

1 ~~Indicates Matter Stricken~~  
2 Indicates New Matter  
3  
4 COMMITTEE REPORT  
5 May 4, 2022  
6

## H. 3599

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8  
9 Introduced by Reps. B. Newton, McGarry, Dabney, Brawley,  
10 Gilliard, King, Jefferson, Howard, S. Williams, Carter, Erickson  
11 and Govan  
12

13 S. Printed 5/4/22--S.  
14 Read the first time February 24, 2022.  
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### THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY

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18  
19 To whom was referred a Bill (H. 3599) to amend the Code of  
20 Laws of South Carolina, 1976, by adding Article 3 to Chapter 36,  
21 Title 40 so as to enact the "Occupational Therapy Licensure  
22 Compact", etc., respectfully

#### REPORT:

23  
24 That they have duly and carefully considered the same and  
25 recommend that the same do pass:  
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27 TOM C. DAVIS for Committee.  
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**A BILL**

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

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

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

“Article 3

Occupational Therapy Licensure Compact

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

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

- 1 (1) increase public access to occupational therapy services by  
2 providing for the mutual recognition of other member-state licenses;
- 3 (2) enhance the ability of the states to protect the health and  
4 safety of the public;
- 5 (3) encourage the cooperation of member states in regulating  
6 multistate occupational therapy practice;
- 7 (4) support spouses of relocating military members;
- 8 (5) enhance the exchange of licensure, investigative, and  
9 disciplinary information between member states;
- 10 (6) allow a remote state to hold a provider of services with a  
11 compact privilege in that state accountable to the practice standards  
12 of that state; and
- 13 (7) facilitate the use of telehealth technology in order to  
14 increase access to occupational therapy services.

15  
16 Section 40-36-520. As used in this compact and except as  
17 otherwise provided:

- 18 (1) 'Active duty military' means full-time duty status in the  
19 active uniformed service of the United States, including members of  
20 the National Guard and Reserve on active duty orders pursuant to  
21 10 U.S.C. Chapter 1209 and Chapter 1211.
- 22 (2) 'Adverse action' means any administrative, civil,  
23 equitable, or criminal action permitted by the laws of a state that is  
24 imposed by a licensing board or other authority against an  
25 occupational therapist or occupational therapy assistant, including  
26 actions against the license or compact privilege of an individual,  
27 such as censure, revocation, suspension, probation, monitoring of  
28 the licensee, or restriction on the practice of the licensee.
- 29 (3) 'Alternative program' means a nondisciplinary  
30 monitoring process approved by an occupational therapy licensing  
31 board.
- 32 (4) 'Compact privilege' means the authorization, which is  
33 equivalent to a license, granted by a remote state to allow a licensee  
34 from another member state to practice as an occupational therapist  
35 or practice as an occupational therapy assistant in the remote state  
36 under its laws and rules. The practice of occupational therapy occurs  
37 in the member state where the patient/client is located at the time of  
38 the patient/client encounter.
- 39 (5) 'Continuing competence/education' means a requirement,  
40 as a condition of license renewal, to provide evidence of  
41 participation in, and completion of, educational and professional  
42 activities relevant to practice or area of work.

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

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

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

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

17 (10) 'Home state' means the member state that is the licensee's  
18 primary state of residence.

19 (11) 'Impaired practitioner' means individuals whose  
20 professional practice is adversely affected by substance abuse,  
21 addiction, or other health-related conditions.

22 (12) 'Investigative information' means information, records,  
23 and documents received or generated by an occupational therapy  
24 licensing board pursuant to an investigation.

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

28 (14) 'Licensee' means an individual who currently holds an  
29 authorization from the state to practice as an occupational therapist  
30 or as an occupational therapy assistant.

31 (15) 'Member state' means a state that has enacted the  
32 compact.

33 (16) 'Occupational therapist' means an individual who is  
34 licensed by a state to practice occupational therapy.

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

37 (18) 'Occupational therapy,' 'occupational therapy practice,'  
38 or the 'practice of occupational therapy' means the care and services  
39 provided by an occupational therapist or an occupational therapy  
40 assistant as set forth in the statutes and regulations of the member  
41 state.

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

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

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

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

16 (23) 'Rule' means a regulation promulgated by the commission  
17 that has the force of law.

18 (24) 'State' means a state, commonwealth, district, or territory  
19 of the United States of America that regulates the practice of  
20 occupational therapy.

21 (25) 'Single-state license' means an occupational therapist  
22 license or occupational therapy assistant license issued by a member  
23 state that authorizes practice only within the issuing state and does  
24 not include a compact privilege in another member state.

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

- 27 (a) assessment;
- 28 (b) intervention;
- 29 (c) consultation; or
- 30 (d) any combination of (a) through (c).

31  
32 Section 40-36-530. (A) To participate in the compact, a member  
33 state shall:

34 (1) license occupational therapists and occupational therapy  
35 assistants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) hold a license in the home state;

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

6 (3) have no encumbrance on any state license;

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

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

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

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

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

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

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

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

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

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

37 (E) A licensee providing occupational therapy in a remote state  
38 is subject to that state's regulatory authority. A remote state may, in  
39 accordance with due process and that state's laws, remove a  
40 licensee's compact privilege in the remote state for a specific period,  
41 impose fines, and take other necessary actions to protect the health  
42 and safety of its citizens. The licensee may be ineligible for a

1 compact privilege in any state until the specific time for removal has  
2 passed and all fines are paid.

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

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

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

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

- 14 (1) the specific period of time for which the compact privilege  
15 was removed has ended;
- 16 (2) all fines have been paid and all conditions have been met;
- 17 (3) two years have elapsed from the date of completing  
18 requirements for items (1) and (2); and
- 19 (4) the compact privileges are reinstated by the commission,  
20 and the compact data system is updated to reflect reinstatement.

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

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

27  
28 Section 40-36-550. (A) An occupational therapist or  
29 occupational therapy assistant may hold a home state license, which  
30 allows for compact privileges in member states, in only one member  
31 state at a time.

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

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

40 (2) upon receipt of an application for obtaining a new home-  
41 state license by virtue of compact privilege, the new home state shall  
42 verify that the occupational therapist or occupational therapy  
43 assistant meets the pertinent criteria outlined in Section 40-36-540



1 by means of the data system, without need for primary source  
2 verification except for:

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

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

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

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

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

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

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

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

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

33

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

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

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

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

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

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

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

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

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

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

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

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

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

25  
26 Section 40-36-580. (A) The compact member states hereby  
27 create and establish a joint public agency known as the  
28 'Occupational Therapy Compact Commission'.

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

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

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

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

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

43 (2) the delegate must be either:

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

4 (b) an administrator of the licensing board;

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

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

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

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

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

22 (C) The commission has powers and duties to:

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

24 (2) establish the fiscal year of the commission;

25 (3) establish bylaws;

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

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

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

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

37 (8) purchase and maintain insurance and bonds;

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

40 (10) hire employees, elect or appoint officers, fix  
41 compensation, define duties, grant such individuals appropriate  
42 authority to carry out the purposes of the compact, and establish the  
43 commission's personnel policies and programs relating to conflicts

1 of interest, qualifications of personnel, and other related personnel  
2 matters;

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

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

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

14 (14) establish a budget and make expenditures;

15 (15) borrow money;

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

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

23 (18) establish and elect an executive committee; and

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

27 (D) With respect to the executive committee:

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

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

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

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

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

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

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

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

1 (6) the executive committee has the duties and responsibilities  
2 to:  
3 (a) recommend to the entire commission changes to the  
4 rules or bylaws, changes to this compact legislation, fees paid by  
5 compact member states such as annual dues, and any commission  
6 compact fee charged to licensees for the compact privilege;  
7 (b) ensure compact administration services are  
8 appropriately provided, contractual or otherwise;  
9 (c) prepare and recommend the budget;  
10 (d) maintain financial records on behalf of the commission;  
11 (e) monitor compact compliance of member states and  
12 provide compliance reports to the commission;  
13 (f) establish additional committees as necessary; and  
14 (g) perform other duties as provided in rules or bylaws.  
15 (E) With respect to meetings of the commission:  
16 (1) all meetings of the commission are open to the public, and  
17 public notice of meetings must be given in the same manner as  
18 required under the rulemaking provisions in Section 40-36-600;  
19 (2) the commission, executive committee, or other  
20 committees of the commission may convene in a closed, nonpublic  
21 meeting if the commission, executive committee, or other  
22 committees of the commission must discuss:  
23 (a) noncompliance of a member state with its obligations  
24 under the compact;  
25 (b) the employment, compensation, discipline or other  
26 matters, practices or procedures related to specific employees or  
27 other matters related to the commission's internal personnel  
28 practices and procedures;  
29 (c) current, threatened, or reasonably anticipated litigation;  
30 (d) negotiation of contracts for the purchase, lease, or sale  
31 of goods, services, or real estate;  
32 (e) accusing a person of a crime or formally censuring a  
33 person;  
34 (f) disclosure of trade secrets or commercial or financial  
35 information that is privileged or confidential;  
36 (g) disclosure of information of a personal nature where  
37 disclosure would constitute a clearly unwarranted invasion of  
38 personal privacy;  
39 (h) disclosure of investigative records compiled for law  
40 enforcement purposes;  
41 (i) disclosure of information related to an investigative  
42 report prepared by or on behalf of or for use of the commission or

1 other committee charged with responsibility of investigation or  
2 determination of compliance issues pursuant to the compact; or

3 (j) matters specifically exempted from disclosure by  
4 federal or member-state statute;

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

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

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

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

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

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

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

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

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

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

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

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

37

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



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

5 (1) identifying information;

6 (2) licensure data;

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

8 (4) nonconfidential information related to alternative program  
9 participation;

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

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

14 (7) current significant investigative information.

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

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

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

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

29

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

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

41 (C) If a majority of the legislatures of the member states rejects  
42 a rule, by enactment of a statute or resolution in the same manner  
43 used to adopt the compact within four years of the date of adoption

1 of the rule, then the rule has no further force and effect in any  
2 member state.

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

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

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

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

14 (F) The notice of proposed rulemaking must include:

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

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

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

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

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

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

30 (1) at least twenty-five persons;

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

32 (3) an association or organization having at least twenty-five  
33 members.

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

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

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

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

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

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

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

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

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

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

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

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

33 (4) protect public health and safety.

34 (N) The commission or an authorized committee of the  
35 commission may direct revisions to a previously adopted rule or  
36 amendment for purposes of correcting typographical errors, errors  
37 in format, errors in consistency, or grammatical errors. Public notice  
38 of a revision must be posted on the website of the commission. The  
39 revision is subject to challenge by any person for a period of thirty  
40 days after posting. The revision may be challenged only on grounds  
41 that the revision results in a material change to a rule. A challenge  
42 must be made in writing and delivered to the chair of the  
43 commission prior to the end of the notice period. If no challenge is

1 made, the revision will take effect without further action. If the  
2 revision is challenged, the revision may not take effect without the  
3 approval of the commission.

4

5 Section 40-36-610. (A) Oversight

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

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

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

20 (B) Default, Technical Assistance, and Termination

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

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

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

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

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

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

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

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

14 (C) Dispute resolution

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

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

21 (D) Enforcement

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

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

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

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

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

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

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

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

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

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

25  
26 Section 40-36-630. This compact must be liberally construed to  
27 effect the purposes of it. The provisions of this compact are  
28 severable and if any phrase, clause, sentence or provision of this  
29 compact is declared to be contrary to the constitution of a member  
30 state or of the United States or the applicability of it to any  
31 government, agency, person, or circumstance is held invalid, the  
32 validity of the remainder of this compact and the applicability of it  
33 to any government, agency, person, or circumstance may not be  
34 affected as a consequence. If this compact is held contrary to the  
35 constitution of any member state, the compact shall remain in full  
36 force and effect as to the remaining member states and in full force  
37 and effect as to the member state affected as to all severable matters.

38  
39 Section 40-36-640. (A) A licensee providing occupational  
40 therapy in a remote state under the compact privilege shall function  
41 within the laws and regulations of the remote state.

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

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

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

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

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

12

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

15

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

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

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

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

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

32 (2) In addition to other requirements established by law and for  
33 the purpose of determining an applicant’s eligibility for an initial  
34 compact privilege, the department shall require a national criminal  
35 records check, supported by fingerprints, by the Federal Bureau of  
36 Investigation. The results of this criminal records check must be  
37 reported to the department. The South Carolina Law Enforcement  
38 Division is authorized to retain the fingerprints for certification  
39 purposes and for notification of the department regarding criminal  
40 charges. Costs of conducting a criminal history background check  
41 must be borne by the applicant. The department shall keep  
42 information received pursuant to this section confidential, except  
43 that information relied upon in denying licensure may be disclosed

1 as may be necessary to support the administrative action. The results  
2 of this criminal records check must not be shared outside the  
3 department.

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

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

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

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

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

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

34  
35 SECTION 3. Section 40-36-250 of the 1976 Code is amended by  
36 adding an item at the end to read:

37  
38 "( ) in addition to other requirements established by law and for  
39 the purpose of determining an applicant's eligibility for a compact  
40 privilege, the department shall require a national criminal records  
41 check, supported by fingerprints, by the Federal Bureau of  
42 Investigation. The results of this criminal records check must be  
43 reported to the department. The South Carolina Law Enforcement



1 Division is authorized to retain the fingerprints for certification  
2 purposes and for notification of the department regarding criminal  
3 charges. Costs of conducting a criminal history background check  
4 must be borne by the applicant. The department shall keep  
5 information received pursuant to this section confidential, except  
6 that information relied upon in denying licensure may be disclosed  
7 as may be necessary to support the administrative action. The results  
8 of this criminal records check must not be shared outside the  
9 department.”

10

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

13

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

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16