

HOUSE BILL 13

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO INTERGOVERNMENTAL AGREEMENTS; ENACTING THE
OCCUPATIONAL THERAPY LICENSURE COMPACT; AMENDING THE
OCCUPATIONAL THERAPY ACT TO PROVIDE FOR STATE AND FEDERAL
CRIMINAL HISTORY BACKGROUND CHECKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 16 of this act may be cited as the "Occupational Therapy Licensure Compact".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the 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 or client is located at the time of the patient or client encounter. The

•232736•1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. The compact is designed to achieve the following objectives:

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

B. enhance the states' ability to protect the public's health and safety;

C. encourage the cooperation of member states in regulating multistate occupational therapy practice;

D. support spouses of relocating military members;

E. enhance the exchange of licensure, investigative and disciplinary information between member states;

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

G. facilitate the use of telehealth technology in order to increase access to occupational therapy services.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the Occupational Therapy Licensure Compact and except as otherwise provided:

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

.232736.1

underscored material = new
[bracketed material] = delete

1 duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C.
2 Chapter 1211;

3 B. "adverse action" means any administrative,
4 civil, equitable or criminal action permitted by a state's laws
5 that is imposed by a licensing board or other authority against
6 an occupational therapist or occupational therapy assistant,
7 including actions against an individual's license or compact
8 privilege such as censure, revocation, suspension, probation,
9 monitoring of the licensee or restriction on the licensee's
10 practice;

11 C. "alternative program" means a non-disciplinary
12 monitoring process approved by an occupational therapy
13 licensing board;

14 D. "compact privilege" means the authorization,
15 which is equivalent to a license, granted by a remote state to
16 allow a licensee from another member state to practice as an
17 occupational therapist or practice as an occupational therapy
18 assistant in the remote state under its laws and rules. The
19 practice of occupational therapy occurs in the member state
20 where the patient or client is located at the time of the
21 patient or client encounter;

22 E. "continuing competence" or "continuing
23 education" means a requirement, as a condition of license
24 renewal, to provide evidence of participation in and completion
25 of educational and professional activities relevant to practice

.232736.1

underscored material = new
[bracketed material] = delete

1 or area of work;

2 F. "current significant investigative information"
3 means investigative information that a licensing board, after
4 an inquiry or investigation that includes notification and an
5 opportunity for the occupational therapist or occupational
6 therapy assistant to respond, if required by state law, has
7 reason to believe is not groundless and if proved true would
8 indicate more than a minor infraction;

9 G. "data system" means a repository of information
10 about licensees, including license status, investigative
11 information, compact privileges and adverse actions;

12 H. "encumbered license" means a license in which an
13 adverse action restricts the practice of occupational therapy
14 by the licensee or said adverse action has been reported to the
15 national practitioner data bank;

16 I. "executive committee" means a group of directors
17 elected or appointed to act on behalf of and within the powers
18 granted to them by the commission;

19 J. "home state" means the member state that is the
20 licensee's primary state of residence;

21 K. "impaired practitioner" means an individual
22 whose professional practice is adversely affected by substance
23 abuse, addiction or other health-related conditions;

24 L. "investigative information" means information,
25 records or documents received or generated by an occupational

underscored material = new
[bracketed material] = delete

1 therapy licensing board pursuant to an investigation;

2 M. "jurisprudence requirement" means the assessment
3 of an individual's knowledge of the laws and rules governing
4 the practice of occupational therapy in a state;

5 N. "licensee" means an individual who currently
6 holds an authorization from a state to practice as an
7 occupational therapist or as an occupational therapy assistant;

8 O. "member state" means a state that has enacted
9 the compact;

10 P. "occupational therapist" means an individual who
11 is licensed by a state to practice occupational therapy;

12 Q. "occupational therapy assistant" means an
13 individual who is licensed by a state to assist in the practice
14 of occupational therapy;

15 R. "occupational therapy", "occupational therapy
16 practice" and the "practice of occupational therapy" mean the
17 care and services provided by an occupational therapist or an
18 occupational therapy assistant as set forth in a member state's
19 statutes and regulations;

20 S. "occupational therapy compact commission" or
21 "commission" means the national administrative body whose
22 membership consists of all states that have enacted the
23 compact;

24 T. "occupational therapy licensing board" or
25 "licensing board" means the agency of a state that is

underscored material = new
[bracketed material] = delete

1 authorized to license and regulate occupational therapists and
2 occupational therapy assistants;

3 U. "primary state of residence" means the home
4 state in which an occupational therapist or occupational
5 therapy assistant who is not active duty military declares a
6 primary residence for legal purposes as verified by the
7 person's driver's license, federal income tax return, lease,
8 deed, mortgage or voter registration or other verifying
9 documentation as further defined by commission rules;

10 V. "remote state" means a member state other than
11 the home state where a licensee is exercising or seeking to
12 exercise the compact privilege;

13 W. "rule" means a regulation promulgated by the
14 commission that has the force of law;

15 X. "state" means any state, commonwealth, district
16 or territory of the United States that regulates the practice
17 of occupational therapy;

18 Y. "single-state license" means an occupational
19 therapist or occupational therapy assistant license issued by a
20 member state that authorizes practice only within the issuing
21 state and does not include a compact privilege in any other
22 member state; and

23 Z. "telehealth" means the application of
24 telecommunication technology to deliver occupational therapy
25 services for assessment, intervention or consultation.

.232736.1

SECTION 4. [NEW MATERIAL] STATE PARTICIPATION IN THE
COMPACT.--

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 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 any adverse action or the availability of investigative information regarding a licensee;

(5) implement or utilize procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures shall 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 within a time frame established by the commission. When a member state receives the results of the federal bureau of investigation criminal record search, the

underscored material = new
[bracketed material] = delete

1 member state shall use the results in making licensure
2 decisions. Communication between a member state and the
3 commission and among member states regarding the verification
4 of eligibility for licensure through the compact shall not
5 include any information received from the federal bureau of
6 investigation relating to a federal criminal records check
7 performed by a member state under Public Law 92-544;

8 (6) comply with the rules of the commission;

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

12 (8) have continuing competence or continuing
13 education requirements as a condition for license renewal.

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

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

20 D. A member state shall provide for the state's
21 delegate to attend all occupational therapy compact commission
22 meetings.

23 E. Individuals not residing in a member state shall
24 continue to be able to apply for a member state's single-state
25 license as provided under the laws of each member state.

.232736.1

1 However, the single-state license granted to these individuals
2 shall not be recognized as granting the compact privilege in
3 any other member state.

4 F. Nothing in the compact shall affect the
5 requirements established by a member state for the issuance of
6 a single-state license.

7 **SECTION 5. [NEW MATERIAL] COMPACT PRIVILEGE.--**

8 A. To exercise the compact privilege under the
9 terms and provisions of the compact, the licensee shall:

10 (1) hold a license in the home state;
11 (2) have a valid United States social security
12 number or national practitioner identification number;

13 (3) have no encumbrance on any state license;
14 (4) be eligible for a compact privilege in any
15 member state in accordance with Subsections D, F, G and H of
16 this section;

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

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

23 (7) pay any applicable fees, including any
24 state fee, for the compact privilege;

25 (8) complete a criminal background check in

.232736.1

underscored material = new
[bracketed material] = delete

1 accordance with Section 4 of the Occupational Therapy Licensure
2 Compact. The licensee shall be responsible for the payment of
3 any fee associated with the completion of a criminal background
4 check;

5 (9) meet any jurisprudence requirements
6 established by the remote state or states in which the licensee
7 is seeking a compact privilege; and

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

11 B. The compact privilege is valid until the
12 expiration date of the home state license. The licensee must
13 comply with the requirements of Subsection A of this section to
14 maintain the compact privilege in the remote state.

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

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

21 E. A licensee providing occupational therapy in a
22 remote state is subject to that state's regulatory authority.
23 A remote state may, in accordance with due process and that
24 state's laws, remove a licensee's compact privilege in the
25 remote state for a specific period of time, impose fines or

1 take any other necessary actions to protect the health and
2 safety of its citizens. The licensee may be ineligible for a
3 compact privilege in any state until the specific time for
4 removal has passed and all fines are paid.

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

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

10 (2) two years have elapsed from the date on
11 which the home state license became unencumbered.

12 G. Once an encumbered license in the home state is
13 restored to good standing, the licensee must meet the
14 requirements of Subsection A of this section to obtain a
15 compact privilege in any remote state.

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

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

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

23 (3) two years have elapsed from the date in
24 which the requirements in Paragraphs (1) and (2) of this
25 subsection were completed; 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 any remote state is removed due to an erroneous charge, privileges shall 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 of this section to obtain a compact privilege in a remote state.

SECTION 6. [NEW MATERIAL] OBTAINING A NEW HOME STATE
LICENSE BY VIRTUE OF COMPACT PRIVILEGE.--

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 state 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

underscored material = new
[bracketed material] = delete

privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Section 5 of the Occupational Therapy Licensure Compact via the data system, without need for primary source verification except for:

(a) a federal bureau of investigation 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) any other criminal background check as required by the new home state; and

(c) submission of any 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 the compact, if the occupational therapist or occupational therapy assistant cannot meet the requirements in Section 5 of the Occupational Therapy Licensure Compact, 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

.232736.1

underscored material = new
[bracketed material] = delete

1 the new home state in order to be issued a new home state
2 license.

3 C. If an occupational therapist or occupational
4 therapy assistant changes primary state of residence by moving
5 from a member state to a nonmember state, or from a nonmember
6 state to a member state, the state criteria shall apply for
7 issuance of a single-state license in the new state.

8 D. Nothing in the compact shall interfere with a
9 licensee's ability to hold a single-state license in multiple
10 states; however, for the purposes of the compact, a licensee
11 shall have only one home state license.

12 E. Nothing in the compact shall affect the
13 requirements established by a member state for the issuance of
14 a single-state license.

15 SECTION 7. [NEW MATERIAL] ACTIVE DUTY MILITARY PERSONNEL
16 OR THEIR SPOUSES.--Active duty military personnel, or their
17 spouses, shall designate a home state where the individual has
18 a current license in good standing. The individual may retain
19 the home state designation during the period the service member
20 is on active duty. Subsequent to designating a home state, the
21 individual shall only change the individual's home state
22 through application for licensure in the new state or through
23 the process described in Section 6 of the Occupational Therapy
24 Licensure Compact.

25 SECTION 8. [NEW MATERIAL] ADVERSE ACTIONS.--

.232736.1

1 A. A home state shall have exclusive power to
2 impose adverse action against an occupational therapist's or
3 occupational therapy assistant's license issued by the home
4 state.

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

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

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

23 C. For purposes of taking adverse action, the home
24 state shall give the same priority and effect to reported
25 conduct received from a member state as it would if the conduct

underscored material = new
[bracketed material] = delete

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 any 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 shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the data system. The data system administrator shall promptly notify the new home state of any adverse actions.

E. If otherwise permitted by state law, a member state may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any 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; provided that 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, any member state may participate with other member states in joint investigations of

underscored material = new
[bracketed material] = delete

1 licensees. Member states shall share any investigative,
2 litigation or compliance materials in furtherance of any joint
3 or individual investigation initiated under the compact.

4 H. If adverse action is taken by the home state
5 against an occupational therapist's or occupational therapy
6 assistant's license, the occupational therapist's or
7 occupational therapy assistant's compact privilege in all other
8 member states shall be deactivated until all encumbrances have
9 been removed from the state license. All home state
10 disciplinary orders that impose adverse action against an
11 occupational therapist's or occupational therapy assistant's
12 license shall include a statement that the occupational
13 therapist's or occupational therapy assistant's compact
14 privilege is deactivated in all member states during the
15 pendency of the order.

16 I. If a member state takes adverse action, it shall
17 promptly notify the administrator of the data system. The
18 administrator of the data system shall promptly notify the home
19 state of any adverse actions by remote states.

20 J. Nothing in the compact shall override a member
21 state's decision that participation in an alternative program
22 may be used in lieu of adverse action.

23 SECTION 9. [NEW MATERIAL] OCCUPATIONAL THERAPY COMPACT
24 COMMISSION--CREATED.--

25 A. The compact member states hereby create and
.232736.1

1 establish a joint public agency known as the "occupational
2 therapy compact commission", subject to the following
3 provisions:

4 (1) the commission is an instrumentality of
5 the compact states;

6 (2) venue is proper and judicial proceedings
7 by or against the commission shall be brought solely and
8 exclusively in a court of competent jurisdiction where the
9 principal office of the commission is located. The commission
10 may waive venue and jurisdictional defenses to the extent it
11 adopts or consents to participate in alternative dispute
12 resolution proceedings; and

13 (3) nothing in the compact shall be construed
14 to be a waiver of sovereign immunity.

15 B. Membership, voting and meetings of the
16 commission shall proceed as follows:

17 (1) each member state shall have and be
18 limited to one delegate selected by that member state's
19 licensing board. The delegate shall be either:

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

23 (b) an administrator of the licensing
24 board;

25 (2) any delegate may be removed or suspended

underscored material = new
[bracketed material] = delete

from office as provided by the law of the state from which the delegate is appointed;

(3) the member state licensing board shall fill any vacancy occurring in the commission within ninety days;

(4) 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;

(5) 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; and

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

C. The commission shall:

(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

underscored material = new
[bracketed material] = delete

1 accordance with the bylaws;

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

4 (6) promulgate uniform rules to facilitate and
5 coordinate implementation and administration of the compact.

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

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

12 (8) purchase and maintain insurance and bonds;

13 (9) borrow, accept or contract for services of
14 personnel, including employees of a member state;

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

21 (11) accept any and all appropriate donations
22 and grants of money, equipment, supplies, materials and
23 services and receive, utilize and dispose of the same; provided
24 that at all times the commission shall avoid any appearance of
25 impropriety or conflict of interest;

.232736.1

(12) lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, whether 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 any property, whether real, personal or mixed;

(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, consumer representatives and such other interested persons as may be designated in the 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 the compact consistent with the state regulation of occupational therapy licensure and practice.

D. The executive committee shall have the power to act on behalf of the commission according to the terms of the compact and shall be composed of nine members as follows:

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

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

(3) one nonvoting ex-officio member from a recognized national occupational therapy certification organization.

E. The ex-officio members of the executive committee shall be selected by their respective organizations.

F. The commission may remove any member of the executive committee as provided in bylaws.

G. The executive committee shall meet at least annually.

H. The executive committee shall have the following duties and responsibilities:

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

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

(3) prepare and recommend a budget;

(4) maintain financial records on behalf of

underscored material = new
[bracketed material] = delete

1 the commission;

2 (5) monitor compact compliance of member
3 states and provide compliance reports to the commission;

4 (6) establish additional committees as
5 necessary; and

6 (7) carry out other duties as provided in
7 rules or bylaws.

8 I. All meetings of the commission shall be open to
9 the public, and public notice of meetings shall be given in the
10 same manner as required under the rulemaking provisions in
11 Section 12 of the Occupational Therapy Licensure Compact.

12 J. The commission or the executive committee or
13 other committees of the commission may convene in a closed,
14 nonpublic meeting if the commission or executive committee or
15 other committees of the commission must discuss:

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

18 (2) the employment, compensation, discipline
19 or other matters, practices or procedures related to specific
20 employees or other matters related to the commission's internal
21 personnel practices and procedures;

22 (3) current, threatened or reasonably
23 anticipated litigation;

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

.232736.1

(5) accusations made of any person of a crime or formal censuring of any person;

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

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

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

(9) disclosure of information related to any investigative reports 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

(10) matters specifically exempted from disclosure by federal or member state statute.

K. If a meeting, or portion of a meeting, is closed pursuant to Subsection J of this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

L. 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

underscored material = new
[bracketed material] = delete

1 action shall be identified in the minutes. All minutes and
2 documents of a closed meeting shall remain under seal, subject
3 to release by a majority vote of the commission or order of a
4 court of competent jurisdiction.

5 M. The commission shall pay, or provide for the
6 payment of, the reasonable expenses of its establishment,
7 organization and ongoing activities. The commission may accept
8 any and all appropriate revenue sources, donations and grants
9 of money, equipment, supplies, materials and services. The
10 commission may levy on and collect an annual assessment from
11 each member state or impose fees on other parties to cover the
12 cost of the operations and activities of the commission and its
13 staff, which must be in a total amount sufficient to cover its
14 annual budget as approved by the commission each year for which
15 revenue is not provided by other sources. The aggregate annual
16 assessment amount shall be allocated based upon a formula to be
17 determined by the commission, which shall promulgate a rule
18 binding upon all member states.

19 N. The commission shall not incur obligations of
20 any kind prior to securing the funds adequate to meet the
21 obligations; nor shall the commission pledge the credit of any
22 of the member states, except by and with the authority of the
23 member state.

24 O. The commission shall keep accurate accounts of
25 all receipts and disbursements. The receipts and disbursements

underscored material = new
[bracketed material] = delete

1 of the commission shall be subject to the audit and accounting
2 procedures established under its bylaws. However, all receipts
3 and disbursements of funds handled by the commission shall be
4 audited yearly by a certified or licensed public accountant,
5 and the report of the audit shall be included in and become
6 part of the annual report of the commission.

7 **SECTION 10. [NEW MATERIAL] QUALIFIED IMMUNITY, DEFENSE
8 AND INDEMNIFICATION.--**

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

22 B. The commission shall defend any member, officer,
23 executive director, employee or representative of the
24 commission in any civil action seeking to impose liability
25 arising out of any actual or alleged act, error or omission

1 that occurred within the scope of commission employment, duties
2 or responsibilities, or that the person against whom the claim
3 is made had a reasonable basis for believing occurred within
4 the scope of commission employment, duties or responsibilities;
5 provided that nothing in this section shall be construed to
6 prohibit that person from retaining counsel; and further
7 provided that the actual or alleged act, error or omission did
8 not result from that person's intentional or willful or wanton
9 misconduct.

10 C. The commission shall indemnify and hold harmless
11 any member, officer, executive director, employee or
12 representative of the commission for the amount of any
13 settlement or judgment obtained against that person arising out
14 of any actual or alleged act, error or omission that occurred
15 within the scope of commission employment, duties or
16 responsibilities, or that such person had a reasonable basis
17 for believing occurred within the scope of commission
18 employment, duties or responsibilities; provided that the
19 actual or alleged act, error or omission did not result from
20 the intentional or willful or wanton misconduct of that person.

21 **SECTION 11. [NEW MATERIAL] DATA SYSTEM.--**

22 A. The commission shall provide for the
23 development, maintenance and utilization of a coordinated
24 database and reporting system containing licensure, adverse
25 action and investigative information on all licensed

1 individuals in member states.

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

- 6 (1) identifying information;
- 7 (2) licensure data;
- 8 (3) adverse actions against a license or
9 compact privilege;
- 10 (4) non-confidential information related to
11 alternative program participation;
- 12 (5) any denial of application for licensure,
13 and the reason for such denial;
- 14 (6) other information that may facilitate the
15 administration of the compact, as determined by the rules of
16 the commission; and
- 17 (7) current significant investigative
18 information.

19 C. Current significant investigative information
20 and other investigative information pertaining to a licensee in
21 any member state shall only be available to other member
22 states.

23 D. The commission shall promptly notify all member
24 states of any adverse action taken against a licensee or an
25 individual applying for a license. Adverse action information

.232736.1

underscored material = new
[bracketed material] = delete

1 pertaining to a licensee in any member state will be available
2 to any other member state.

3 E. Member states contributing information to the
4 data system may designate information that may not be shared
5 with the public without the express permission of the
6 contributing state.

7 F. Any information submitted to the data system
8 that is subsequently required to be expunged by the laws of the
9 member state contributing the information shall be removed from
10 the data system.

11 **SECTION 12. [NEW MATERIAL] RULEMAKING.--**

12 A. The commission shall exercise its rulemaking
13 powers pursuant to the criteria set forth in this section and
14 the rules adopted thereunder. Rules and amendments shall
15 become binding as of the date specified in each rule or
16 amendment.

17 B. The commission shall promulgate reasonable rules
18 in order to effectively and efficiently achieve the purposes of
19 the compact. In the event the commission exercises its
20 rulemaking authority in a manner that is beyond the scope of
21 the purposes of the compact, such an action by the commission
22 shall be invalid and have no force and effect.

23 C. If a majority of the legislatures of the member
24 states rejects a rule, by enactment of a statute or resolution
25 in the same manner used to adopt the compact within four years

underscored material = new
[bracketed material] = delete

1 of the date of adoption of the rule, the rule shall have no
2 further force and effect in any member state.

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

5 E. Prior to promulgation and adoption of a final
6 rule by the commission, and at least thirty days in advance of
7 the meeting at which the rule will be considered and voted
8 upon, the commission shall file a notice of proposed
9 rulemaking:

10 (1) on the website of the commission or other
11 publicly accessible platform; and

12 (2) on the website of each member state
13 occupational therapy licensing board or other publicly
14 accessible platform or the publication in which each state
15 would otherwise publish proposed rules.

16 F. The notice of proposed rulemaking shall include:

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

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

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

24 (4) the manner in which interested persons may
25 submit notice to the commission of their intention to attend

.232736.1

1 the public hearing and any written comments.

2 G. Prior to adoption of a proposed rule, the
3 commission shall allow persons to submit written data, facts,
4 opinions and arguments, which shall be made available to the
5 public.

6 H. The commission shall grant an opportunity for a
7 public hearing before it adopts a rule or amendment if a
8 hearing is requested by:

9 (1) at least twenty-five persons;
10 (2) a state or federal governmental
11 subdivision or agency; or
12 (3) an association or organization having at
13 least twenty-five members.

14 I. If a hearing is held on the proposed rule or
15 amendment, the commission shall publish the place, time and
16 date of the scheduled public hearing. If the hearing is held
17 via electronic means, the commission shall publish the
18 mechanism for access to the electronic hearing and the
19 procedure for hearings shall be conducted according to the
20 following provisions:

21 (1) all persons wishing to be heard at the
22 hearing shall notify the executive director of the commission
23 or other designated member in writing of their desire to appear
24 and testify at the hearing not less than five business days
25 before the scheduled date of the hearing;

(2) hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing;

(3) all hearings will be recorded. A copy of the recording will be made available on request; and

(4) nothing in this section shall 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 shall be retroactively applied to the rule as soon as reasonably possible, but 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 any revisions shall be posted on the website of the commission. The revision shall be 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 shall 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 shall take effect without further action.

underscored material = new
[bracketed material] = delete

1 If the revision is challenged, the revision may not take effect
2 without the approval of the commission.

3 **SECTION 13. [NEW MATERIAL] OVERSIGHT, DISPUTE RESOLUTION**
4 **AND ENFORCEMENT.--**

5 A. The executive, legislative and judicial branches
6 of state government in each member state shall enforce the
7 compact and take all actions necessary and appropriate to
8 effectuate the compact's purposes and intent. The provisions
9 of the compact and the rules promulgated hereunder shall have
10 standing as statutory law.

11 B. All courts shall take judicial notice of the
12 compact and the rules in any judicial or administrative
13 proceeding in a member state pertaining to the subject matter
14 of the compact which may affect the powers, responsibilities or
15 actions of the commission. The commission shall be entitled to
16 receive service of process in any judicial or administrative
17 proceeding and shall have standing to intervene in such a
18 proceeding for all purposes. Failure to provide service of
19 process to the commission shall render a judgment or order void
20 as to the commission, the compact or promulgated rules.

21 C. If the commission determines that a member state
22 has defaulted in the performance of its obligations or
23 responsibilities under the compact or the promulgated rules,
24 the commission shall:

25 (1) provide written notice to the defaulting

.232736.1

underscored material = new
[bracketed material] = delete

state and other member states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

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

D. 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 the 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.

E. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall 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.

F. 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.

G. The commission shall not bear any costs related to a state that is found to be in default or that has been

underscored material = new
[bracketed material] = delete

1 terminated from the compact, unless agreed upon in writing
2 between the commission and the defaulting state.

3 H. The defaulting state may appeal the action of
4 the commission by petitioning the United States district court
5 for the District of Columbia or the federal district where the
6 commission has its principal offices. The prevailing member
7 shall be awarded all costs of such litigation, including
8 reasonable attorney fees.

9 I. Upon request by a member state, the commission
10 shall attempt to resolve disputes related to the compact that
11 arise among member states and between member and nonmember
12 states.

13 J. The commission shall promulgate a rule providing
14 for both mediation and binding dispute resolution for disputes
15 as appropriate.

16 K. The commission, in the reasonable exercise of
17 its discretion, shall enforce the provisions and rules of the
18 compact.

19 L. By majority vote, the commission may initiate
20 legal action in the United States district court for the
21 District of Columbia or the federal district where the
22 commission has its principal offices against a member state in
23 default to enforce compliance with the provisions of the
24 compact and its promulgated rules and bylaws. The relief
25 sought may include both injunctive relief and damages. In the

underscored material = new
[bracketed material] = delete

1 event judicial enforcement is necessary, the prevailing member
2 shall be awarded all costs of such litigation, including
3 reasonable attorney fees.

4 M. The remedies provided in the compact shall not
5 be the exclusive remedies of the commission. The commission
6 may pursue any other remedies available under federal or state
7 law.

8 SECTION 14. [NEW MATERIAL] DATE OF IMPLEMENTATION OF THE
9 OCCUPATIONAL THERAPY LICENSURE COMPACT AND ASSOCIATED RULES,
10 WITHDRAWAL AND AMENDMENT.--

11 A. The compact shall come into effect on the date
12 on which the compact statute is enacted into law in the tenth
13 member state. The provisions, which become effective at that
14 time, shall be limited to the powers granted to the commission
15 relating to assembly and the promulgation of rules.

16 Thereafter, the commission shall meet and exercise rulemaking
17 powers necessary to the implementation and administration of
18 the compact.

19 B. Any state that joins the compact subsequent to
20 the commission's initial adoption of the rules shall be subject
21 to the rules as they exist on the date on which the compact
22 becomes law in that state. Any rule that has been previously
23 adopted by the commission shall have the full force and effect
24 of law on the day the compact becomes law in that state.

25 C. Any member state may withdraw from the compact

.232736.1

underscored material = new
[bracketed material] = delete

1 by enacting a statute repealing the same.

2 D. A member state's withdrawal shall not take
3 effect until six months after enactment of the repealing
4 statute.

5 E. Withdrawal shall not affect the continuing
6 requirement of the withdrawing state's occupational therapy
7 licensing board to comply with the investigative and adverse
8 action reporting requirements of the compact prior to the
9 effective date of withdrawal.

10 F. Nothing contained in the compact shall be
11 construed to invalidate or prevent any occupational therapy
12 licensure agreement or other cooperative arrangement between a
13 member state and a nonmember state that does not conflict with
14 the provisions of the compact.

15 G. The compact may be amended by the member states.
16 No amendment to the compact shall become effective and binding
17 upon any member state until it is enacted into the laws of all
18 member states.

19 SECTION 15. [NEW MATERIAL] CONSTRUCTION AND
20 SEVERABILITY.--The compact shall be liberally construed so as
21 to effectuate the purposes of the compact. The provisions of
22 the compact shall be severable and if any phrase, clause,
23 sentence or provision of the compact is declared to be contrary
24 to the constitution of any member state or of the United States
25 or the applicability thereof to any government, agency, person

.232736.1

underscored material = new
[bracketed material] = delete

1 or circumstance is held invalid, the validity of the remainder
2 of the compact and the applicability thereof to any government,
3 agency, person or circumstance shall not be affected thereby.
4 If the compact shall be held contrary to the constitution of
5 any member state, the compact shall remain in full force and
6 effect as to the remaining member states and in full force and
7 effect as to the member state affected as to all severable
8 matters.

9 **SECTION 16. [NEW MATERIAL] BINDING EFFECT OF COMPACT AND**
10 **OTHER LAWS.--**

11 A. A licensee providing occupational therapy in a
12 remote state under the compact privilege shall function within
13 the laws and regulations of the remote state.

14 B. Nothing in the compact prevents the enforcement
15 of any other law of a member state that is not inconsistent
16 with the compact.

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

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

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

24 F. In the event any provision of the compact
25 exceeds the constitutional limits imposed on the legislature of

underscored material = new
[bracketed material] = delete

any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

SECTION 17. Section 61-12A-9 NMSA 1978 (being Laws 1996, Chapter 55, Section 9, as amended) is amended to read:

"61-12A-9. BOARD--POWERS AND DUTIES.--

A. The board shall:

(1) promulgate rules in accordance with the State Rules Act to carry out the provisions of the Occupational Therapy Act;

(2) use funds to meet the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act;

(3) adopt a code of ethics;

(4) enforce the provisions of the Occupational Therapy Act to protect the public by conducting hearings on charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act;

(5) establish and collect fees;

(6) provide for examination for and issuance, renewal and reinstatement of licenses;

(7) establish, impose, collect and remit fines for violations of the Occupational Therapy Act to the current school fund;

.232736.1

(8) appoint a registrar to keep records and minutes necessary to carry out the functions of the board;

[and]

(9) obtain the legal assistance of the attorney general;

(10) prescribe procedures, forms and the manner of submitting an applicant's full set of fingerprints for state and federal criminal history background reports that the board uses to evaluate the applicant's qualification for licensure; and

(11) require an applicant, as a condition of
eligibility for initial licensure, to submit a full set of
fingerprints to the department of public safety to obtain state
and national criminal history record information on the
applicant. State and national criminal history record reports
are confidential and not public records. The board shall not
disseminate criminal history record information across state
lines.

B. The board may:

(1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

(2) hire or contract with an investigator to investigate complaints that have been filed with the board.

The board shall set the compensation of the investigator to be

1 paid from the funds of the board;
2 (3) inspect establishments; and
3 (4) designate hearing officers."

4 - 42 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete