in the Remote State.
206 (C) A Licensee providing Occupational Therapy in a Remote State under the Compact
207 Privilege shall function within the laws and regulations of the Remote State.
208 (D) Occupational Therapy Assistants practicing in a Remote State shall be supervised
209 by an Occupational Therapist licensed or holding a Compact Privilege in that Remote State.
210 (E) A Licensee providing Occupational Therapy in a Remote State is subject to that
211 State's regulatory authority. A Remote State may, in accordance with due process and that
212 State's laws, remove a Licensee's Compact Privilege in the Remote State for a specific period
213 of time, impose fines, and/or take any other necessary actions to protect the health and safety of

214 its citizens. The Licensee may be ineligible for a Compact Privilege in any State until the
215 specific time for removal has passed and all fines are paid.

216 (F) If a Home State license is encumbered, the Licensee shall lose the Compact
217 Privilege in any Remote State until the following occur:

218 (1) The Home State license is no longer encumbered; and

219 (2) Two years have elapsed from the date on which the Home State license is no longer
220 encumbered in accordance with Subsection 58-42b-204(F)(1).

221 (G) Once an Encumbered License in the Home State is restored to good standing, the
222 Licensee must meet the requirements of Subsection (A) to obtain a Compact Privilege in any
223 Remote State.

224 (H) If a Licensee's Compact Privilege in any Remote State is removed, the individual
225 may lose the Compact Privilege in any other Remote State until the following occur:

226 (1) The specific period of time for which the Compact Privilege was removed has
227 ended;

228 (2) All fines have been paid and all conditions have been met;

229 (3) Two years have elapsed from the date of completing requirements for Subsections
230 (H)(1) and (2); and

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

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

235 (J) Once the requirements of Subsection (H) have been met, the licensee must meet the
236 requirements in Subsection (A) to obtain a Compact Privilege in a Remote State.

237 Section 6. Section **58-42b-205** is enacted to read:

238 **58-42b-205. Section 5 -- Obtaining a new home state license by virtue of a**
239 **compact privilege.**

240 (A) An Occupational Therapist or Occupational Therapy Assistant may hold a Home
241 State license, which allows for Compact Privileges in Member States, in only one Member
242 State at a time.

243 (B) If an Occupational Therapist or Occupational Therapy Assistant changes Primary
244 State of Residence by moving between two Member States:

245 (1) The Occupational Therapist or Occupational Therapy Assistant shall file an
246 application for obtaining a new Home State license by virtue of a Compact Privilege, pay all
247 applicable fees, and notify the current and new Home State in accordance with applicable
248 Rules adopted by the Commission.

249 (2) Upon receipt of an application for obtaining a new Home State license by virtue of
250 compact privilege, the new Home State shall verify that the Occupational Therapist or
251 Occupational Therapy Assistant meets the pertinent criteria outlined in Section 58-42b-204 via
252 the Data System, without need for primary source verification except for:

253 (a) an FBI fingerprint based criminal background check if not previously performed or
254 updated pursuant to applicable Rules adopted by the Commission in accordance with Public
255 Law 92-544;

256 (b) other criminal background check as required by the new Home State; and

257 (c) submission of any requisite Jurisprudence Requirements of the new Home State.

258 (3) The former Home State shall convert the former Home State license into a
259 Compact Privilege once the new Home State has activated the new Home State license in
260 accordance with applicable Rules adopted by the Commission.

261 (4) Notwithstanding any other provision of this Compact, if the Occupational Therapist
262 or Occupational Therapy Assistant cannot meet the criteria in Section 58-42b-204, the new
263 Home State shall apply its requirements for issuing a new Single-State License.

264 (5) The Occupational Therapist or the Occupational Therapy Assistant shall pay all
265 applicable fees to the new Home State in order to be issued a new Home State license.

266 (C) If an Occupational Therapist or Occupational Therapy Assistant changes Primary
267 State of Residence by moving from a Member State to a non-Member State, or from a
268 non-Member State to a Member State, the State criteria shall apply for issuance of a
269 Single-State License in the new State.

270 (D) Nothing in this compact shall interfere with a Licensee's ability to hold a
271 Single-State License in multiple States; however, for the purposes of this compact, a Licensee
272 shall have only one Home State license.

273 (E) Nothing in this Compact shall affect the requirements established by a Member
274 State for the issuance of a Single-State License.

275 Section 7. Section **58-42b-206** is enacted to read:

276 **58-42b-206. Section 6 -- Active duty military personnel or their spouses.**

277 (A) Active Duty Military personnel, or their spouses, shall designate a Home State
278 where the individual has a current license in good standing. The individual may retain the
279 Home State designation during the period the service member is on active duty. Subsequent to
280 designating a Home State, the individual shall only change their Home State through
281 application for licensure in the new State or through the process described in Section
282 58-42b-205.

283 Section 8. Section **58-42b-207** is enacted to read:

284 **58-42b-207. Section 7 -- Adverse actions.**

285 (A) A Home State shall have exclusive power to impose Adverse Action against an
286 Occupational Therapist's or Occupational Therapy Assistant's license issued by the Home State.

287 (B) In addition to the other powers conferred by State law, a Remote State shall have
288 the authority, in accordance with existing State due process law, to:

289 (1) Take Adverse Action against an Occupational Therapist's or Occupational Therapy
290 Assistant's Compact Privilege within that Member State.

291 (2) Issue subpoenas for both hearings and investigations that require the attendance and
292 testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing
293 Board in a Member State for the attendance and testimony of witnesses or the production of
294 evidence from another Member State shall be enforced in the latter State by any court of
295 competent jurisdiction, according to the practice and procedure of that court applicable to
296 subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness
297 fees, travel expenses, mileage, and other fees required by the service statutes of the State in
298 which the witnesses or evidence are located.

299 (C) For purposes of taking Adverse Action, the Home State shall give the same priority
300 and effect to reported conduct received from a Member State as it would if the conduct had
301 occurred within the Home State. In so doing, the Home State shall apply its own State laws to
302 determine appropriate action.

303 (D) The Home State shall complete any pending investigations of an Occupational
304 Therapist or Occupational Therapy Assistant who changes Primary State of Residence during
305 the course of the investigations. The Home State, where the investigations were initiated, shall
306 also have the authority to take appropriate action(s) and shall promptly report the conclusions

307 of the investigations to the Occupational Therapy Compact Commission Data System. The
308 Occupational Therapy Compact Commission Data System administrator shall promptly notify
309 the new Home State of any Adverse Actions.

310 (E) A Member State, if otherwise permitted by State law, may recover from the
311 affected Occupational Therapist or Occupational Therapy Assistant the costs of investigations
312 and disposition of cases resulting from any Adverse Action taken against that Occupational
313 Therapist or Occupational Therapy Assistant.

314 (F) A Member State may take Adverse Action based on the factual findings of the
315 Remote State, provided that the Member State follows its own procedures for taking the
316 Adverse Action.

317 (G) Joint Investigations

318 (1) In addition to the authority granted to a Member State by its respective State
319 Occupational Therapy laws and regulations or other applicable State law, any Member State
320 may participate with other Member States in joint investigations of Licensees.

321 (2) Member States shall share any investigative, litigation, or compliance materials in
322 furtherance of any joint or individual investigation initiated under the Compact.

323 (H) If an Adverse Action is taken by the Home State against an Occupational
324 Therapist's or Occupational Therapy Assistant's license, the Occupational Therapist's or
325 Occupational Therapy Assistant's Compact Privilege in all other Member States shall be
326 deactivated until all encumbrances have been removed from the State license. All Home State
327 disciplinary orders that impose Adverse Action against an Occupational Therapist's or
328 Occupational Therapy Assistant's license shall include a Statement that the Occupational
329 Therapist's or Occupational Therapy Assistant's Compact Privilege is deactivated in all
330 Member States during the pendency of the order.

331 (I) If a Member State takes Adverse Action, it shall promptly notify the administrator
332 of the Data System. The administrator of the Data System shall promptly notify the Home State
333 of any Adverse Actions by Remote States.

334 (J) Nothing in this Compact shall override a Member State's decision that participation
335 in an Alternative Program may be used in lieu of Adverse Action.

336 Section 9. Section **58-42b-208** is enacted to read:

337 **58-42b-208. Section 8 -- Establishment of the Occupational Therapy Compact**

338 **Commission.**

339 (A) The Compact Member States hereby create and establish a joint public agency
340 known as the Occupational Therapy Compact Commission.

341 (1) The Commission is an instrumentality of the Compact States.

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

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

347 (B) Membership, Voting, and Meetings

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

350 (2) The delegate shall be either:

351 (a) A current member of the Licensing Board, who is an Occupational Therapist,
352 Occupational Therapy Assistant, or public member; or

353 (b) An administrator of the Licensing Board.

354 (3) Any delegate may be removed or suspended from office as provided by the law of
355 the State from which the delegate is appointed.

356 (4) The Member State board shall fill any vacancy occurring in the Commission within
357 90 days.

358 (5) Each delegate shall be entitled to one vote with regard to the promulgation of Rules
359 and creation of bylaws and shall otherwise have an opportunity to participate in the business
360 and affairs of the Commission. A delegate shall vote in person or by such other means as
361 provided in the bylaws. The bylaws may provide for delegates' participation in meetings by
362 telephone or other means of communication.

363 (6) The Commission shall meet at least once during each calendar year. Additional
364 meetings shall be held as set forth in the bylaws.

365 (7) The Commission shall establish by Rule a term of office for delegates.

366 (C) The Commission shall have the following powers and duties:

367 (1) Establish a Code of Ethics for the Commission;

368 (2) Establish the fiscal year of the Commission;

- 369 (3) Establish bylaws;
- 370 (4) Maintain its financial records in accordance with the bylaws;
- 371 (5) Meet and take such actions as are consistent with the provisions of this Compact
372 and the bylaws;
- 373 (6) Promulgate uniform Rules to facilitate and coordinate implementation and
374 administration of this Compact. The Rules shall have the force and effect of law and shall be
375 binding in all Member States;
- 376 (7) Bring and prosecute legal proceedings or actions in the name of the Commission,
377 provided that the standing of any State Occupational Therapy Licensing Board to sue or be
378 sued under applicable law shall not be affected;
- 379 (8) Purchase and maintain insurance and bonds;
- 380 (9) Borrow, accept, or contract for services of personnel, including, but not limited to,
381 employees of a Member State;
- 382 (10) Hire employees, elect or appoint officers, fix compensation, define duties, grant
383 such individuals appropriate authority to carry out the purposes of the Compact, and establish
384 the Commission's personnel policies and programs relating to conflicts of interest,
385 qualifications of personnel, and other related personnel matters;
- 386 (11) Accept any and all appropriate donations and grants of money, equipment,
387 supplies, materials and services, and receive, utilize and dispose of the same, provided that at
388 all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;
- 389 (12) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold,
390 improve or use, any property, real, personal or mixed, provided that at all times the
391 Commission shall avoid any appearance of impropriety;
- 392 (13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
393 any property real, personal, or mixed;
- 394 (14) Establish a budget and make expenditures;
- 395 (15) Borrow money;
- 396 (16) Appoint committees, including standing committees composed of members, State
397 regulators, State legislators or their representatives, and consumer representatives, and such
398 other interested persons as may be designated in this Compact and the bylaws;
- 399 (17) Provide and receive information from, and cooperate with, law enforcement

400 agencies;

401 (18) Establish and elect an Executive Committee; and

402 (19) Perform such other functions as may be necessary or appropriate to achieve the

403 purposes of this Compact consistent with the State regulation of Occupational Therapy

404 licensure and practice.

405 (D) The Executive Committee. The Executive Committee shall have the power to act

406 on behalf of the Commission according to the terms of this Compact.

407 (1) The Executive Committee shall be composed of nine members:

408 (a) Seven voting members who are elected by the Commission from the current

409 membership of the Commission;

410 (b) One ex-officio, nonvoting member from a recognized national Occupational

411 Therapy professional association; and

412 (c) One ex-officio, nonvoting member from a recognized national Occupational

413 Therapy certification organization.

414 (2) The ex-officio members will be selected by their respective organizations.

415 (3) The Commission may remove any member of the Executive Committee as

416 provided in bylaws.

417 (4) The Executive Committee shall meet at least annually.

418 (5) The Executive Committee shall have the following Duties and responsibilities:

419 (a) Recommend to the entire Commission changes to the Rules or bylaws, changes to

420 this Compact legislation, fees paid by Compact Member States such as annual dues, and any

421 Commission Compact fee charged to Licensees for the Compact Privilege;

422 (b) Ensure Compact administration services are appropriately provided, contractual or

423 otherwise;

424 (c) Prepare and recommend the budget;

425 (d) Maintain financial records on behalf of the Commission;

426 (e) Monitor Compact compliance of Member States and provide compliance reports to

427 the Commission;

428 (f) Establish additional committees as necessary; and

429 (g) Perform other duties as provided in Rules or bylaws.

430 (E) Meetings of the Commission

431 (1) All meetings shall be open to the public, and public notice of meetings shall be
432 given in the same manner as required under the Rulemaking provisions in Section 58-42b-210.

433 (2) The Commission or the Executive Committee or other committees of the
434 Commission may convene in a closed, non-public meeting if the Commission or Executive
435 Committee or other committees of the Commission must discuss:

436 (a) Non-compliance of a Member State with its obligations under the Compact;

437 (b) The employment, compensation, discipline or other matters, practices or procedures
438 related to specific employees or other matters related to the Commission's internal personnel
439 practices and procedures;

440 (c) Current, threatened, or reasonably anticipated litigation;

441 (d) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
442 estate;

443 (e) Accusing any person of a crime or formally censuring any person;

444 (f) Disclosure of trade secrets or commercial or financial information that is privileged
445 or confidential;

446 (g) Disclosure of information of a personal nature where disclosure would constitute a
447 clearly unwarranted invasion of personal privacy;

448 (h) Disclosure of investigative records compiled for law enforcement purposes;

449 (i) Disclosure of information related to any investigative reports prepared by or on
450 behalf of or for use of the Commission or other committee charged with responsibility of
451 investigation or determination of compliance issues pursuant to the Compact; or

452 (j) Matters specifically exempted from disclosure by federal or Member State statute.

453 (3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the
454 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
455 reference each relevant exempting provision.

456 (4) The Commission shall keep minutes that fully and clearly describe all matters
457 discussed in a meeting and shall provide a full and accurate summary of actions taken, and the
458 reasons therefore, including a description of the views expressed. All documents considered in
459 connection with an action shall be identified in such minutes. All minutes and documents of a
460 closed meeting shall remain under seal, subject to release by a majority vote of the Commission
461 or order of a court of competent jurisdiction.

462 (F) Financing of the Commission

463 (1) The Commission shall pay, or provide for the payment of, the reasonable expenses
464 of its establishment, organization, and ongoing activities.

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

467 (3) The Commission may levy on and collect an annual assessment from each Member
468 State or impose fees on other parties to cover the cost of the operations and activities of the
469 Commission and its staff, which must be in a total amount sufficient to cover its annual budget
470 as approved by the Commission each year for which revenue is not provided by other sources.
471 The aggregate annual assessment amount shall be allocated based upon a formula to be
472 determined by the Commission, which shall promulgate a Rule binding upon all Member
473 States.

474 (4) The Commission shall not incur obligations of any kind prior to securing the funds
475 adequate to meet the same, nor shall the Commission pledge the credit of any of the Member
476 States, except by and with the authority of the Member State.

477 (5) The Commission shall keep accurate accounts of all receipts and disbursements.
478 The receipts and disbursements of the Commission shall be subject to the audit and accounting
479 procedures established under its bylaws. However, all receipts and disbursements of funds
480 handled by the Commission shall be audited yearly by a certified or licensed public accountant,
481 and the report of the audit shall be included in and become part of the annual report of the
482 Commission.

483 (G) Qualified Immunity, Defense, and Indemnification

484 (1) The members, officers, executive director, employees and representatives of the
485 Commission shall be immune from suit and liability, either personally or in their official
486 capacity, for any claim for damage to or loss of property or personal injury or other civil
487 liability caused by or arising out of any actual or alleged act, error or omission that occurred, or
488 that the person against whom the claim is made had a reasonable basis for believing occurred
489 within the scope of Commission employment, duties or responsibilities, provided that nothing
490 in this paragraph shall be construed to protect any such person from suit and/or liability for any
491 damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of
492 that person.

493 (2) The Commission shall defend any member, officer, executive director, employee,
494 or representative of the Commission in any civil action seeking to impose liability arising out
495 of any actual or alleged act, error, or omission that occurred within the scope of Commission
496 employment, duties, or responsibilities, or that the person against whom the claim is made had
497 a reasonable basis for believing occurred within the scope of Commission employment, duties,
498 or responsibilities, provided that nothing herein shall be construed to prohibit that person from
499 retaining his or her own counsel, and provided further, that the actual or alleged act, error, or
500 omission did not result from that person's intentional or willful or wanton misconduct.

501 (3) The Commission shall indemnify and hold harmless any member, officer, executive
502 director, employee, or representative of the Commission for the amount of any settlement or
503 judgment obtained against that person arising out of any actual or alleged act, error or omission
504 that occurred within the scope of Commission employment, duties, or responsibilities, or that
505 such person had a reasonable basis for believing occurred within the scope of Commission
506 employment, duties, or responsibilities, provided that the actual or alleged act, error, or
507 omission did not result from the intentional or willful or wanton misconduct of that person.

508 Section 10. Section **58-42b-209** is enacted to read:

509 **58-42b-209. Section 9 -- Data system.**

510 (A) The Commission shall provide for the development, maintenance, and utilization
511 of a coordinated database and reporting system containing licensure, Adverse Action, and
512 Investigative Information on all licensed individuals in Member States.

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

516 (1) Identifying information;

517 (2) Licensure data;

518 (3) Adverse Actions against a license or Compact Privilege;

519 (4) Non-confidential information related to Alternative Program participation;

520 (5) Any denial of application for licensure, and the reason(s) for such denial;

521 (6) Other information that may facilitate the administration of this Compact, as
522 determined by the Rules of the Commission; and

523 (7) Current Significant Investigative Information.

524 (C) Current Significant Investigative Information and other Investigative Information
525 pertaining to a Licensee in any Member State will only be available to other Member States.

526 (D) The Commission shall promptly notify all Member States of any Adverse Action
527 taken against a Licensee or an individual applying for a license. Adverse Action information
528 pertaining to a Licensee in any Member State will be available to any other Member State.

529 (E) Member States contributing information to the Data System may designate
530 information that may not be shared with the public without the express permission of the
531 contributing State.

532 (F) Any information submitted to the Data System that is subsequently required to be
533 expunged by the laws of the Member State contributing the information shall be removed from
534 the Data System.

535 Section 11. Section **58-42b-210** is enacted to read:

536 **58-42b-210. Section 10 -- Rulemaking.**

537 (A) The Commission shall exercise its Rulemaking powers pursuant to the criteria set
538 forth in this Section and the Rules adopted thereunder. Rules and amendments shall become
539 binding as of the date specified in each Rule or amendment.

540 (B) The Commission shall promulgate reasonable rules in order to effectively and
541 efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event
542 the Commission exercises its rulemaking authority in a manner that is beyond the scope of the
543 purposes of the Compact, or the powers granted hereunder, then such an action by the
544 Commission shall be invalid and have no force and effect.

545 (C) If a majority of the legislatures of the Member States rejects a Rule, by enactment
546 of a statute or resolution in the same manner used to adopt the Compact within four years of
547 the date of adoption of the Rule, then such Rule shall have no further force and effect in any
548 Member State.

549 (D) Rules or amendments to the Rules shall be adopted at a regular or special meeting
550 of the Commission.

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

554 (1) On the website of the Commission or other publicly accessible platform; and

555 (2) On the website of each Member State Occupational Therapy Licensing Board or
556 other publicly accessible platform or the publication in which each State would otherwise
557 publish proposed Rules.

558 (F) The Notice of Proposed Rulemaking shall include:

559 (1) The proposed time, date, and location of the meeting in which the Rule will be
560 considered and voted upon;

561 (2) The text of the proposed Rule or amendment and the reason for the proposed Rule;

562 (3) A request for comments on the proposed Rule from any interested person; and

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

565 (G) Prior to adoption of a proposed Rule, the Commission shall allow persons to
566 submit written data, facts, opinions, and arguments, which shall be made available to the
567 public.

568 (H) The Commission shall grant an opportunity for a public hearing before it adopts a
569 Rule or amendment if a hearing is requested by:

570 (1) At least 25 persons;

571 (2) A State or federal governmental subdivision or agency; or

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

573 (I) If a hearing is held on the proposed Rule or amendment, the Commission shall
574 publish the place, time, and date of the scheduled public hearing. If the hearing is held via
575 electronic means, the Commission shall publish the mechanism for access to the electronic
576 hearing.

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

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

582 (3) All hearings will be recorded. A copy of the recording will be made available on
583 request.

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

586 this section.

587 (J) Following the scheduled hearing date, or by the close of business on the scheduled
588 hearing date if the hearing was not held, the Commission shall consider all written and oral
589 comments received.

590 (K) If no written notice of intent to attend the public hearing by interested parties is
591 received, the Commission may proceed with promulgation of the proposed Rule without a
592 public hearing.

593 (L) The Commission shall, by majority vote of all members, take final action on the
594 proposed Rule and shall determine the effective date of the Rule, if any, based on the
595 Rulemaking record and the full text of the Rule.

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

602 (1) Meet an imminent threat to public health, safety, or welfare;

603 (2) Prevent a loss of Commission or Member State funds;

604 (3) Meet a deadline for the promulgation of an administrative Rule that is established
605 by federal law or Rule; or

606 (4) Protect public health and safety.

607 (N) The Commission or an authorized committee of the Commission may direct
608 revisions to a previously adopted Rule or amendment for purposes of correcting typographical
609 errors, errors in format, errors in consistency, or grammatical errors. Public notice of any
610 revisions shall be posted on the website of the Commission. The revision shall be subject to
611 challenge by any person for a period of 30 days after posting. The revision may be challenged
612 only on grounds that the revision results in a material change to a Rule. A challenge shall be
613 made in writing and delivered to the chair of the Commission prior to the end of the notice
614 period. If no challenge is made, the revision will take effect without further action. If the
615 revision is challenged, the revision may not take effect without the approval of the
616 Commission.

617 Section 12. Section **58-42b-211** is enacted to read:

618 **58-42b-211. Section 11 -- Oversight, dispute resolution, and enforcement.**

619 (A) Oversight

620 (1) The executive, legislative, and judicial branches of State government in each
621 Member State shall enforce this Compact and take all actions necessary and appropriate to
622 effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules
623 promulgated hereunder shall have standing as statutory law.

624 (2) All courts shall take judicial notice of the Compact and the Rules in any judicial or
625 administrative proceeding in a Member State pertaining to the subject matter of this Compact
626 which may affect the powers, responsibilities, or actions of the Commission.

627 (3) The Commission shall be entitled to receive service of process in any such
628 proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure
629 to provide service of process to the Commission shall render a judgment or order void as to the
630 Commission, this Compact, or promulgated Rules.

631 (B) Default, Technical Assistance, and Termination

632 (1) If the Commission determines that a Member State has defaulted in the
633 performance of its obligations or responsibilities under this Compact or the promulgated Rules,
634 the Commission shall:

635 (a) Provide written notice to the defaulting State and other Member States of the nature
636 of the default, the proposed means of curing the default, and/or any other action to be taken by
637 the Commission; and

638 (b) Provide remedial training and specific technical assistance regarding the default.

639 (2) If a State in default fails to cure the default, the defaulting State may be terminated
640 from the Compact upon an affirmative vote of a majority of the Member States, and all rights,
641 privileges, and benefits conferred by this Compact may be terminated on the effective date of
642 termination. A cure of the default does not relieve the offending State of obligations or
643 liabilities incurred during the period of default.

644 (3) Termination of membership in the Compact shall be imposed only after all other
645 means of securing compliance have been exhausted. Notice of intent to suspend or terminate
646 shall be given by the Commission to the governor, the majority and minority leaders of the
647 defaulting State's legislature, and each of the Member States.

648 (4) A State that has been terminated is responsible for all assessments, obligations, and
649 liabilities incurred through the effective date of termination, including obligations that extend
650 beyond the effective date of termination.

651 (5) The Commission shall not bear any costs related to a State that is found to be in
652 default or that has been terminated from the Compact, unless agreed upon in writing between
653 the Commission and the defaulting State.

654 (6) The defaulting State may appeal the action of the Commission by petitioning the
655 U.S. District Court for the District of Columbia or the federal district where the Commission
656 has its principal offices. The prevailing member shall be awarded all costs of such litigation,
657 including reasonable attorney's fees.

658 (C) Dispute Resolution

659 (1) Upon request by a Member State, the Commission shall attempt to resolve disputes
660 related to the Compact that arise among Member States and between member and non-Member
661 States.

662 (2) The Commission shall promulgate a Rule providing for both mediation and binding
663 dispute resolution for disputes as appropriate.

664 (D) Enforcement

665 (1) The Commission, in the reasonable exercise of its discretion, shall enforce the
666 provisions and Rules of this Compact.

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

673 (3) The remedies herein shall not be the exclusive remedies of the Commission. The
674 Commission may pursue any other remedies available under federal or State law.

675 Section 13. Section **58-42b-212** is enacted to read:

676 **58-42b-212. Section 12 -- Date of implementation of the Interstate Commission for**
677 **Occupational Therapy Practice and associated rules, withdrawal, and amendment.**

678 (A) The Compact shall come into effect on the date on which the Compact statute is

679 enacted into law in the tenth Member State. The provisions, which become effective at that
680 time, shall be limited to the powers granted to the Commission relating to assembly and the
681 promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking
682 powers necessary to the implementation and administration of the Compact.

683 (B) Any State that joins the Compact subsequent to the Commission's initial adoption
684 of the Rules shall be subject to the Rules as they exist on the date on which the Compact
685 becomes law in that State. Any Rule that has been previously adopted by the Commission shall
686 have the full force and effect of law on the day the Compact becomes law in that State.

687 (C) Any Member State may withdraw from this Compact by enacting a statute
688 repealing the same.

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

691 (2) Withdrawal shall not affect the continuing requirement of the withdrawing State's
692 Occupational Therapy Licensing Board to comply with the investigative and Adverse Action
693 reporting requirements of this act prior to the effective date of withdrawal.

694 (D) Nothing contained in this Compact shall be construed to invalidate or prevent any
695 Occupational Therapy licensure agreement or other cooperative arrangement between a
696 Member State and a non-Member State that does not conflict with the provisions of this
697 Compact.

698 (E) This Compact may be amended by the Member States. No amendment to this
699 Compact shall become effective and binding upon any Member State until it is enacted into the
700 laws of all Member States.

701 Section 14. Section **58-42b-213** is enacted to read:

702 **58-42b-213. Section 13 -- Construction and severability.**

703 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
704 provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision
705 of this Compact is declared to be contrary to the constitution of any Member State or of the
706 United States or the applicability thereof to any government, agency, person, or circumstance is
707 held invalid, the validity of the remainder of this Compact and the applicability thereof to any
708 government, agency, person, or circumstance shall not be affected thereby. If this Compact
709 shall be held contrary to the constitution of any Member State, the Compact shall remain in full

710 force and effect as to the remaining Member States and in full force and effect as to the
711 Member State affected as to all severable matters.

712 Section 15. Section **58-42b-214** is enacted to read:

713 **58-42b-214. Section 14 -- Binding effect of compact and other laws.**

714 (A) A Licensee providing Occupational Therapy in a Remote State under the Compact
715 Privilege shall function within the laws and regulations of the Remote State.

716 (B) Nothing herein prevents the enforcement of any other law of a Member State that is
717 not inconsistent with the Compact.

718 (C) Any laws in a Member State in conflict with the Compact are superseded to the
719 extent of the conflict.

720 (D) Any lawful actions of the Commission, including all Rules and bylaws
721 promulgated by the Commission, are binding upon the Member States.

722 (E) All agreements between the Commission and the Member States are binding in
723 accordance with their terms.

724 (F) In the event any provision of the Compact exceeds the constitutional limits
725 imposed on the legislature of any Member State, the provision shall be ineffective to the extent
726 of the conflict with the constitutional provision in question in that Member State.

727 Section 16. Section **58-42b-301** is enacted to read:

728 **Part 3. Rulemaking**

729 **58-42b-301. Rulemaking authority.**

730 The division may make rules in accordance with Title 63G, Chapter 3, Utah
731 Administrative Rulemaking Act, to implement this chapter.