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COMMITTEE REPORT

February 17, 2022

**H. 3599**

Introduced by Reps. B. Newton, McGarry, Dabney, Brawley, Gilliard, King, Jefferson, Howard, S. Williams, Carter and Erickson

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Read the first time January 12, 2021.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 3599) to amend the Code of Laws of South Carolina, 1976, by adding Article 3 to Chapter 36, Title 40 so as to enact the “Occupational Therapy Licensure Compact”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 36, Title 40 of the 1976 Code is amended by adding:

“Article 3

Occupational Therapy Licensure Compact

Section 40‑36‑510. (A) The purpose of this compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

(B) This compact is designed to achieve the following objectives:

(1) increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;

(2) enhance the ability of the states to protect the health and safety of the public;

(3) encourage the cooperation of member states in regulating multistate occupational therapy practice;

(4) support spouses of relocating military members;

(5) enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to the practice standards of that state; and

(7) facilitate the use of telehealth technology in order to increase access to occupational therapy services.

Section 40‑36‑520. As used in this compact and except as otherwise provided:

(1) ‘Active duty military’ means full‑time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and Chapter 1211.

(2) ‘Adverse action’ means any administrative, civil, equitable, or criminal action permitted by the laws of a state that is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against the license or compact privilege of an individual, such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the practice of the licensee.

(3) ‘Alternative program’ means a nondisciplinary monitoring process approved by an occupational therapy licensing board.

(4) ‘Compact privilege’ means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(5) ‘Continuing competence/education’ means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

(6) ‘Current significant investigative information’ means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(7) ‘Data system’ means a repository of information about licensees including, but not limited to, license status, investigative information, compact privileges, and adverse actions.

(8) ‘Encumbered license’ means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the National Practitioners Data Bank (NPDB).

(9) ‘Executive committee’ means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(10) ‘Home state’ means the member state that is the licensee’s primary state of residence.

(11) ‘Impaired practitioner’ means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health‑related conditions.

(12) ‘Investigative information’ means information, records, and documents received or generated by an occupational therapy licensing board pursuant to an investigation.

(13) ‘Jurisprudence requirement’ means the assessment of an individual’s knowledge of the laws and rules governing the practice of occupational therapy in a state.

(14) ‘Licensee’ means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

(15) ‘Member state’ means a state that has enacted the compact.

(16) ‘Occupational therapist’ means an individual who is licensed by a state to practice occupational therapy.

(17) ‘Occupational therapy assistant’ means an individual who is licensed by a state to assist in the practice of occupational therapy.

(18) ‘Occupational therapy,’ ‘occupational therapy practice,’ or the ‘practice of occupational therapy’ means the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the statutes and regulations of the member state.

(19) ‘Occupational Therapy Compact Commission’ or ‘commission’ means the national administrative body whose membership consists of all states that have enacted the compact.

(20) ‘Occupational therapy licensing board’ or ‘licensing board’ means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

(21) ‘Primary state of residence’ means the state, also known as the home state, in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by a driver’s license, federal income tax return, lease, deed, mortgage, voter registration, or other verifying documentation as further defined by commission rules.

(22) ‘Remote state’ means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(23) ‘Rule’ means a regulation promulgated by the commission that has the force of law.

(24) ‘State’ means a state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

(25) ‘Single‑state license’ means an occupational therapist license or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in another member state.

(26) ‘Telehealth’ means the application of telecommunication technology to deliver occupational therapy services for:

(a) assessment;

(b) intervention;

(c) consultation; or

(d) any combination of (a) through (c).

Section 40‑36‑530. (A) To participate in the compact, a member state shall:

(1) license occupational therapists and occupational therapy assistants;

(2) participate fully in the commission’s data system including, but not limited to, using the commission’s unique identifier as defined in rules of the commission;

(3) have a mechanism in place for receiving and investigating complaints about licensees;

(4) notify the commission, in compliance with the terms of the compact and rules, of an adverse action or the availability of investigative information regarding a licensee;

(5) implement or use procedures for considering the criminal history records of applicants for an initial compact privilege, provided these procedures must include the submission of fingerprints or other biometric‑based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records, and:

(a) within a period established by the commission, require a criminal background check for a licensee seeking or applying for a compact privilege whose primary state of residence is that member state, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions; and

(b) ensure communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92‑544;

(6) comply with the rules of the commission;

(7) use only a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(8) have continuing competence/education requirements as a condition for license renewal.

(B) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(C) A member state may charge a fee for granting a compact privilege.

(D) A member state shall provide for the state’s delegate to attend all occupational therapy compact commission meetings.

(E) An individual not residing in a member state shall continue to be able to apply for a member state’s single‑state license as provided under the laws of each member state. However, the single‑state license granted to these individuals may not be recognized as granting the compact privilege in any other member state.

(F) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single‑state license.

Section 40‑36‑540. (A) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

(1) hold a license in the home state;

(2) have a valid United States Social Security Number or national practitioner identification number;

(3) have no encumbrance on any state license;

(4) be eligible for a compact privilege in any member state in accordance with subsections (D), (F), (G), and (H);

(5) have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege, and two years have elapsed from the date of such completion;

(6) notify the commission that the licensee is seeking the compact privilege within a remote state;

(7) pay applicable fees, including a state fee, for the compact privilege;

(8) complete a criminal background check in accordance with Section 40‑36‑530(A)(5), provided the licensee must be responsible for the payment of a fee associated with the completion of a criminal background check;

(9) meet jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

(10) report to the commission adverse action taken by a nonmember state within thirty days from the date the adverse action is taken.

(B) The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection (A) to maintain the compact privilege in the remote state.

(C) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(D) Occupational therapy assistants practicing in a remote state must be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

(E) A licensee providing occupational therapy in a remote state is subject to that state’s regulatory authority. A remote state may, in accordance with due process and that state’s laws, remove a licensee’s compact privilege in the remote state for a specific period, impose fines, and take other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(F) If a home-state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(1) the home-state license is no longer encumbered; and

(2) two years have elapsed from the date on which the home-state license is no longer encumbered in accordance with item (1).

(G) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection (A) to obtain a compact privilege in a remote state.

(H) If a licensee’s compact privilege in a remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

(1) the specific period of time for which the compact privilege was removed has ended;

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

(3) two years have elapsed from the date of completing requirements for items (1) and (2); and

(4) the compact privileges are reinstated by the commission, and the compact data system is updated to reflect reinstatement.

(I) If a licensee’s compact privilege in a remote state is removed due to an erroneous charge, privileges must be restored through the compact data system.

(J) Once the requirements of subsection (H) have been met, the licensee must meet the requirements in subsection (A) to obtain a compact privilege in a remote state.

Section 40‑36‑550. (A) An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

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

(1) the occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home states in accordance with applicable rules adopted by the commission;

(2) upon receipt of an application for obtaining a new home-state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Section 40‑36‑540 by means of the data system, without need for primary source verification except for:

(a) an FBI fingerprint‑based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92‑544;

(b) other criminal background check as required by the new home state; and

(c) submission of requisite jurisprudence requirements of the new home state;

(3) the former home state shall convert the former home-state license into a compact privilege once the new home state has activated the new home-state license in accordance with applicable rules adopted by the commission;

(4) notwithstanding any other provision of this compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Section 40‑36‑540, the new home state shall apply its requirements for issuing a new single‑state license; and

(5) the occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home-state license.

(C) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria applies for issuance of a single‑state license in the new state.

(D) Nothing in this compact may be construed to interfere with the ability of a licensee to hold a single‑state license in multiple states; however, for the purposes of this compact, a licensee shall have one home state license.

(E) Nothing in this compact may be construed to affect the requirements established by a member state for the issuance of a single‑state license.

Section 40‑36‑560. Active duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual only shall change their home state through application for licensure in the new state or through the process described in Section 40‑36‑550.

Section 40‑36‑570. (A) A home state has exclusive power to impose adverse action against an occupational therapist license or occupational therapy assistant license issued by the home state.

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

(1) take adverse action against an occupational therapist’s or occupational therapy assistant’s compact privilege within that member state; and

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

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

(D) The home state shall complete pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, also shall have the authority to take appropriate action and promptly shall report the conclusions of the investigations to the occupational therapy compact commission data system. The data system administrator shall promptly notify the new home state of adverse actions.

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

(F) A member state may take adverse action based on the factual findings of the remote state if the member state follows its own procedures for taking the adverse action.

(G) In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, a member state may participate with other member states in joint investigations of licensees. Member states shall share investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(H) If an adverse action is taken by the home state against an occupational therapist license or occupational therapy assistant license, the compact privilege of the occupational therapist or occupational therapy assistant in all other member states must be deactivated until all encumbrances have been removed from the state license. All home-state disciplinary orders that impose adverse action against an occupational therapist license or occupational therapy assistant license shall include a statement that the compact privilege of the occupational therapist or occupational therapy assistant is deactivated in all member states during the pendency of the order.

(I) If a member state takes adverse action, it promptly shall notify the data system administrator, who promptly shall notify the home state of adverse actions by remote states.

(J) Nothing in this compact may be construed to override a member state’s decision that participation in an alternative program may be used in lieu of adverse action.

Section 40‑36‑580. (A) The compact member states hereby create and establish a joint public agency known as the ‘Occupational Therapy Compact Commission’.

(1) The commission is an instrumentality of the compact states.

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

(3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(B) With respect to commission membership, voting, and meetings:

(1) each member state has, and is limited to, one delegate selected by that member state’s licensing board;

(2) the delegate must be either:

(a) a current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

(b) an administrator of the licensing board;

(3) a delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed;

(4) the member state board shall fill a vacancy occurring in the commission within ninety days;

(5) each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission, provided a delegate shall vote in person or by such other means as provided in the bylaws, and the bylaws may provide for delegates’ participation in meetings by telephone or other means of communication;

(6) the commission shall meet at least once during each calendar year and additional meetings shall be held as set forth in the bylaws; and

(7) the commission shall establish by rule a term of office for delegates.

(C) The commission has powers and duties to:

(1) establish a code of ethics for the commission;

(2) establish the fiscal year of the commission;

(3) establish bylaws;

(4) maintain its financial records in accordance with the bylaws;

(5) meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(6) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact, which have the force and effect of law and are binding in all member states;

(7) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of a state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;

(8) purchase and maintain insurance and bonds;

(9) borrow, accept, or contract for services of personnel including, but not limited to, employees of a member state;

(10) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(11) accept appropriate donations and grants of money, equipment, supplies, materials and services, and receive, and use and dispose of them; provided that the commission shall avoid any appearance of impropriety, or conflict of interest;

(12) lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(13) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real property, personal property, or a mixture of real and personal property;

(14) establish a budget and make expenditures;

(15) borrow money;

(16) appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(17) provide and receive information from, and cooperate with, law enforcement agencies;

(18) establish and elect an executive committee; and

(19) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(D) With respect to the executive committee:

(1) the executive committee shall have the power to act on behalf of the commission according to the terms of this compact;

(2) the executive committee is composed of nine members, consisting of:

(a) seven voting members who are elected by the commission from the current membership of the commission;

(b) one ex officio, nonvoting member from a recognized national occupational therapy professional association; and

(c) one ex officio, nonvoting member from a recognized national occupational therapy certification organization;

(3) the ex officio members must be selected by their respective organizations;

(4) the commission may remove a member of the executive committee as provided in bylaws;

(5) the executive committee shall meet at least annually; and

(6) the executive committee has the duties and responsibilities to:

(a) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(b) ensure compact administration services are appropriately provided, contractual or otherwise;

(c) prepare and recommend the budget;

(d) maintain financial records on behalf of the commission;

(e) monitor compact compliance of member states and provide compliance reports to the commission;

(f) establish additional committees as necessary; and

(g) perform other duties as provided in rules or bylaws.

(E) With respect to meetings of the commission:

(1) all meetings of the commission are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 40‑36‑600;

(2) the commission, executive committee, or other committees of the commission may convene in a closed, nonpublic meeting if the commission, executive committee, or other committees of the commission must discuss:

(a) noncompliance of a member state with its obligations under the compact;

(b) the employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission’s internal personnel practices and procedures;

(c) current, threatened, or reasonably anticipated litigation;

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

(e) accusing a person of a crime or formally censuring a person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

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

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

(i) disclosure of information related to an investigative report prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(j) matters specifically exempted from disclosure by federal or member‑state statute;

(3) if a meeting, or portion of a meeting, is closed pursuant to this provision, the commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision; and

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

(F) With respect to financing of the commission, the commission:

(1) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;

(2) may accept appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

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

(4) may not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state; and

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

(G) With respect to qualified immunity, defense, and indemnification:

(1) the members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that nothing in this paragraph may be construed to protect any such person from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful or wanton misconduct of that person;

(2) the commission shall defend any member, officer, executive director, employee, or representative of the commission in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that no provision of this article may be construed to prohibit that person from retaining his own counsel, and provided further, that the actual or alleged act, error, or omission did not result from that person’s intentional or wilful or wanton misconduct;

(3) the commission shall indemnify and hold harmless a member, officer, executive director, employee, or representative of the commission for the amount of a settlement or judgment obtained against that person arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or wilful or wanton misconduct of that person.

Section 40‑36‑590. (A) The Commission shall provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(B) A member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable, using a unique identifier, as required by the rules of the commission, including:

(1) identifying information;

(2) licensure data;

(3) adverse actions against a license or compact privilege;

(4) nonconfidential information related to alternative program participation;

(5) any denial of application for licensure, and the basis for the denial;

(6) other information that may facilitate the administration of this compact, as determined by the rules of the commission; and

(7) current significant investigative information.

(C) Current significant investigative information and other investigative information pertaining to a licensee in a member state will only be available to other member states.

(D) The commission shall promptly notify all member states of an adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(E) A member state that contributes information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(F) Information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

Section 40‑36‑600. (A) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted pursuant to it. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(B) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force and effect.

(C) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then the rule has no further force and effect in any member state.

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

(E) Prior to promulgation and adoption of a final rule by the commission, and at least thirty days in advance of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of proposed rulemaking on the respective websites of:

(1) the commission or other publicly accessible platform; and

(2) each member‑state occupational therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(F) The notice of proposed rulemaking must include:

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

(2) the text of the proposed rule or amendment and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

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

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

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

(1) at least twenty‑five persons;

(2) a state or federal governmental subdivision or agency; or

(3) an association or organization having at least twenty‑five members.

(I) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) A person wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing no less than five business days before the scheduled date of the hearing.

(2) A hearing must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) A hearing must be recorded. A copy of the recording must be made available on request.

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

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

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

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

(M) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

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

(2) prevent a loss of commission or member‑state funds;

(3) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) protect public health and safety.

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

Section 40‑36‑610. (A) Oversight

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effect the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(3) The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

(B) Default, Technical Assistance, and Termination

(1) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

(a) written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and any other action, if any, to be taken by the commission; and

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

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

(3) Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states.

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

(5) The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney’s fees.

(C) Dispute resolution

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

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

(D) Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney’s fees.

(3) The remedies in this section are not exclusive. The commission may pursue any other remedies available under federal or state law.

Section 40‑36‑620. (A) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, must be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(B) A state that joins the compact subsequent to the commission’s initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. A rule that has been previously adopted by the commission must have the full force and effect of law on the day the compact becomes law in that state.

(C) A member state may withdraw from this compact by enacting a statute repealing the same. The withdrawal of a member state may not:

(1) take effect until six months after enactment of the repealing statute; or

(2) affect the continuing requirement of the withdrawing state’s occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(D) Nothing contained in this compact may be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(E) This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 40‑36‑630. This compact must be liberally construed to effect the purposes of it. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of a member state or of the United States or the applicability of it to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of it to any government, agency, person, or circumstance may not be affected as a consequence. If this compact is held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Section 40‑36‑640. (A) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(B) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(C) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(D) Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

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

(F) In the event a provision of the compact exceeds the constitutional limits imposed on the legislature of a member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.”

SECTION 2. Section 40‑36‑230 of the 1976 Code is amended to read:

“Section 40‑36‑230. (A)(1) An applicant for licensure as an occupational therapist shall file a written application on forms provided by the board showing to the satisfaction of the board that the applicant:

~~(1)~~(a) has graduated from an occupational therapy educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy or other educational program which the board considers to be substantially equivalent;

~~(2)~~(b) has completed successfully a minimum of six months of supervised field work experience at an educational institution approved by the educational institution where the applicant met the academic requirements;

~~(3)~~(c) has passed a board approved certification exam for the occupational therapist; and

~~(4)~~(d) is in good standing with NBCOT or other board approved certification program.

(2) In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for an initial compact privilege, the department shall require a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of this criminal records check must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. Costs of conducting a criminal history background check must be borne by the applicant. The department shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action. The results of this criminal records check must not be shared outside the department.

(B)(1) An applicant for licensure as an occupational therapy assistant shall file a written application on a form approved by the board showing to the satisfaction of the board that the applicant:

~~(1)~~(a) has graduated from an occupational therapy assistant educational program approved by ACOTE or other AOTA endorsed accrediting body for occupational therapy or other educational program which the board considers to be substantially equivalent;

~~(2)~~(b) has completed successfully a minimum of two months of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the applicant met the academic requirements;

~~(3)~~(c) has passed a board approved certification exam for the occupational therapy assistant; and

~~(4)~~(d) is in good standing with NBCOT or other board approved certification program.

(2) In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for a compact privilege, the department shall require a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of this criminal records check must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. Costs of conducting a criminal history background check must be borne by the applicant. The department shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action. The results of this criminal records check must not be shared outside the department.”

SECTION 3. Section 40‑36‑250 of the 1976 Code is amended by adding an item at the end to read:

“( ) in addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for a compact privilege, the department shall require a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of this criminal records check must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. Costs of conducting a criminal history background check must be borne by the applicant. The department shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action. The results of this criminal records check must not be shared outside the department.”

SECTION 4. Sections 40‑36‑5 through 40‑36‑310 of the 1976 Code are designated Article 1, entitled “General Provisions”.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill allows the South Carolina Board of Occupational Therapy (board) to enter into a multistate occupational licensure compact. The compact allows qualified occupational therapists or occupational therapy assistants to practice in all member states by applying for a compact privilege. Under current law, an occupational therapist must apply for licensure with the licensure board of each state in which the individual wishes to practice. Additionally, this bill requires applicants to undergo a state criminal history records check in their home state, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant. This compact takes effect on the date of enactment by the tenth state. Currently, compact legislation has been introduced in eleven states. Therefore, we cannot determine when and if this compact will go into full effect.

**Department of Labor, Licensing and Regulation.** The Occupational Therapy Compact Commission (commission) is responsible for the administration of the interstate compact. This commission consists of one delegate from each member state selected by that member state’s licensing board. The commission will meet at least once each calendar year, and expenditures related to the travel costs of the delegate will be provided by the member state. Additionally, the commission may collect an annual assessment from each member state to cover its operational costs. Furthermore, the bill requires compact states to have a mechanism in place for receiving and investigating complaints about licensees, as well as, for remote states to cover the costs associated with hearings and investigations required by the service statutes of the state where witnesses and evidence are located. However, these costs for investigations and disposition of cases can be recovered from the affected party. Lastly, the bill requires member states to submit a uniform data set to the commission’s data system on all individuals to whom the compact is applicable. While LLR anticipates that these provisions will cause increased expenditures for the board and that additional board meetings may be necessary to hold application hearings and disciplinary hearings resulting from background checks, LLR is unable to determine the total increased cost of these provisions to the board.

LLR indicates that additional board meetings may be necessary to hold application hearings and disciplinary hearings resulting from background checks. The cost breakdown of board meetings includes a $35 per diem for each board member, a 56 cent per mile mileage reimbursement, and a $2,156 court reporter fee. The board consists of seven members. LLR cannot estimate the number of additional meetings that may be necessary as a result of this bill.

This bill creates additional administrative duties that cannot be managed by existing staff. Therefore, LLR anticipates that it will require 1.0 additional FTE to handle criminal background check processing during the licensure process, process applications, and assist with board meetings and other duties as needed. Salary and fringe benefits for an Administrative Assistant will total $47,728, and other recurring operating expenses will total $2,500. Non-recurring infrastructure costs associated with this position will total $1,000. Therefore, this bill will increase other funds expenditures by $51,228 in the first fiscal year in which the compact becomes active and by $50,228 each year thereafter.It is not known when and if this compact will go into effect.

The total expenditure impact of this bill on LLR is undetermined. However, compact privilege fees paid by applicants will be established by the board and could generate the necessary revenue to offset anticipated expenditure increases.

**State Law Enforcement Division.** We have not received a response from SLED regarding the expenditure impact of this bill. However, we anticipate that this bill will require SLED to perform activities that can be conducted in the normal course of agency business. Therefore, we do not expect that this bill will have an expenditure impact on the agency due to the provision requiring a state criminal history records check and fingerprinting for applicants to the board. *This section of the fiscal impact statement has been updated to include an agency impact for SLED.*

**State Revenue**

This bill allows the South Carolina Board of Occupational Therapy (board) to enter into a multistate occupational licensure compact. The compact allows qualified occupational therapists or occupational therapy assistants to practice in all member states by applying for a compact privilege. Under current law, an occupational therapist must apply for licensure with the licensure board of each state in which the individual wishes to practice. Additionally, this bill requires applicants to undergo a state criminal history records check in their home state, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant.

**Department of Labor, Licensing and Regulation.** This bill allows LLR to collect a fee from out-of-state occupational therapists or occupational therapy assistants for licenses issued or renewed through this interstate compact. Additionally, the board may issue and collect fines as a result of adverse action taken against a licensee, as well as recover the costs for investigation and disposition of cases resulting from adverse action taken against a licensee. The revenue impact of this bill on the other funds of LLR is undetermined because LLR cannot estimate how many new applicants will seek compact licensure, how many fines may be issued against licensees, and what fee the board will establish for compact licensure.

The board falls under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2021-22 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures. Because the total amount of increased costs to the board is unknown, LLR is unable to determine the exact revenue impact to the general fund. However, LLR anticipates the revenue impact of this bill on the general fund will not exceed a few hundred dollars.

**State Law Enforcement Division.** We have not received a response from SLED regarding the revenue impact of this bill. However, we anticipate that this bill may increase the number of state criminal records checks that SLED is required to perform. The total cost for a criminal records check is $51.75, of which $25 is retained by SLED. The vendor, Identogo, receives $13.50, and the remainder of the fee, $13.25, is remitted to the Federal Bureau of Investigation. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of $4,461,000 must be deposited in the general fund. Any revenue over that amount is retained by SLED.

LLR indicates there have been an average of about 270 initial licenses granted for occupational therapists and occupational therapy assistants between FY 2016-17 and FY 2019-20. If state background checks are performed on an average of 270 individuals a year, revenue would increase by approximately $6,750 each fiscal year. In FY 2018-19, SLED generated approximately $1,300,000 in total from state criminal records checks. As a note, RFA is not using FY 2019-20 data due to the impact of the COVID-19 pandemic on state background checks processing. We do not anticipate that the total increase in revenue due to state background checks will be more than the $4,461,000 cap on revenue deposited to the general fund. Based upon this, the increase in revenue of $6,750 will be deposited to the general fund in the first fiscal year in which the compact becomes active and each year thereafter, and there is no increase in other funds revenue of SLED. *This section of the fiscal impact statement has been updated to include an agency impact for SLED.*

**Updated for Additional Agency Response on February 24, 2021**

**Introduced on January 12, 2021**

**State Expenditure**

This bill provides for the South Carolina Board of Occupational Therapy (board) to enter into a multistate occupational licensure compact. The compact allows qualified occupational therapists or occupational therapy assistants to practice in all member states by applying for a compact privilege. Under current law, an occupational therapist must apply for licensure with the licensure board of each state in which the individual wishes to practice.

Additionally, this bill requires applicants to undergo a state criminal history records check in their home state, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant.

This compact takes effect on the date of enactment by the tenth state. Currently, compact legislation has been introduced in eleven states. RFA cannot determine when and if this compact will go into full effect.

**Department of Labor, Licensing and Regulation.** The Occupational Therapy Compact Commission (commission) is responsible for the administration of the interstate compact. This commission consists of one delegate from each member state selected by that member state’s licensing board. The commission will meet at least once each calendar year, and expenditures related to the travel costs of the delegate will be provided by the member state. Additionally, the commission may collect an annual assessment from each member state to cover its operational costs. Furthermore, the bill requires compact states to have a mechanism in place for receiving and investigating complaints about licensees, as well as for remote states to cover the costs associated with hearings and investigations required by the service statutes of the state where witnesses and evidence are located. However, these costs for investigations and disposition of cases can be recovered from the affected party. Lastly, the bill requires member states to submit a uniform data set to the commission’s data system on all individuals to whom the compact is applicable. While LLR anticipates that these provisions will cause increased expenditures for the board and that additional board meetings may be necessary to hold application hearings and disciplinary hearings resulting from background checks, LLR is unable to determine the total increased cost of these provisions to the board.

LLR indicates that additional board meetings may be necessary to hold application hearings and disciplinary hearings resulting from background checks. The cost breakdown of board meetings includes a $35 per diem for each board member, a 56 cent per mile mileage reimbursement, and a $2,156 court reporter fee. The board consists of seven members. LLR cannot estimate the number of additional meetings that may be necessary as a result of this bill.

This bill creates additional administrative duties that cannot be managed by existing staff. Therefore, LLR anticipates that it will require 1 additional FTE to handle criminal background check processing during the licensure process, process applications, and assist with board meetings and other duties as needed. Salary and fringe benefits for an Administrative Assistant will total $47,728, and other recurring operating expenses will total $2,500. Non-recurring infrastructure costs associated with this position will total $1,000. Therefore, this bill will increase other funds expenditures by $51,228 in the first fiscal year in which the compact becomes active and by $50,228 each year thereafter.It is not known when and if this compact will go into effect.

The total expenditure impact of this bill is undetermined. However, compact privilege fees paid by applicants will be established by the board and could generate the necessary revenue to offset anticipated expenditure increases.

This fiscal impact has been updated for an additional response from LLR.

**State Law Enforcement Division.** The expenditure impact of this bill on SLED is pending, contingent upon a response from the agency.

**State Revenue**

**Department of Labor, Licensing and Regulation.** This bill allows LLR to collect a fee from out-of-state occupational therapists or occupational therapy assistants for licenses issued or renewed through this interstate compact. Additionally, the board may issue and collect fines as a result of adverse action taken against a licensee, as well as recover the costs for investigation and disposition of cases resulting from adverse action taken against a licensee. The revenue impact of this bill on the other funds of LLR is undetermined because LLR cannot estimate how many new applicants will seek compact licensure, how many fines may be issued against licensees, and what fee the board will establish for compact licensure.

The board falls under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2019-20 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures. Because the total amount of increased costs to the board is unknown, LLR is unable to determine the exact revenue impact to the general fund. However, LLR anticipates the revenue impact of this bill on the general fund will not exceed a few hundred dollars.

This fiscal impact has been updated for an additional response from LLR.

**State Law Enforcement Division.** This bill may increase the number of state criminal records checks that SLED is required to perform. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of $4,461,000 must be deposited in the general fund. Any revenue over that amount is retained by SLED. The revenue impact of this bill on the general fund and the other funds of SLED is pending, contingent upon a response from the agency.

**Introduced on January 12, 2021**

**State Expenditure**

This bill allows South Carolina to enter into a multistate occupational licensure compact. The compact allows qualified occupational therapists or occupational therapy assistants to practice in all member states by applying for a compact privilege. Under current law, an occupational therapist must apply for licensure with the licensure board of each state in which the individual wishes to practice. The licensure board for South Carolina is the Board of Occupational Therapy (board), which is regulated by LLR.

Additionally, this bill requires applicants to undergo a state criminal history records check in their home state, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant.

**Department of Labor, Licensing and Regulation.** The Occupational Therapy Compact Commission (commission) is responsible for the administration of the interstate compact. This commission consists of one delegate from each member state selected by that member state’s licensing board. The commission will meet at least once each calendar year, and expenditures related to the travel costs of the delegate will be provided by the member state. Additionally, the commission may collect an annual assessment from each member state to cover its operational costs.

This bill requires the board to review applications for new home state licenses and compact privileges, to determine qualification of the applicant, and to activate new home state licenses in accordance with rules adopted by the commission. If the compact qualifications are not met, a single-state license may be considered by the board. The board must also report to the commission any adverse action imposed against a licensee and comply with adverse action imposed by member states against a home state licensee. Additionally, the board must submit a data set to the commission’s data system containing information on individuals to whom the compact is applicable.

The expenditure impact of this bill on LLR is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** The expenditure impact of this bill on SLED is pending, contingent upon a response from the agency.

**State Revenue**

**Department of Labor, Licensing and Regulation.** This bill allows LLR to collect a fee from out-of-state occupational therapists or occupational therapy assistants for licenses issued or renewed through this interstate compact. LLR is required, pursuant to Section 40-1-50(D), to adjust fees biennially to ensure that fee revenue is sufficient, but not excessive, to cover expenses of each respective board. Additionally, the board may issue and collect fines as a result of adverse action taken against a licensee, as well as recover the costs for investigation and disposition of cases resulting from adverse action taken against a licensee. The revenue impact of this bill on the other funds of LLR is pending, contingent upon a response from the agency.

The board falls under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 20190-20 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures. The revenue impact of this bill on the general fund is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** This bill may increase the number of state criminal records checks that SLED is required to perform. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of $4,461,000 must be deposited in the general fund. Any revenue over that amount is retained by SLED. The revenue impact of this bill on the general fund and the other funds of SLED is pending, contingent upon a response from the agency.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 36, TITLE 40 SO AS TO ENACT THE “OCCUPATIONAL THERAPY LICENSURE COMPACT” WHICH ENTERS SOUTH CAROLINA INTO A MULTISTATE OCCUPATIONAL LICENSURE COMPACT TO PROVIDE FOR THE RECIPROCAL PRACTICE OF OCCUPATIONAL THERAPY AMONG THE STATES THAT ARE PARTIES TO THE COMPACT; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 36 AS ARTICLE 1, ENTITLED “GENERAL PROVISIONS”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 36, Title 40 of the 1976 Code is amended by adding:

“Article 3

Occupational Therapy Licensure Compact

Section 40‑36‑510. (A) The purpose of this compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

(B) This compact is designed to achieve the following objectives:

(1) increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;

(2) enhance the ability of the states to protect the health and safety of the public;

(3) encourage the cooperation of member states in regulating multistate occupational therapy practice;

(4) support spouses of relocating military members;

(5) enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to the practice standards of that state; and

(7) facilitate the use of telehealth technology in order to increase access to occupational therapy services.

Section 40‑36‑520. As used in this compact and except as otherwise provided:

(1) ‘Active duty military’ means full‑time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and Section 1211.

(2) ‘Adverse action’ means any administrative, civil, equitable, or criminal action permitted by the laws of a state that is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against the license or compact privilege of an individual, such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the practice of the licensee.

(3) ‘Alternative program’ means a nondisciplinary monitoring process approved by an occupational therapy licensing board.

(4) ‘Compact privilege’ means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(5) ‘Continuing competence/education’ means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

(6) ‘Current significant investigative information’ means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(7) ‘Data system’ means a repository of information about licensees including, but not limited to, license status, investigative information, compact privileges, and adverse actions.

(8) ‘Encumbered license’ means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the National Practitioners Data Bank (NPDB).

(9) ‘Executive committee’ means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(10) ‘Home state’ means the member state that is the licensee’s primary state of residence.

(11) ‘Impaired practitioner’ means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health‑related conditions.

(12) ‘Investigative information’ means information, records, and documents received or generated by an occupational therapy licensing board pursuant to an investigation.

(13) ‘Jurisprudence requirement’ means the assessment of an individual’s knowledge of the laws and rules governing the practice of occupational therapy in a state.

(14) ‘Licensee’ means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

(15) ‘Member state’ means a state that has enacted the compact.

(16) ‘Occupational therapist’ means an individual who is licensed by a state to practice occupational therapy.

(17) ‘Occupational therapy assistant’ means an individual who is licensed by a state to assist in the practice of occupational therapy.

(18) ‘Occupational therapy,’ ‘occupational therapy practice,’ or the ‘practice of occupational therapy’ means the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the statutes and regulations of the member state.

(19) ‘Occupational Therapy Compact Commission’ or ‘commission’ means the national administrative body whose membership consists of all states that have enacted the compact.

(20) ‘Occupational therapy licensing board’ or ‘licensing board’ means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

(21) ‘Primary state of residence’ means the state, also known as the home state, in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by a driver’s license, federal income tax return, lease, deed, mortgage, voter registration, or other verifying documentation as further defined by commission rules.

(22) ‘Remote state’ means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(23) ‘Rule’ means a regulation promulgated by the commission that has the force of law.

(24) ‘State’ means a state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

(25) ‘Single‑state license’ means an occupational therapist license or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in another member state.

(26) ‘Telehealth’ means the application of telecommunication technology to deliver occupational therapy services for:

(a) assessment;

(b) intervention;

(c) consultation; or

(d) any combination of (a) through (c).

Section 40‑36‑530. (A) To participate in the compact, a member state shall:

(1) license occupational therapists and occupational therapy assistants;

(2) participate fully in the commission’s data system including, but not limited to, using the commission’s unique identifier as defined in rules of the commission;

(3) have a mechanism in place for receiving and investigating complaints about licensees;

(4) notify the commission, in compliance with the terms of the compact and rules, of an adverse action or the availability of investigative information regarding a licensee;

(5) implement or use procedures for considering the criminal history records of applicants for an initial compact privilege, provided these procedures must include the submission of fingerprints or other biometric‑based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records, and:

(a) within a period established by the commission, require a criminal background check for a licensee seeking or applying for a compact privilege whose primary date of residence is that member state, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions; and

(b) ensure communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92‑544;

(6) comply with the rules of the commission;

(7) use only a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(8) have continuing competence/education requirements as a condition for license renewal.

(B) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(C) A member state may charge a fee for granting a compact privilege.

(D) A member state shall provide for the state’s delegate to attend all occupational therapy compact commission meetings.

(E) An individual not residing in a member state shall continue to be able to apply for a member state’s single‑state license as provided under the laws of each member state. However, the single‑state license granted to these individuals may not be recognized as granting the compact privilege in another member state.

(F) Nothing in this compact may affect the requirements established by a member state for the issuance of a single‑state license.

Section 40‑36‑540. (A) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

(1) hold a license in the home state;

(2) have a valid United States Social Security Number or national practitioner identification number;

(3) have no encumbrance on a state license;

(4) be eligible for a compact privilege in a member state in accordance with subsections (D), (F), (G), and (H);

(5) have paid all fines and completed all requirements resulting from an adverse action against a license or compact privilege, and two years have elapsed from the date of such completion;

(6) notify the commission that the licensee is seeking the compact privilege within a remote state;

(7) pay applicable fees, including a state fee, for the compact privilege;

(8) complete a criminal background check in accordance with Section 40‑36‑530(A)(5), provided the licensee must be responsible for the payment of a fee associated with the completion of a criminal background check;

(9) meet jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

(10) report to the commission adverse action taken by a nonmember state within thirty days from the date the adverse action is taken.

(B) The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection (A) to maintain the compact privilege in the remote state.

(C) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(D) Occupational therapy assistants practicing in a remote state must be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

(E) A licensee providing occupational therapy in a remote state is subject to that state’s regulatory authority. A remote state may, in accordance with due process and that state’s laws, remove a licensee’s compact privilege in the remote state for a specific period, impose fines, and take other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(F) If a home-state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(1) the home-state license is no longer encumbered; and

(2) two years have elapsed from the date on which the home state license is no longer encumbered in accordance with item (1).

(G) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection (A) to obtain a compact privilege in a remote state.

(H) If a licensee’s compact privilege in a remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

(1) the specific period of time for which the compact privilege was removed has ended;

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

(3) two years have elapsed from the date of completing requirements for items (1) and (2); and

(4) the compact privileges are reinstated by the commission, and the compact data system is updated to reflect reinstatement.

(I) If a licensee’s compact privilege in a remote state is removed due to an erroneous charge, privileges must be restored through the compact data system.

(J) Once the requirements of subsection (H) have been met, the license must meet the requirements in subsection (A) to obtain a compact privilege in a remote state.

Section 40‑36‑550. (A) An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

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

(1) the occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home states in accordance with applicable rules adopted by the commission;

(2) upon receipt of an application for obtaining a new home-state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Section 40‑36‑540 by means of the data system, without need for primary source verification except for:

(a) an FBI fingerprint‑based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92‑544;

(b) other criminal background check as required by the new home state; and

(c) submission of requisite jurisprudence requirements of the new home state;

(3) the former home state shall convert the former home state license into a compact privilege once the new home-state has activated the new home-state license in accordance with applicable rules adopted by the commission;

(4) notwithstanding another provision of this compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Section 40‑36‑540, the new home state shall apply its requirements for issuing a new single‑state license; and

(5) the occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home-state license.

(C) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria applies for issuance of a single‑state license in the new state.

(D) Nothing in this compact may be construed to interfere with the ability of a licensee to hold a single‑state license in multiple states; however, for the purposes of this compact, a licensee only may have one home state license.

(E) Nothing in this compact maybe construed to affect the requirements established by a member state for the issuance of a single‑state license.

Section 40‑36‑560. Active duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual only shall change their home state through application for licensure in the new state or through the process described in Section 40‑36‑550.

Section 40‑36‑570. (A) A home state has exclusive power to impose adverse action against an occupational therapist license or occupational therapy assistant license issued by the home state.

(B) In addition to the other powers conferred by state law, a remote state may, in accordance with existing state due process law:

(1) take adverse action against an occupational therapist’s or occupational therapy assistant’s compact privilege within that member state; and

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

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

(D) The home state shall complete pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, also shall have the authority to take appropriate action and promptly shall report the conclusions of the investigations to the occupational therapy compact commission data system. The data system administrator shall promptly notify the new home state of adverse actions.

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

(F) A member state may take adverse action based on the factual findings of the remote state if the member state follows its own procedures for taking the adverse action.

(G) In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, a member state may participate with other member states in joint investigations of licensees. In such joint investigations, member states shall share investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(H) If an adverse action is taken by the home state against an occupational therapist license or occupational therapy assistant license, the compact privilege of the occupational therapist or occupational therapy assistant in all other member states must be deactivated until all encumbrances have been removed from the state license. All home-state disciplinary orders that impose adverse action against an occupational therapist license or occupational therapy assistant license shall include a statement that the compact privilege of the occupational therapist or occupational therapy assistant is deactivated in all member states during the pendency of the order.

(I) If a member state takes adverse action, it promptly shall notify the data system administrator, who promptly shall notify the home state of adverse actions by remote states.

(J) Nothing in this compact may be construed to override a member state’s decision that participation in an alternative program may be used in lieu of adverse action.

Section 40‑36‑580. (A) The compact member states hereby create and establish a joint public agency known as the ‘Occupational Therapy Compact Commission’.

(1) The commission is an instrumentality of the compact states.

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

(3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(B) With respect to commission membership, voting, and meetings:

(1) each member state has, and is limited to, one delegate selected by that member-state’s licensing board;

(2) the delegate must be either:

(a) a current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

(b) an administrator of the licensing board;

(3) a delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed;

(4) the member state board shall fill a vacancy occurring in the commission within ninety days;

(5) each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission, provided a delegate shall vote in person or by such other means as provided in the bylaws, and the bylaws may provide for delegates’ participation in meetings by telephone or other means of communication;

(6) the commission shall meet at least once during each calendar year and additional meetings must be held as set forth in the bylaws; and

(7) the commission shall establish by rule a term of office for delegates.

(C) The commission has powers and duties to:

(1) establish a code of ethics for the commission;

(2) establish the fiscal year of the commission;

(3) establish bylaws;

(4) maintain its financial records in accordance with the bylaws;

(5) meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(6) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact, which have the force and effect of law and are binding in all member states;

(7) bring and prosecute legal proceedings or actions in the name of the commission if the standing of a state occupational therapy licensing board to sue or be sued under applicable law may not be affected;

(8) purchase and maintain insurance and bonds;

(9) borrow, accept, or contract for services of personnel including, but not limited to, employees of a member state;

(10) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(11) accept appropriate donations and grants of money, equipment, supplies, materials and services, and receive, and use and dispose of them; provided that the commission shall avoid any appearance of impropriety, or conflict of interest;

(12) lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(13) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real property, personal property, or a mixture of real and personal property;

(14) establish a budget and make expenditures;

(15) borrow money;

(16) appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(17) provide and receive information from, and cooperate with, law enforcement agencies;

(18) establish and elect an executive committee; and

(19) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(D) With respect to the executive committee:

(1) the executive committee may act on behalf of the commission according to the terms of this compact;

(2) the executive committee is composed of nine members, consisting of:

(a) seven voting members who are elected by the commission from the current membership of the commission;

(b) one ex officio, nonvoting member from a recognized national occupational therapy professional association; and

(c) one ex officio, nonvoting member from a recognized national occupational therapy certification organization;

(3) the ex officio members must be selected by their respective organizations;

(4) the commission may remove a member of the executive committee as provided in bylaws;

(5) the executive committee shall meet at least annually; and

(6) the executive committee has the duties and responsibilities to:

(a) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(b) ensure compact administration services are appropriately provided, contractual or otherwise;

(c) prepare and recommend the budget;

(d) maintain financial records on behalf of the commission;

(e) monitor compact compliance of member states and provide compliance reports to the commission;

(f) establish additional committees as necessary; and

(g) perform other duties as provided in rules or bylaws.

(E) With respect to meetings of the commission:

(1) all meetings of the commission are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 40‑36‑600;

(2) the commission, executive committee, or other committees of the commission may convene in a closed, nonpublic meeting if the commission, executive committee, or other committees of the commission must discuss:

(a) noncompliance of a member state with its obligations under the compact;

(b) the employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission’s internal personnel practices and procedures;

(c) current, threatened, or reasonably anticipated litigation;

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

(e) accusing a person of a crime or formally censuring a person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

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

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

(i) disclosure of information related to an investigative report prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(j) matters specifically exempted from disclosure by federal or member‑state statute;

(3) if a meeting, or portion of a meeting, is closed pursuant to this provision, the commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision; and

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

(F) With respect to financing of the commission, the commission:

(1) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;

(2) may accept appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

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

(4) may not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state; and

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

(G) With respect to qualified immunity, defense, and indemnification:

(1) the members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that nothing in this paragraph may be construed to protect any such person from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful or wanton misconduct of that person;

(2) the commission shall defend any member, officer, executive director, employee, or representative of the commission in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that no provision of this item may be construed to prohibit that person from retaining his own counsel, and provided further, that the actual or alleged act, error, or omission did not result from that person’s intentional or wilful or wanton misconduct;

(3) the commission shall indemnify and hold harmless a member, officer, executive director, employee, or representative of the commission for the amount of a settlement or judgment obtained against that person arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or wilful or wanton misconduct of that person.

Section 40‑36‑590. (A) The Commission shall provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(B) A member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable, using a unique identifier, as required by the rules of the commission, including:

(1) identifying information;

(2) licensure data;

(3) adverse actions against a license or compact privilege;

(4) nonconfidential information related to alternative program participation;

(5) any denial of application for licensure, and the basis for the denial;

(6) other information that may facilitate the administration of this compact, as determined by the rules of the commission; and

(7) current significant investigative information.

(C) Current significant investigative information and other investigative information pertaining to a licensee in a member state is only available to other member states.

(D) The commission shall promptly notify all member states of an adverse action taken against a licensee or an individual applying for a license. A member state is entitled to adverse action information pertaining to a licensee in another member state.

(E) A member state that contributes information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(F) Information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

Section 40‑36‑600. (A) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted pursuant to it. Rules and amendments become binding as of the date specified in each rule or amendment.

(B) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force and effect.

(C) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then the rule has no further force and effect in any member state.

(D) Rules or amendments to the rules only may be adopted at a regular or special meeting of the commission.

(E) Prior to promulgation and adoption of a final rule by the commission, and at least thirty days in advance of the meeting at which the rule is to be considered and voted upon, the commission shall file a notice of proposed rulemaking on the respective websites of:

(1) the commission or other publicly accessible platform; and

(2) each member‑state occupational therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(F) The notice of proposed rulemaking must include:

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

(2) the text of the proposed rule or amendment and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

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

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

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

(1) at least twenty‑five persons;

(2) a state or federal governmental subdivision or agency; or

(3) an association or organization having at least twenty‑five members.

(I) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) A person wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing no less than five business days before the scheduled date of the hearing.

(2) A hearing must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) A hearing must be recorded. A copy of the recording must be made available on request.

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

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

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

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

(M) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

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

(2) prevent a loss of commission or member‑state funds;

(3) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) protect public health and safety.

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

Section 40‑36‑610. (A) Oversight

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effect the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(3) The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

(B) Default, Technical Assistance, and Termination

(1) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

(a) written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and any other action, if any, to be taken by the commission; and

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

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

(3) Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states.

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

(5) The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney’s fees.

(C) Dispute resolution

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

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

(D) Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney’s fees.

(3) The remedies in this section are not exclusive. The commission may pursue any other remedies available under federal or state law.

Section 40‑36‑620. (A) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, must be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(B) A state that joins the compact subsequent to the commission’s initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. A rule that has been previously adopted by the commission must have the full force and effect of law on the day the compact becomes law in that state.

(C) A member state may withdraw from this compact by enacting a statute repealing the same. The withdrawal of a member state may not:

(1) take effect until six months after enactment of the repealing statute; or

(2) affect the continuing requirement of the withdrawing state’s occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(D) Nothing contained in this compact may be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(E) This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 40‑36‑630. This compact must be liberally construed to effect the purposes of it. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of a member state or of the United States or the applicability of it to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of it to any government, agency, person, or circumstance may not be affected as a consequence. If this compact is held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Section 40‑36‑640. (A) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(B) Nothing herein prevents the enforcement of another law of a member state that is not inconsistent with the compact.

(C) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(D) Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

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

(F) In the event a provision of the compact exceeds the constitutional limits imposed on the legislature of a member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.”

SECTION 2. Sections 40‑36‑5 through 40‑36‑310 of the 1976 Code are designated Article 1, entitled “General Provisions”.

SECTION 3. This act takes effect upon approval by the Governor.

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