

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4731

FISCAL  
NOTE

BY DELEGATE KESSINGER

[Introduced February 15, 2022; Referred to the  
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §30-28A-1, §30-28A-2, §30-28A-3, §30-28A-4, §30-28A-5, §30-28A-6, §30-  
3 28A-7, §30-28A-8, §30-28A-9, §30-28A-10, §30-28A-11, §30-28A-12, §30-28A-13, and  
4 §30-28A-14, all relating to enacting and adopting an interstate Occupational Therapy  
5 Licensure Compact; stating purposes of the compact; defining terms, providing  
6 requirements for compact participation and responsibilities of the state licensing board;  
7 establishing reciprocal privileges for licensees of one state to practice in other member  
8 states and setting requirements therefor; setting requirements when a licensee changes  
9 state of residence; authorizing licensees on active military duty or with a spouse on active  
10 duty to designate a home state; describing the powers, procedures, and relative  
11 responsibilities of the licensing boards of the home state and remote states; establishing  
12 a representative, multi-state Occupational Therapy Compact Commission to establish  
13 rules for member state participation in the compact, establish a code of ethics, develop  
14 uniform rules for licensure and disciplinary procedures; and implement the provisions of  
15 the compact; describing the powers, duties, organization, financing, and legal liabilities of  
16 the compact commission and its members; authorizing the development, maintenance,  
17 and utilization of a coordinated database and reporting system for information regarding  
18 licensees or potential licensees; establishing a process for rulemaking within the compact  
19 commission; defining legal responsibilities of member states for participation in the  
20 compact and providing for redress if a member state fails to comply; establishing  
21 conditions for the compact to take effect; providing for construction and severability of  
22 provisions of the compact to be consistent with state law; and providing resolution for  
23 differences between the requirements of the compact and of state law.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 28A. OCCUPATIONAL THERAPY LICENSURE COMPACT.**

**§30-28A-1. Purpose.**

1       The purpose of this compact is to facilitate interstate practice of occupational therapy with  
2 the goal of improving public access to occupational therapy services. The practice of occupational  
3 therapy occurs in the state where the patient/client is located at the time of the patient/client  
4 encounter. The compact preserves the regulatory authority of states to protect public health and  
5 safety through the current system of state licensure.

6       This compact is designed to achieve the following objectives:

7       Increase public access to occupational therapy services by providing for the mutual  
8 recognition of other member state licenses;

9       Enhance the states' ability to protect the public's health and safety;

10       Encourage the cooperation of member states in regulating multi-state occupational  
11 therapy practice;

12       Support spouses of relocating military members;

13       Enhance the exchange of licensure, investigative, and disciplinary information between  
14 member states;

15       Allow a remote state to hold a provider of services with a compact privilege in that state  
16 accountable to that state's practice standards; and

17       Facilitate the use of telehealth technology in order to increase access to occupational  
18 therapy services.

**§30-28A-2. Definitions.**

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

3       "Active duty military" means full-time duty status in the active uniformed service of the  
4 United States, including members of the National Guard and Reserve on active duty orders  
5 pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C. Chapter 1211.

6       "Adverse action" means any administrative, civil, equitable, or criminal action permitted by  
7 a state's laws which is imposed by a licensing board or other authority against an occupational

8 therapist or occupational therapy assistant, including actions against an individual's license or  
9 compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee,  
10 or restriction on the licensee's practice.

11 "Alternative program" means a non-disciplinary monitoring process approved by an  
12 occupational therapy licensing board.

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

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

21 "Current significant investigative information" means Investigative Information that a  
22 licensing board, after an inquiry or investigation that includes notification and an opportunity for  
23 the occupational therapist or occupational therapy assistant to respond, if required by state law,  
24 has reason to believe is not groundless and, if proved true, would indicate more than a minor  
25 infraction.

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

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

31 "Executive committee" means a group of directors elected or appointed to act on behalf  
32 of, and within the powers granted to them by, the commission.

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

34 “Impaired practitioner” means individuals whose professional practice is adversely  
35 affected by substance abuse, addiction, or other health-related conditions.

36 “Investigative information” means information, records, and/or documents received or  
37 generated by an occupational therapy licensing board pursuant to an investigation.

38 “Jurisprudence requirement” means the assessment of an individual’s knowledge of the  
39 laws and rules governing the practice of occupational therapy in a state.

40 “Licensee” means an individual who currently holds an authorization from the state to  
41 practice as an occupational therapist or as an occupational therapy assistant.

42 “Member state” means a state that has enacted the compact.

43 “Occupational therapist” means an individual who is licensed by a state to practice  
44 occupational therapy.

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

47 “Occupational therapy,” “occupational therapy practice,” and the “practice of occupational  
48 therapy” mean the care and services provided by an occupational therapist or an occupational  
49 therapy assistant as set forth in the member state’s statutes and regulations.

50 “Occupational therapy compact commission” or “commission” means the national  
51 administrative body whose membership consists of all states that have enacted the compact.

52 “Occupational therapy licensing board” or “licensing board” means the agency of a state  
53 that is authorized to license and regulate occupational therapists and occupational therapy  
54 assistants.

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

60 “Remote state” means a member state other than the home state, where a licensee is  
61 exercising or seeking to exercise the compact privilege.

62 “Rule” means a regulation promulgated by the commission that has the force of law.

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

65 “Single-state license” means an occupational therapist or occupational therapy assistant  
66 license issued by a member state that authorizes practice only within the issuing state and does  
67 not include a compact privilege in any other member state.

68 “Telehealth” means the application of telecommunication technology to deliver  
69 occupational therapy services for assessment, intervention and/or consultation.

**§30-28A-3. State participation in the compact.**

1 (a) To participate in the compact, a member state shall:

2 (1) License occupational therapists and occupational therapy assistants

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

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

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

8 (5) Implement or utilize procedures for considering the criminal history records of  
9 applicants for an initial compact privilege. These procedures shall include the submission of  
10 fingerprints or other biometric-based information by applicants for the purpose of obtaining an  
11 applicant’s criminal history record information from the Federal Bureau of Investigation and the  
12 agency responsible for retaining that state’s criminal records;

13 (A) A member state shall, within a time frame established by the commission, require a  
14 criminal background check for a licensee seeking/applying for a compact privilege whose primary  
15 state of residence is that member state, by receiving the results of the Federal Bureau of

16 Investigation criminal record search, and shall use the results in making licensure decisions.

17 (B) Communication between a member state, the commission and among member states  
18 regarding the verification of eligibility for licensure through the compact shall not include any  
19 information received from the Federal Bureau of Investigation relating to a federal criminal records  
20 check performed by a member state under Public Law 92-544.

21 (6) Comply with the rules of the commission;

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

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

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

29 (c) Member states may charge a fee for granting a compact privilege.

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

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

36 (f) Nothing in this compact shall affect the requirements established by a member state  
37 for the issuance of a single-state license.

**§30-28A-4. Compact privilege.**

1 (a) To exercise the compact privilege under the terms and provisions of the compact, the  
2 licensee shall:

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

4           (2) Have a valid United States Social Security number or National Practitioner  
5 Identification number;

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

7           (4) Be eligible for a compact privilege in any member state in accordance with subsections  
8 (d), (f), (g), and (h) of this section;

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

12           (6) Notify the commission that the licensee is seeking the compact privilege within a  
13 remote state(s);

14           (7) Pay any applicable fees, including any state fee, for the compact privilege;

15           (8) Complete a criminal background check, in accordance with §30-28A-3 of this code, for  
16 which the licensee shall be responsible for the payment of any fee associated with the completion  
17 of the criminal background check.

18           (9) Meet any jurisprudence requirements established by the remote state(s) in which the  
19 licensee is seeking a compact privilege; and

20           (10) Report to the commission adverse action taken by any non-member state within 30  
21 days from the date the adverse action is taken.

22           (b) The compact privilege is valid until the expiration date of the home state license. The  
23 licensee must comply with the requirements of subsection (a) of this section to maintain the  
24 compact privilege in the remote state.

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

27           (d) Occupational therapy assistants practicing in a remote state shall be supervised by an  
28 occupational therapist licensed or holding a compact privilege in that remote state.

29           (e) A licensee providing occupational therapy in a remote state is subject to that state's

30 regulatory authority. A remote state may, in accordance with due process and that state's laws,  
31 remove a licensee's compact privilege in the remote state for a specific period of time, impose  
32 finer, and/or take any other necessary actions to protect the health and safety of its citizens. The  
33 licensee may be ineligible for a compact privilege in any state until the specific time for removal  
34 has passed and all fines are paid.

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

37 (1) The home state license is no longer encumbered; and

38 (2) Two years have elapsed from the date on which the home state license is no longer  
39 encumbered in accordance with subdivision (f)(1) of this section.

40 (g) Once an encumbered license in the home state is restored to good standing, the  
41 licensee must meet the requirements of subsection (a) of this section to obtain a compact privilege  
42 in any remote state.

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

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

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

47 (3) Two years have elapsed from the date of completing requirements for subdivisions  
48 (h)(1) and (2) of this section; and

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

51 (i) If a licensee's compact privilege in any remote state is removed due to an erroneous  
52 charge, privileges shall be restored through the compact data system.

53 (j) Once the requirements of subsection (h) of this section have been met, the licensee  
54 must meet the requirements in subsection (a) of this section to obtain a compact privilege in a  
55 remote state.

**§30-28A-5. Obtaining a new home state license by virtue of compact privilege.**

1           (a) An occupational therapist or occupational therapy assistant may hold a home state  
2 license, which allows for compact privileges in member states, in only one member state at a  
3 time.

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

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

10           (2) Upon receipt of an application for obtaining a new home state license by virtue of  
11 compact privilege, the new home state shall verify that the occupational therapist or occupational  
12 therapy assistant meets the pertinent criteria outlined in §30-28A-4 of this code via the data  
13 system, without need for primary source verification except for:

14           (A) An FBI fingerprint-based criminal background check if not previously performed or  
15 updated pursuant to applicable rules adopted by the commission in accordance with Public Law  
16 92-544;

17           (B) Other criminal background check as required by the new home state; and

18           (C) Submission of any requisite jurisprudence requirements of the new home state.

19           (3) The former home state shall convert the former home state license into a compact  
20 privilege once the new home state has activated the new home state license in accordance with  
21 applicable rules adopted by the commission.

22           (4) Notwithstanding any other provision of this compact, if the occupational therapist or  
23 occupational therapy assistant cannot meet the criteria in §30-28A-4 of this code, the new home  
24 state shall apply its requirements for issuing a new single-state license.

25           (5) The occupational therapist or the occupational therapy assistant shall pay all applicable

26 fees to the new home state in order to be issued a new home state license.

27 (c) If an occupational therapist or occupational therapy assistant changes primary state of  
28 residence by moving from a member state to a non-member state, or from a non-member state  
29 to a member state, the state criteria shall apply for issuance of a single-state license in the new  
30 state.

31 (d) Nothing in this compact shall interfere with a licensee's ability to hold a single-state  
32 license in multiple states; however, for the purposes of this compact, a licensee shall have only  
33 one home state license.

34 (e) Nothing in this compact shall affect the requirements established by a member state  
35 for the issuance of a single-state license.

**§30-28A-6. Active-duty military personnel or their spouses.**

1 Active-duty military personnel, or their spouses, shall designate a home state where the  
2 individual has a current license in good standing. The individual may retain the home state  
3 designation during the period the service member is on active duty. Subsequent to designating a  
4 home state, the individual shall only change their home state through application for licensure in  
5 the new state or through the process described in §30-28A-5 of this code.

**§30-28A-7. Adverse actions.**

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

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

5 (1) Take adverse action against an occupational therapist's or occupational therapy  
6 assistant's compact privilege within that member state; and

7 (2) Issue subpoenas for both hearings and investigations that require the attendance and  
8 testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing  
9 board in a member state for the attendance and testimony of witnesses or the production of

10 evidence from another member state shall be enforced in the latter state by any court of  
11 competent jurisdiction, according to the practice and procedure of that court applicable to  
12 subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness  
13 fees, travel expenses, mileage and other fees required by the service statutes of the state in which  
14 the witnesses or evidence are located.

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

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

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

29 (f) A member state may take adverse action based on the factual findings of the remote  
30 state, provided that the member state follows its own procedures for taking the adverse action.

31 (g) Joint investigations. —

32 (1) In addition to the authority granted to a member state by its respective state  
33 occupational therapy laws and regulations or other applicable state law, any member state may  
34 participate with other member states in joint investigations of licensees.

35 (2) Member states shall share any investigative, litigation, or compliance materials in

36 furtherance of any joint or individual investigation initiated under the compact.

37 (h) If an adverse action is taken by the home state against an occupational therapist's or  
38 occupational therapy assistant's license, or the occupational therapist's or occupational therapy  
39 assistant's compact privilege in all other member states shall be deactivated until all  
40 encumbrances have been removed from the state license. All home state disciplinary orders that  
41 impose adverse action against an occupational therapist's or occupational therapy assistant's  
42 license shall include a statement that the occupational therapist's or occupational therapy  
43 assistant's compact privilege is deactivated in all member states during the pendency of the order.

44 (i) If a member state takes adverse action, it shall promptly notify the administrator of the  
45 data system. The administrator of the data system shall promptly notify the home state of any  
46 adverse actions by remote states.

47 (j) Nothing in this compact shall override a member state's decision that participation in an  
48 alternative program may be used in lieu of adverse action.

**§30-28A-8. Establishment of the Occupational Therapy Compact Commission.**

1 (a) The compact member states hereby create and establish a joint public agency known  
2 as the Occupational Therapy Compact Commission:

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

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

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

9 (b) *Membership, voting, and meetings.* —

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

12 (2) The delegate shall be either:

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

15 (B) An administrator of the licensing board.

16 (3) Any delegate may be removed or suspended from office as provided by the law of the  
17 state from which the delegate is appointed.

18 (4) The member state board shall fill any vacancy occurring in the commission within 90  
19 days.

20 (5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and  
21 creation of bylaws and shall otherwise have an opportunity to participate in the business and  
22 affairs of the commission. A delegate shall vote in person or by such other means as provided in  
23 the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other  
24 means of communication.

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

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

28 (c) The commission shall have the following powers and duties:

29 (1) Establish a code of ethics for the commission;

30 (2) Establish the fiscal year of the commission;

31 (3) Establish bylaws;

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

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

35 (6) Promulgate uniform rules to facilitate and coordinate implementation and  
36 administration of this compact. The rules shall have the force and effect of law and shall be binding  
37 in all member states;

38 (7) Bring and prosecute legal proceedings or actions in the name of the commission,

39 provided that the standing of any state occupational therapy licensing board to sue or be sued  
40 under applicable law shall not be affected;

41 (8) Purchase and maintain insurance and bonds;

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

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

48 (11) Accept any and all appropriate donations and grants of money, equipment, supplies,  
49 materials and services, and receive, utilize and dispose of the same; provided that at all times the  
50 commission shall avoid any appearance of impropriety and/or conflict of interest;

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

54 (13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of  
55 any property real, personal, or mixed;

56 (14) Establish a budget and make expenditures;

57 (15) Borrow money;

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

61 (17) Provide and receive information from, and cooperate with, law-enforcement agencies;

62 (18) Establish and elect an executive committee; and

63 (19) Perform such other functions as may be necessary or appropriate to achieve the  
64 purposes of this compact consistent with the state regulation of occupational therapy licensure

65 and practice.

66 (d) The Executive Committee. —

67 The executive committee shall have the power to act on behalf of the commission  
68 according to the terms of this compact.

69 (1) The executive committee shall be composed of nine members:

70 (A) Seven voting members who are elected by the commission from the current  
71 membership of the commission;

72 (B) One ex-officio, nonvoting member from a recognized national occupational therapy  
73 professional association; and

74 (C) One ex-officio, nonvoting member from a recognized national occupational therapy  
75 certification organization.

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

77 (3) The commission may remove any member of the executive committee as provided in  
78 bylaws.

79 (4) The executive committee shall meet at least annually.

80 (5) The executive committee shall have the following duties and responsibilities:

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

84 (B) Ensure compact administration services are appropriately provided, contractual or  
85 otherwise;

86 (C) Prepare and recommend the budget;

87 (D) Maintain financial records on behalf of the commission;

88 (E) Monitor compact compliance of member states and provide compliance reports to the  
89 commission;

90 (F) Establish additional committees as necessary; and

91 (G) Perform other duties as provided in rules or bylaws.

92 (e) Meetings of the commission. —

93 (1) All meetings shall be open to the public, and public notice of meetings shall be given  
94 in the same manner as required under the rulemaking provisions in §30-28A-10.

95 (2) The commission or the executive committee or other committees of the commission  
96 may convene in a closed, non-public meeting if the commission or executive committee or other  
97 committees of the commission must discuss:

98 (A) Non-compliance of a member state with its obligations under the compact;

99 (B) The employment, compensation, discipline or other matters, practices or procedures  
100 related to specific employees or other matters related to the commission's internal personnel  
101 practices and procedures;

102 (C) Current, threatened, or reasonably anticipated litigation;

103 (D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real  
104 estate;

105 (E) Accusing any person of a crime or formally censuring any person;

106 (F) Disclosure of trade secrets or commercial or financial information that is privileged or  
107 confidential;

108 (G) Disclosure of information of a personal nature where disclosure would constitute a  
109 clearly unwarranted invasion of personal privacy;

110 (H) Disclosure of investigative records compiled for law enforcement purposes;

111 (I) Disclosure of information related to any investigative reports prepared by or on behalf  
112 of or for use of the commission or other committee charged with responsibility of investigation or  
113 determination of compliance issues pursuant to the compact; or

114 (J) Matters specifically exempted from disclosure by federal or member state statute.

115 (3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the  
116 commission's legal counsel or designee shall certify that the meeting may be closed and shall

117 reference each relevant exempting provision.

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

124 (f) *Financing of the commission.* —

125 (1) The commission shall pay, or provide for the payment of, the reasonable expenses of  
126 its establishment, organization, and ongoing activities.

127 (2) The commission may accept any and all appropriate revenue sources, donations, and  
128 grants of money, equipment, supplies, materials, and services.

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

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

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

143 commission.

144 (g) Qualified immunity, defense, and indemnification. —

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

153 (2) The commission shall defend any member, officer, executive director, employee, or  
154 representative of the commission in any civil action seeking to impose liability arising out of any  
155 actual or alleged act, error, or omission that occurred within the scope of commission  
156 employment, duties, or responsibilities, or that the person against whom the claim is made had a  
157 reasonable basis for believing occurred within the scope of commission employment, duties, or  
158 responsibilities; provided that nothing herein shall be construed to prohibit that person from  
159 retaining his or her own counsel; and provided further, that the actual or alleged act, error, or  
160 omission did not result from that person's intentional or willful or wanton misconduct.

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

**§30-28A-9. Data system.**

1 (a) The commission shall provide for the development, maintenance, and utilization of a  
2 coordinated database and reporting system containing licensure, adverse action, and  
3 investigative information on all licensed individuals in member states.

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

7 (1) Identifying information;

8 (2) Licensure data;

9 (3) Adverse actions against a license or compact privilege;

10 (4) Non-confidential information related to alternative program participation;

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

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

14 (7) Current significant investigative information.

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

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

20 (e) Member states contributing information to the data system may designate information  
21 that may not be shared with the public without the express permission of the contributing state.

22 (f) Any information submitted to the data system that is subsequently required to be  
23 expunged by the laws of the member state contributing the information shall be removed from the  
24 data system.

### **§30-28A-10. Rulemaking**

1 (a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth

2 in this section and the rules adopted thereunder. Rules and amendments shall become binding  
3 as of the date specified in each rule or amendment.

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

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

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

14 (e) Prior to promulgation and adoption of a final rule or rules by the commission, and at  
15 least 30 days in advance of the meeting at which the rule will be considered and voted upon, the  
16 commission shall file a notice of proposed rulemaking:

17 (1) On the website of the commission or other publicly accessible platform; and

18 (2) On the website of each member state occupational therapy licensing board or other  
19 publicly accessible platform or the publication in which each state would otherwise publish  
20 proposed rules.

21 (f) The notice of proposed rulemaking shall include:

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

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

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

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

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

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

32 (1) At least 25 persons;

33 (2) A state or federal governmental subdivision or agency; or

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

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

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

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

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

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

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

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

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

54 (m) Upon determination that an emergency exists, the commission may consider and  
55 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that  
56 the usual rulemaking procedures provided in the compact and in this section shall be retroactively  
57 applied to the rule as soon as reasonably possible, in no event later than 90 days after the  
58 effective date of the rule. For the purposes of this provision, an emergency rule is one that must  
59 be adopted immediately in order to:

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

61 (2) Prevent a loss of commission or member state funds;

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

64 (4) Protect public health and safety.

65 (n) The commission or an authorized committee of the commission may direct revisions  
66 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors  
67 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be  
68 posted on the website of the commission. The revision shall be subject to challenge by any person  
69 for a period of 30 days after posting. The revision may be challenged only on grounds that the  
70 revision results in a material change to a rule. A challenge shall be made in writing and delivered  
71 to the chair of the commission prior to the end of the notice period. If no challenge is made, the  
72 revision will take effect without further action. If the revision is challenged, the revision may not  
73 take effect without the approval of the commission.

**§30-28A-11. Oversight; dispute resolution; and enforcement.**

1 (a) Oversight. —

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

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

9 (3) The commission shall be entitled to receive service of process in any such proceeding  
10 and shall have standing to intervene in such a proceeding for all purposes. Failure to provide  
11 service of process to the commission shall render a judgment or order void as to the commission,  
12 this compact, or promulgated rules.

13 (b) Default, technical assistance, and termination. —

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

17 (A) Provide written notice to the defaulting state and other member states of the nature of  
18 the default, the proposed means of curing the default and/or any other action to be taken by the  
19 commission; and

20 (B) Provide remedial training and specific technical assistance regarding the default.

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

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

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

32 beyond the effective date of termination.

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

36 (6) The defaulting state may appeal the action of the commission by petitioning the U.S.  
37 District Court for the District of Columbia or the federal district where the commission has its  
38 principal offices. The prevailing member shall be awarded all costs of such litigation, including  
39 reasonable attorney's fees.

40 (c) Dispute resolution. —

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

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

46 (d) Enforcement. —

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

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

55 (3) The remedies herein shall not be the exclusive remedies of the commission. The  
56 commission may pursue any other remedies available under federal or state law.

**§30-28A-12. Date of implementation of the interstate commission for occupational therapy**

**practice and associated rules, withdrawal, and amendment.**

1       (a) The compact shall come into effect on the date on which the compact statute is enacted  
2 into law in the 10th member state. The provisions, which become effective at that time, shall be  
3 limited to the powers granted to the commission relating to assembly and the promulgation of  
4 rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the  
5 implementation and administration of the compact.

6       (b) Any state that joins the compact subsequent to the commission's initial adoption of the  
7 rules shall be subject to the rules as they exist on the date on which the compact becomes law in  
8 that state. Any rule that has been previously adopted by the commission shall have the full force  
9 and effect of law on the day the compact becomes law in that state.

10       (c) Any member state may withdraw from this compact by enacting a statute repealing the  
11 same.

12       (1) A member state's withdrawal shall not take effect until six months after enactment of  
13 the repealing statute.

14       (2) Withdrawal shall not affect the continuing requirement of the withdrawing state's  
15 occupational therapy licensing board to comply with the investigative and adverse action reporting  
16 requirements of this act prior to the effective date of withdrawal.

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

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

**§30-28A-13. Construction and severability.**

1       This compact shall be liberally construed to effectuate the purposes thereof. The  
2 provisions of this compact shall be severable and if any phrase, clause, sentence or provision of

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

**§30-28A-14. Binding effect of compact and other laws.**

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

3 Nothing herein prevents the enforcement of any other law of a member state that is not  
4 inconsistent with the compact.

5 Any laws in a member state in conflict with the compact are superseded to the extent of  
6 the conflict.

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

9 All agreements between the commission and the member states are binding in  
10 accordance with their terms.

11 In the event any provision of the compact exceeds the constitutional limits imposed on the  
12 legislature of any member state, the provision shall be ineffective to the extent of the conflict with  
13 the constitutional provision in question in that member state.

NOTE: The purpose of this bill is to enact the Occupational Therapy Licensure Compact for the West Virginia Board of Occupational Therapy to participate with similar licensing authorities in other states to enhance the states' ability to protect the public's health and safety, to share licensure, investigative, and disciplinary information regarding their licensees, support spouses of relocating military members, and facilitate the use of telehealth technology in order to increase access to occupational therapy services.

Strike-throughs indicate language that would be stricken from a heading or the present law,

and underscoring indicates new language that would be added.