

House Bill 2736

Sponsored by Representative HUDSON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Enacts interstate Occupational Therapy Licensure Compact. Permits Occupational Therapy Licensing Board to disclose specified information to Occupational Therapy Compact Commission. Exempts individuals authorized to work as occupational therapists or occupational therapy assistants under compact privilege from requirement to obtain license from board and from restrictions on use of titles. Allows board to use moneys to meet financial obligations imposed on State of Oregon as result of participation in compact.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to an occupational therapy licensure compact; creating new provisions; amending ORS
3 675.220, 675.222, 675.330 and 676.177; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. The provisions of the Occupational Therapy Licensure Compact are as fol-**
6 **lows:**

OCCUPATIONAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

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

16 **This Compact is designed to achieve the following objectives:**

17 **A. Increase public access to occupational therapy services by providing for the mutual**
18 **recognition of other member state licenses;**

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

20 **C. Encourage the cooperation of member states in regulating multistate occupational**
21 **therapy practice;**

22 **D. Support spouses of relocating military members;**

23 **E. Enhance the exchange of licensure, investigative and disciplinary information between**
24 **member states;**

25 **F. Allow a remote state to hold a provider of services with a compact privilege in that**
26 **state accountable to that state's practice standards; and**

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

SECTION 2. DEFINITIONS

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

A. "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 10 U.S.C. Chapter 1211.

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

C. "Alternative program" means a nondisciplinary monitoring process approved by an occupational therapy licensing board.

D. "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 or client is located at the time of the patient or client encounter.

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

F. "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.

G. "Data system" means a repository of information about licensees, including but not limited to license status, investigative information, compact privileges and adverse actions.

H. "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 Practitioner Data Bank.

I. "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.

J. "Home state" means the member state that is the licensee's primary state of residence.

K. "Investigative information" means information, records and/or documents received or generated by an occupational therapy licensing board pursuant to an investigation.

L. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

M. "Licensee" means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

N. "Member state" means a state that has enacted the Compact.

O. "Occupational therapist" means an individual who is licensed by a state to practice occupational therapy.

P. "Occupational therapy," "occupational therapy practice" and the "practice of occupa-

1 tional therapy” mean the care and services provided by an occupational therapist or an oc-
 2 cupational therapy assistant as set forth in the member state’s statutes and regulations.
 3 “Occupational therapy” also has the meaning given the term in ORS 675.210.

4 Q. “Occupational therapy assistant” means an individual who is licensed by a state to
 5 assist in the practice of occupational therapy.

6 R. “Occupational Therapy Compact Commission” or “Commission” means the national
 7 administrative body whose membership consists of all states that have enacted the Compact.

8 S. “Occupational therapy licensing board” or “licensing board” means the agency of a
 9 state that is authorized to license and regulate occupational therapists and occupational
 10 therapy assistants.

11 T. “Primary state of residence” means the state (also known as the home state) in which
 12 an occupational therapist or occupational therapy assistant who is not active duty military
 13 declares a primary residence for legal purposes as verified by: driver’s license, federal in-
 14 come tax return, lease, deed, mortgage or voter registration or other verifying documenta-
 15 tion as further defined by Commission rules.

16 U. “Remote state” means a member state other than the home state where a licensee is
 17 exercising or seeking to exercise the compact privilege.

18 V. “Rule” means a regulation promulgated by the Commission that has the force of law.

19 W. “Single-state license” means an occupational therapist or occupational therapy as-
 20 sistant license issued by a member state that authorizes practice only within the issuing
 21 state and does not include a compact privilege in any other member state.

22 X. “State” means any state, commonwealth, district or territory of the United States of
 23 America that regulates the practice of occupational therapy.

24 Y. “Telehealth” means the application of telecommunication technology to deliver occu-
 25 pational therapy services for assessment, intervention and/or consultation.

26 **SECTION 3. STATE PARTICIPATION IN THE COMPACT**

27 **A. To participate in the Compact, a member state shall:**

- 28 1. License occupational therapists and occupational therapy assistants;
- 29 2. Participate fully in the Commission’s data system, including but not limited to using
 30 the Commission’s unique identifier as defined in rules of the Commission;
- 31 3. Have a mechanism in place for receiving and investigating complaints about licensees;
- 32 4. Notify the Commission, in compliance with the terms of the Compact and rules, of any
 33 adverse action or the availability of investigative information regarding a licensee;
- 34 5. Implement or utilize procedures for considering the criminal history records of appli-
 35 cants for an initial compact privilege. These procedures shall include the submission of fin-
 36 gerprints or other biometric-based information by applicants for the purpose of obtaining an
 37 applicant’s criminal history record information from the Federal Bureau of Investigation and
 38 the agency responsible for retaining that state’s criminal records;

39 a. A member state shall, within a time frame established by the Commission, require a
 40 criminal background check for a licensee seeking or applying for a compact privilege whose
 41 primary state of residence is that member state by receiving the results of the Federal Bu-
 42 reau of Investigation criminal record search and shall use the results in making licensure
 43 decisions.

44 b. Communication between a member state and the Commission and among member
 45 states regarding the verification of eligibility for licensure through the Compact shall not

1 include any information received from the Federal Bureau of Investigation relating to a
2 federal criminal records check performed by a member state under Public Law 92-544.

3 6. Comply with the rules of the Commission;

4 7. Utilize only a recognized national examination as a requirement for licensure pursuant
5 to the rules of the Commission; and

6 8. Have continuing competence or education requirements as a condition for license re-
7 newal.

8 B. A member state shall grant the compact privilege to a licensee holding a valid unen-
9 cumbered license in another member state in accordance with the terms of the Compact and
10 rules.

11 C. Member states may charge a fee for granting a compact privilege.

12 D. A member state shall provide for the state's delegate to attend all Occupational
13 Therapy Compact Commission meetings.

14 E. Individuals not residing in a member state shall continue to be able to apply for a
15 member state's single-state license as provided under the laws of each member state. How-
16 ever, the single-state license granted to these individuals shall not be recognized as granting
17 the compact privilege in any other member state.

18 F. Nothing in this Compact shall affect the requirements established by a member state
19 for the issuance of a single-state license.

20 **SECTION 4. COMPACT PRIVILEGE**

21 A. To exercise the compact privilege under the terms and provisions of the Compact, the
22 licensee shall:

23 1. Hold a license in the home state;

24 2. Have a valid United States Social Security Number or National Provider Identification
25 number;

26 3. Have no encumbrance on any state license;

27 4. Be eligible for a compact privilege in any member state in accordance with Section 4D,
28 F, G, and H of this Compact;

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

32 6. Notify the Commission that the licensee is seeking the compact privilege within a re-
33 mote state;

34 7. Pay any applicable fees, including any state fee, for the compact privilege;

35 8. Complete a criminal background check in accordance with Section 3A(5) of this Com-
36 pact. The licensee shall be responsible for the payment of any fee associated with the com-
37 pletion of a criminal background check.

38 9. Meet any jurisprudence requirements established by the remote state in which the
39 licensee is seeking a compact privilege; and

40 10. Report to the Commission adverse action taken by any nonmember state within 30
41 days from the date the adverse action is taken.

42 B. The compact privilege is valid until the expiration date of the home state license. The
43 licensee must comply with the requirements of Section 4A of this Compact to maintain the
44 compact privilege in the remote state.

45 C. A licensee providing occupational therapy in a remote state under the compact privi-

1 lege shall function within the laws and regulations of the remote state.

2 D. Occupational therapy assistants practicing in a remote state shall be supervised by
3 an occupational therapist licensed or holding a compact privilege in that remote state.

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

10 F. If a home state license is encumbered, the licensee shall lose the compact privilege in
11 any remote state until the following occur:

12 1. The home state license is no longer encumbered; and

13 2. Two years have elapsed from the date on which the home state license is no longer
14 encumbered in accordance with Section 4F(1) of this Compact.

15 G. Once an encumbered license in the home state is restored to good standing, the
16 licensee must meet the requirements of Section 4A of this Compact to obtain a compact
17 privilege in any remote state.

18 H. If a licensee's compact privilege in any remote state is removed, the individual may
19 lose the compact privilege in any other remote state until the following occur:

20 1. The specific period of time for which the compact privilege was removed has ended;

21 2. All fines have been paid and all conditions have been met;

22 3. Two years have elapsed from the date of completing requirements set forth in Section
23 4H(1) and (2) of this Compact; and

24 4. The compact privileges are reinstated by the Commission, and the compact data sys-
25 tem is updated to reflect reinstatement.

26 I. If a licensee's compact privilege in any remote state is removed due to an erroneous
27 charge, privileges shall be restored through the compact data system.

28 J. Once the requirements of Section 4H of this Compact have been met, the licensee must
29 meet the requirements in Section 4A of this Compact to obtain a compact privilege in a re-
30 mote state.

31 **SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT**
32 **PRIVILEGE**

33 A. An occupational therapist or occupational therapy assistant may hold a home state
34 license which allows for compact privileges in member states in only one member state at a
35 time.

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

38 1. The occupational therapist or occupational therapy assistant shall file an application
39 for obtaining a new home state license by virtue of a compact privilege, pay all applicable
40 fees and notify the current and new home state in accordance with applicable rules adopted
41 by the Commission.

42 2. Upon receipt of an application for obtaining a new home state license by virtue of
43 compact privilege, the new home state shall verify that the occupational therapist or occu-
44 pational therapy assistant meets the pertinent criteria outlined in Section 4 of this Compact
45 via the data system without need for primary source verification except for:

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

4 b. Other criminal background check as required by the new home state; and

5 c. Submission of any requisite jurisprudence requirements of the new home state.

6 3. The former home state shall convert the former home state license into a compact
 7 privilege once the new home state has activated the new home state license in accordance
 8 with applicable rules adopted by the Commission.

9 4. Notwithstanding any other provision of this Compact, if the occupational therapist or
 10 occupational therapy assistant cannot meet the criteria in Section 4 of this Compact, the
 11 new home state shall apply its requirements for issuing a new single-state license.

12 5. The occupational therapist or the occupational therapy assistant shall pay all applica-
 13 ble fees to the new home state in order to be issued a new home state license.

14 C. If an occupational therapist or occupational therapy assistant changes primary state
 15 of residence by moving from a member state to a nonmember state, or from a nonmember
 16 state to a member state, the state criteria shall apply for issuance of a single-state license
 17 in the new state.

18 D. Nothing in this Compact shall interfere with a licensee's ability to hold a single-state
 19 license in multiple states. However, for the purposes of this Compact, a licensee shall have
 20 only one home state license.

21 E. Nothing in this Compact shall affect the requirements established by a member state
 22 for the issuance of a single-state license.

23 **SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

24 A. Active duty military personnel, or their spouses, shall designate a home state where
 25 the individual has a current license in good standing. The individual may retain the home
 26 state designation during the period the service member is on active duty. Subsequent to
 27 designating a home state, the individual shall only change their home state through appli-
 28 cation for licensure in the new state or through the process described in Section 5 of this
 29 Compact.

30 **SECTION 7. ADVERSE ACTIONS**

31 A. A home state shall have exclusive power to impose adverse action against an occupa-
 32 tional therapist's or occupational therapy assistant's license issued by the home state.

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

35 1. Take adverse action against an occupational therapist's or occupational therapy
 36 assistant's compact privilege within that member state.

37 2. Issue subpoenas for both hearings and investigations that require the attendance and
 38 testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing
 39 board in a member state for the attendance and testimony of witnesses or the production
 40 of evidence from another member state shall be enforced in the latter state by any court of
 41 competent jurisdiction, according to the practice and procedure of that court applicable to
 42 subpoenas issued in proceedings pending before it. The issuing authority shall pay any wit-
 43 ness fees, travel expenses, mileage and other fees required by the service statutes of the
 44 state in which the witnesses or evidence are located.

45 C. For purposes of taking adverse action, the home state shall give the same priority and

1 effect to reported conduct received from a member state as it would if the conduct had oc-
 2 curred within the home state. In so doing, the home state shall apply its own state laws to
 3 determine appropriate action.

4 **D. The home state shall complete any pending investigations of an occupational therapist
 5 or occupational therapy assistant who changes primary state of residence during the course
 6 of the investigations. The home state, where the investigations were initiated, shall also have
 7 the authority to take appropriate action and shall promptly report the conclusions of the
 8 investigations to the Occupational Therapy Compact Commission data system. The data
 9 system administrator shall promptly notify the new home state of any adverse actions.**

10 **E. A member state, if otherwise permitted by state law, may recover from the affected
 11 occupational therapist or occupational therapy assistant the costs of investigations and dis-
 12 position of cases resulting from any adverse action taken against that occupational therapist
 13 or occupational therapy assistant.**

14 **F. A member state may take adverse action based on the factual findings of the remote
 15 state, provided that the member state follows its own procedures for taking the adverse
 16 action.**

17 **G. Joint Investigations**

18 **1. In addition to the authority granted to a member state by its respective state occu-
 19 pational therapy laws and regulations or other applicable state law, any member state may
 20 participate with other member states in joint investigations of licensees.**

21 **2. Member states shall share any investigative, litigation or compliance materials in
 22 furtherance of any joint or individual investigation initiated under the Compact.**

23 **H. If an adverse action is taken by the home state against an occupational therapist's
 24 or occupational therapy assistant's license, the occupational therapist's or occupational
 25 therapy assistant's compact privilege in all other member states shall be deactivated until
 26 all encumbrances have been removed from the state license. All home state disciplinary or-
 27 ders that impose adverse action against an occupational therapist's or occupational therapy
 28 assistant's license shall include a statement that the occupational therapist's or occupational
 29 therapy assistant's compact privilege is deactivated in all member states during the
 30 pendency of the order.**

31 **I. If a member state takes adverse action, it shall promptly notify the administrator of
 32 the data system. The administrator of the data system shall promptly notify the home state
 33 of any adverse actions by remote states.**

34 **J. Nothing in this Compact shall override a member state's decision that participation in
 35 an alternative program may be used in lieu of adverse action.**

36 **SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COM-
 37 MISSION.**

38 **A. The compact member states hereby create and establish a joint public agency known
 39 as the Occupational Therapy Compact Commission:**

40 **1. The Commission is an instrumentality of the compact states.**

41 **2. Venue is proper and judicial proceedings by or against the Commission shall be brought
 42 solely and exclusively in a court of competent jurisdiction where the principal office of the
 43 Commission is located. The Commission may waive venue and jurisdictional defenses to the
 44 extent it adopts or consents to participate in alternative dispute resolution proceedings.**

45 **3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.**

B. Membership, Voting and Meetings

1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.

2. The delegate shall 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. Any 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 any vacancy occurring in the Commission within 90 days.

5. Each delegate shall be 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. A delegate shall vote in person or by such other means as provided in the bylaws. 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. Additional meetings shall be held as set forth in the bylaws.

7. The Commission shall establish by rule a term of office for delegates.

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

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. The rules shall have the force and effect of law and shall be binding in all member states;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any 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 any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/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;

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

3 **14. Establish a budget and make expenditures;**

4 **15. Borrow money;**

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

8 **17. Provide information to and receive information from, and cooperate with, law**
9 **enforcement agencies;**

10 **18. Establish and elect an executive committee; and**

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

14 **D. The Executive Committee**

15 **The Executive Committee shall have the power to act on behalf of the Commission ac-**
16 **ording to the terms of this Compact.**

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

18 **a. Seven voting members who are elected by the Commission from the current member-**
19 **ship of the Commission;**

20 **b. One ex-officio, nonvoting member from a recognized national occupational therapy**
21 **professional association; and**

22 **c. One ex-officio, nonvoting member from a recognized national occupational therapy**
23 **certification organization.**

24 **2. The ex-officio members will be selected by their respective organizations.**

25 **3. The Commission may remove any member of the Executive Committee as provided in**
26 **bylaws.**

27 **4. The Executive Committee shall meet at least annually.**

28 **5. The Executive Committee shall have the following duties and responsibilities:**

29 **a. Recommend to the entire Commission changes to the rules or bylaws, changes to this**
30 **Compact legislation, fees paid by compact member states such as annual dues, and any**
31 **compact fee charged to licensees for the compact privilege;**

32 **b. Ensure compact administration services are appropriately provided, contractual or**
33 **otherwise;**

34 **c. Prepare and recommend the budget;**

35 **d. Maintain financial records on behalf of the Commission;**

36 **e. Monitor compact compliance of member states and provide compliance reports to the**
37 **Commission;**

38 **f. Establish additional committees as necessary; and**

39 **g. Perform other duties as provided in rules or bylaws.**

40 **E. Meetings of the Commission**

41 **1. All meetings shall be open to the public, and public notice of meetings shall be given**
42 **in the same manner as required under the rulemaking provisions in Section 10 of this Com-**
43 **compact.**

44 **2. The Commission or the Executive Committee or other committees of the Commission**
45 **may convene in a closed, nonpublic meeting if the Commission or Executive Committee or**

1 other committees of the Commission must discuss:

2 a. Noncompliance of a member state with its obligations under the Compact;

3 b. The employment, compensation, discipline or other matters, practices or procedures
4 related to specific employees or other matters related to the Commission's internal person-
5 nel practices and procedures;

6 c. Current, threatened or reasonably anticipated litigation;

7 d. Negotiation of contracts for the purchase, lease or sale of goods, services or real es-
8 tate;

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

10 f. Disclosure of trade secrets or commercial or financial information that is privileged
11 or confidential;

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

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

15 i. Disclosure of information related to any investigative reports prepared by or on behalf
16 of or for use of the Commission or other committee charged with responsibility of investi-
17 gation or determination of compliance issues pursuant to the Compact; or

18 j. Matters specifically exempted from disclosure by federal or member state statute.

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

22 4. The Commission shall keep minutes that fully and clearly describe all matters dis-
23 cussed in a meeting and shall provide a full and accurate summary of actions taken, and the
24 reasons therefore, including a description of the views expressed. All documents considered
25 in connection with an action shall be identified in such minutes. All minutes and documents
26 of a closed meeting shall remain under seal, subject to release by a majority vote of the
27 Commission or order of a court of competent jurisdiction.

28 **F. Financing of the Commission**

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

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

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

40 b. An assessment levied, or any other financial obligation imposed, under this Compact
41 is effective against the State of Oregon only to the extent that moneys necessary to pay the
42 assessment or meet the financial obligation have been deposited in the Occupational Therapy
43 Licensing Board Account established under ORS 675.330.

44 4. The Commission shall not incur obligations of any kind prior to securing the funds
45 adequate to meet the same; nor shall the Commission pledge the credit of any of the member

1 states, except by and with the authority of the member state.

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

8 **G. Qualified Immunity, Defense and Indemnification**

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

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

27 3. The Commission shall indemnify and hold harmless any member, officer, executive di-
 28 rector, employee or representative of the Commission for the amount of any settlement or
 29 judgment obtained against that person arising out of any actual or alleged act, error or
 30 omission that occurred within the scope of Commission employment, duties or responsibil-
 31 ities, or that such person had a reasonable basis for believing occurred within the scope of
 32 Commission employment, duties or responsibilities, provided that the actual or alleged act,
 33 error or omission did not result from the intentional or willful or wanton misconduct of that
 34 person.

35 **SECTION 9. DATA SYSTEM**

36 A. The Commission shall provide for the development, maintenance and utilization of a
 37 coordinated database and reporting system containing licensure, adverse action and investi-
 38 gative information on all licensed individuals in member states.

39 B. A member state shall submit a uniform data set to the data system on all individuals
 40 to whom this Compact is applicable (utilizing a unique identifier) as required by the rules of
 41 the Commission, including:

- 42 1. Identifying information;
- 43 2. Licensure data;
- 44 3. Adverse actions against a license or compact privilege;
- 45 4. Nonconfidential information related to alternative program participation;

1 **5. Any denial of application for licensure and the reasons for such denial;**

2 **6. Other information that may facilitate the administration of this Compact, as deter-**
3 **mined by the rules of the Commission; and**

4 **7. Current significant investigative information.**

5 **C. Current significant investigative information and other investigative information per-**
6 **taining to a licensee in any member state will only be available to other member states.**

7 **D. The Commission shall promptly notify all member states of any adverse action taken**
8 **against a Licensee or an individual applying for a license. Adverse action information per-**
9 **taining to a licensee in any member state will be available to any other member state.**

10 **E. Member states contributing information to the data system may designate informa-**
11 **tion that may not be shared with the public without the express permission of the contrib-**
12 **uting state.**

13 **F. Any information submitted to the data system that is subsequently required to be**
14 **expunged by the laws of the member state contributing the information shall be removed**
15 **from the data system.**

16 **SECTION 10. RULEMAKING**

17 **A.1. The Commission shall exercise its rulemaking powers pursuant to the criteria set**
18 **forth in this section and the rules adopted thereunder. Rules and amendments shall become**
19 **binding as of the date specified in each rule or amendment.**

20 **2. Notwithstanding Section 10A(1) of this Compact, the Occupational Therapy Licensing**
21 **Board shall review the rules of the Commission. The licensing board may approve and adopt**
22 **the rules of the Commission as rules of the licensing board. The State of Oregon is subject**
23 **to a rule of the Commission only if the rule of the Commission is adopted by the licensing**
24 **board.**

25 **B. The Commission shall promulgate reasonable rules in order to effectively and effi-**
26 **ciently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the**
27 **Commission exercises its rulemaking authority in a manner that is beyond the scope of the**
28 **purposes of the Compact, or the powers granted hereunder, then such an action by the**
29 **Commission shall be invalid and have no force and effect.**

30 **C. If a majority of the legislatures of the member states rejects a rule by enactment of**
31 **a statute or resolution in the same manner used to adopt the Compact within four years of**
32 **the date of adoption of the rule, then such rule shall have no further force and effect in any**
33 **member state.**

34 **D. Rules or amendments to the rules shall be adopted at a regular or special meeting of**
35 **the Commission.**

36 **E. Prior to promulgation and adoption of a final rule or rules by the Commission, and**
37 **at least 30 days in advance of the meeting at which the rule will be considered and voted**
38 **upon, the Commission shall file a notice of proposed rulemaking:**

39 **1. On the website of the Commission or other publicly accessible platform; and**

40 **2. On the website of each member state occupational therapy licensing board or other**
41 **publicly accessible platform or the publication in which each state would otherwise publish**
42 **proposed rules.**

43 **F. The notice of proposed rulemaking shall include:**

44 **1. The proposed time, date and location of the meeting in which the rule will be consid-**
45 **ered and voted upon;**

- 1 **2. The text of the proposed rule or amendment and the reason for the proposed rule;**
- 2 **3. A request for comments on the proposed rule from any interested person; and**
- 3 **4. The manner in which interested persons may submit notice to the Commission of their**
- 4 **intention to attend the public hearing and any written comments.**

5 **G. Prior to adoption of a proposed rule, the Commission shall allow persons to submit**

6 **written data, facts, opinions and arguments, which shall be made available to the public.**

7 **H. The Commission shall grant an opportunity for a public hearing before it adopts a rule**

8 **or amendment if a hearing is requested by:**

- 9 **1. At least 25 persons;**
- 10 **2. A state or federal governmental subdivision or agency; or**
- 11 **3. An association or organization having at least 25 members.**

12 **I. If a hearing is held on the proposed rule or amendment, the Commission shall publish**

13 **the place, time and date of the scheduled public hearing. If the hearing is held via electronic**

14 **means, the Commission shall publish the mechanism for access to the electronic hearing.**

15 **1. All persons wishing to be heard at the hearing shall notify the executive director of**

16 **the Commission or other designated member in writing of their desire to appear and testify**

17 **at the hearing not less than five business days before the scheduled date of the hearing.**

18 **2. Hearings shall be conducted in a manner providing each person who wishes to com-**

19 **ment a fair and reasonable opportunity to comment orally or in writing.**

20 **3. All hearings will be recorded. A copy of the recording will be made available on re-**

21 **quest.**

22 **4. Nothing in this section shall be construed as requiring a separate hearing on each rule.**

23 **Rules may be grouped for the convenience of the Commission at hearings required by this**

24 **section.**

25 **J. Following the scheduled hearing date, or by the close of business on the scheduled**

26 **hearing date if the hearing was not held, the Commission shall consider all written and oral**

27 **comments received.**

28 **K. If no written notice of intent to attend the public hearing by interested parties is re-**

29 **ceived, the Commission may proceed with promulgation of the proposed rule without a public**

30 **hearing.**

31 **L. The Commission shall, by majority vote of all members, take final action on the pro-**

32 **posed rule and shall determine the effective date of the rule, if any, based on the rulemaking**

33 **record and the full text of the rule.**

34 **M. Upon determination that an emergency exists, the Commission may consider and**

35 **adopt an emergency rule without prior notice, opportunity for comment or hearing, provided**

36 **that the usual rulemaking procedures provided in the Compact and in this section shall be**

37 **retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days**

38 **after the effective date of the rule. For the purposes of this provision, an emergency rule is**

39 **one that must be adopted immediately in order to:**

- 40 **1. Meet an imminent threat to public health, safety or welfare;**
- 41 **2. Prevent a loss of Commission or member state funds;**
- 42 **3. Meet a deadline for the promulgation of an administrative rule that is established by**
- 43 **federal law or rule; or**
- 44 **4. Protect public health and safety.**

45 **N. The Commission or an authorized committee of the Commission may direct revisions**

1 to a previously adopted rule or amendment for purposes of correcting typographical errors,
 2 errors in format, errors in consistency or grammatical errors. Public notice of any revisions
 3 shall be posted on the website of the Commission. The revision shall be subject to challenge
 4 by any person for a period of 30 days after posting. The revision may be challenged only on
 5 grounds that the revision results in a material change to a rule. A challenge shall be made
 6 in writing and delivered to the chair of the Commission prior to the end of the notice period.
 7 If no challenge is made, the revision will take effect without further action. If the revision
 8 is challenged, the revision may not take effect without the approval of the Commission.

9 **SECTION 11. OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT**

10 **A. Oversight**

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

15 2. All courts shall take judicial notice of the Compact and the rules in any judicial or
 16 administrative proceeding in a member state pertaining to the subject matter of this Com-
 17 pact which may affect the powers, responsibilities or actions of the Commission.

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

22 **B. Default, Technical Assistance and Termination**

23 1. If the Commission determines that a member state has defaulted in the performance
 24 of its obligations or responsibilities under this Compact or the promulgated rules, the Com-
 25 mission shall:

26 a. Provide written notice to the defaulting state and other member states of the nature
 27 of the default, the proposed means of curing the default and/or any other action to be taken
 28 by the Commission; and

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

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

35 3. Termination of membership in the Compact shall be imposed only after all other means
 36 of securing compliance have been exhausted. Notice of intent to suspend or terminate shall
 37 be given by the Commission to the governor, the majority and minority leaders of the de-
 38 faulting state's legislature, and each of the member states.

39 4. A state that has been terminated is responsible for all assessments, obligations and
 40 liabilities incurred through the effective date of termination, including obligations that ex-
 41 tend beyond the effective date of termination.

42 5. The Commission shall not bear any costs related to a state that is found to be in de-
 43 fault or that has been terminated from the Compact, unless agreed upon in writing between
 44 the Commission and the defaulting state.

45 6. The defaulting state may appeal the action of the Commission by petitioning the U.S.

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

4 **C. Dispute Resolution**

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

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

10 **D. Enforcement**

11 1. The Commission, in the reasonable exercise of its discretion, shall enforce the pro-
 12 visions and rules of this Compact.

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

19 3. The remedies herein shall not be the exclusive remedies of the Commission. The
 20 Commission may pursue any other remedies available under federal or state law.

21 **SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR**
 22 **OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL AND**
 23 **AMENDMENT**

24 **A.** The Compact shall come into effect on the date on which the Compact statute is en-
 25 acted into law in the tenth member state. The provisions, which become effective at that
 26 time, shall be limited to the powers granted to the Commission relating to assembly and the
 27 promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking pow-
 28 ers necessary to the implementation and administration of the Compact.

29 **B.** Any state that joins the Compact subsequent to the Commission’s initial adoption of
 30 the rules shall be subject to the rules as they exist on the date on which the Compact be-
 31 comes law in that state. Any rule that has been previously adopted by the Commission shall
 32 have the full force and effect of law on the day the Compact becomes law in that state.

33 **C.** Any member state may withdraw from this Compact by enacting a statute repealing
 34 the same.

35 1. A member state’s withdrawal shall not take effect until six months after enactment
 36 of the repealing statute.

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

40 **D.** Nothing contained in this Compact shall be construed to invalidate or prevent any
 41 occupational therapy licensure agreement or other cooperative arrangement between a
 42 member state and a nonmember state that does not conflict with the provisions of this
 43 Compact.

44 **E.** This Compact may be amended by the member states. No amendment to this Compact
 45 shall become effective and binding upon any member state until it is enacted into the laws

1 of all member states.

2 **SECTION 13. CONSTRUCTION AND SEVERABILITY**

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

12 **SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS**

13 **A. A licensee providing occupational therapy in a remote state under the compact privi-**
 14 **lege shall function within the laws and regulations of the remote state.**

15 **B. Nothing herein prevents the enforcement of any other law of a member state that is**
 16 **not inconsistent with the Compact.**

17 **C. Any laws in a member state in conflict with the Compact are superseded to the extent**
 18 **of the conflict.**

19 **D. Any lawful actions of the Commission, including all rules and bylaws promulgated by**
 20 **the Commission, are binding upon the member states.**

21 **E. All agreements between the Commission and the member states are binding in ac-**
 22 **cordance with their terms.**

23 **F. In the event any provision of the Compact exceeds the constitutional limits imposed**
 24 **on the legislature of any member state, the provision shall be ineffective to the extent of the**
 25 **conflict with the constitutional provision in question in that member state.**

26 **SECTION 2. The Legislative Assembly of the State of Oregon hereby ratifies the Occu-**
 27 **ptional Therapy Licensure Compact set forth in section 1 of this 2023 Act.**

28 **SECTION 3. ORS 675.220 is amended to read:**

29 675.220. (1) [No] **A person [shall] may not** practice occupational therapy or purport to be an
 30 occupational therapist or occupational therapy assistant, or as being able to practice occupational
 31 therapy, or to render occupational therapy services, or use the abbreviations designated by the Oc-
 32 cupational Therapy Licensing Board under ORS 675.320 unless the person is licensed in accordance
 33 with ORS 675.210 to 675.340.

34 (2) ORS 675.210 to 675.340 do not apply to:

35 (a) Employment as an occupational therapist or occupational therapy assistant in an institution
 36 or an agency of the federal government.

37 (b) Persons licensed under any other law of this state to do any acts included in the definition
 38 of occupational therapy in ORS 675.210 or persons working under the direction of any such person.

39 (c) The practice of occupational therapy which is incidental to the planned program of study for
 40 students enrolled in an occupational therapist or occupational therapy assistant program approved
 41 by the board.

42 **(3) Subsections (1) and (2) of this section do not apply to a person who is authorized to**
 43 **practice as an occupational therapist or occupational therapy assistant by compact privilege**
 44 **as defined in section 1 of this 2023 Act.**

45 **SECTION 4. ORS 675.222 is amended to read:**

1 675.222. (1) [No] A person [shall] **may not** hire or employ a person to practice as an occupa-
 2 tional therapist or as an occupational therapy assistant unless the person hired or employed is li-
 3 censed in accordance with ORS 675.210 to 675.340.

4 **(2) Subsection (1) of this section does not apply to a person who is authorized to practice**
 5 **as an occupational therapist or as an occupational therapy assistant by compact privilege**
 6 **as defined in section 1 of this 2023 Act.**

7 **SECTION 5.** ORS 675.330 is amended to read:

8 675.330. (1) The Occupational Therapy Licensing Board Account is established in the State
 9 Treasury, separate and distinct from the General Fund. All moneys received by the Occupational
 10 Therapy Licensing Board under ORS 675.210 to 675.340 shall be deposited into the account and are
 11 continuously appropriated to the board to be used only for the administration and enforcement of
 12 ORS 675.210 to 675.340, 675.990 (2), 676.850 and 676.860 **and for the purpose of meeting the fi-**
 13 **ancial obligations imposed on the State of Oregon as a result of this state’s participation**
 14 **in the Occupational Therapy Licensure Compact established under section 1 of this 2023**
 15 **Act.** Any interest or other income from moneys in the account shall be credited to the account.

16 (2) All civil penalties collected or received for violations of or in prosecutions under ORS
 17 675.210 to 675.340 shall be deposited into the Occupational Therapy Licensing Board Account and
 18 shall be used only for the administration and enforcement of ORS 675.210 to 675.340.

19 **SECTION 6.** ORS 676.177 is amended to read:

20 676.177. (1) Notwithstanding any other provision of ORS 676.165 to 676.180, a health professional
 21 regulatory board, upon a determination by the board that it possesses otherwise confidential infor-
 22 mation that reasonably relates to the regulatory or enforcement function of another public entity,
 23 may disclose that information to the other public entity.

24 (2) Any public entity that receives information pursuant to subsection (1) of this section shall
 25 agree to take all reasonable steps to maintain the confidentiality of the information, except that the
 26 public entity may use or disclose the information to the extent necessary to carry out the regulatory
 27 or enforcement functions of the public entity.

28 (3) For purposes of this section, “public entity” means:

29 (a) A board or agency of this state, or a board or agency of another state with regulatory or
 30 enforcement functions similar to the functions of a health professional regulatory board of this state;

31 (b) A district attorney;

32 (c) The Department of Justice;

33 (d) A state or local public body of this state that licenses, franchises or provides emergency
 34 medical services; or

35 (e) A law enforcement agency of this state, another state or the federal government.

36 (4) Notwithstanding subsections (1) to (3) of this section[,]:

37 (a) The Oregon Board of Physical Therapy may disclose information described in subsection (1)
 38 of this section to the Physical Therapy Compact Commission established in ORS 688.240.

39 (b) **The Occupational Therapy Licensing Board may disclose information described in**
 40 **subsection (1) of this section to the Occupational Therapy Compact Commission established**
 41 **in section 1 of this 2023 Act.**

42 **SECTION 7.** (1) **The amendments to ORS 675.220 and 675.222 by sections 3 and 4 of this**
 43 **2023 Act apply to individuals authorized to work as occupational therapists or occupational**
 44 **therapy assistants by compact privilege on and after the operative date specified in section**
 45 **8 of this 2023 Act.**

1 **(2) The amendments to ORS 675.330 by section 5 of this 2023 Act apply to moneys received**
2 **by the Occupational Therapy Licensing Board on and after the operative date specified in**
3 **section 8 of this 2023 Act.**

4 **(3) The amendments to ORS 676.177 by section 6 of this 2023 Act apply to information**
5 **disclosed on and after the operative date specified in section 8 of this 2023 Act.**

6 **SECTION 8.** (1) Sections 1 and 2 of this 2023 Act and the amendments to ORS 675.220,
7 **675.222, 675.330 and 676.177 by sections 3 to 6 of this 2023 Act become operative on January**
8 **1, 2024.**

9 **(2) The Occupational Therapy Licensing Board may take any action before the operative**
10 **date specified in subsection (1) of this section that is necessary to enable the board to exer-**
11 **cise, on and after the operative date specified in subsection (1) of this section, all of the du-**
12 **ties, functions and powers conferred on the board by sections 1 and 2 of this 2023 Act and**
13 **the amendments to ORS 675.220, 675.222, 675.330 and 676.177 by sections 3 to 6 of this 2023**
14 **Act.**

15 **SECTION 9.** This 2023 Act takes effect on the 91st day after the date on which the 2023
16 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

17