

MAINE STATE LEGISLATURE

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L.D. 31

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Date: 6/15/21

(Filing No. S-305)

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HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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Reproduced and distributed under the direction of the Secretary of the Senate.

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STATE OF MAINE

6

SENATE

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130TH LEGISLATURE

8

FIRST SPECIAL SESSION

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COMMITTEE AMENDMENT "A" to S.P. 39, L.D. 31, "An Act To Adopt the Occupational Therapy Licensure Compact"

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Amend the bill by striking out everything after the enacting clause and inserting the following:

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'Sec. 1. 32 MRSA, c. 32, sub-c. 1 is enacted by adding before section 2271 the following to read:

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SUBCHAPTER 1

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GENERAL LICENSING PROVISIONS

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Sec. 2. 32 MRSA c. 32, sub-c. 2 is enacted to read:

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SUBCHAPTER 2

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OCCUPATIONAL THERAPY LICENSURE COMPACT

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§2287. Short title; findings and declaration of purpose

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1. Short title. This chapter may be known and cited as "the Occupational Therapy Licensure Compact" or "compact."

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2. Legislative intent. This compact is the Maine enactment of the Occupational Therapy Licensure Compact. The form, format and text of the compact have been changed minimally so as to conform to Maine statutory conventions. The changes are technical in nature, and it is the intent of the Legislature that this Act be interpreted as substantively the same as the Occupational Therapy Licensure Compact that is enacted by other compact states.

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3. Purposes. The general purposes of this compact are to:

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- 1 A. Increase public access to occupational therapy services by providing for the mutual
- 2 recognition of other member state licenses;
- 3 B. Enhance the member states' ability to protect the public's health and safety;
- 4 C. Encourage the cooperation of member states in regulating multistate occupational
- 5 therapy practice;
- 6 D. Support spouses of relocating military members;
- 7 E. Enhance the exchange of licensure, investigative and disciplinary information
- 8 among member states;
- 9 F. Allow a remote state to hold a provider of services with a compact privilege in that
- 10 state accountable to that state's practice standards; and
- 11 G. Facilitate the use of telehealth technology in order to increase access to occupational
- 12 therapy services.

13 **§2288. Definitions**

14 As used in this compact, unless the context otherwise indicates, the following terms

15 have the following meanings.

16 1. Active duty military. "Active duty military" means full-time duty status in the

17 active uniformed service of the United States, including members of the National Guard

18 and Reserve on active duty orders pursuant to 10 United States Code, Chapter 1209 and 10

19 United States Code, Chapter 1211.

20 2. Adverse action. "Adverse action" means any administrative, civil, equitable or

21 criminal action permitted by a state's laws that is imposed by a licensing board or other

22 authority against an occupational therapist or occupational therapy assistant, including

23 actions against an individual's license or compact privilege such as censure, revocation,

24 suspension, probation, monitoring of the licensee or restriction on the licensee's practice.

25 3. Alternative program. "Alternative program" means a nondisciplinary monitoring

26 process approved by an occupational therapy licensing board.

27 4. Compact privilege. "Compact privilege" means the authorization, which is

28 equivalent to a license, granted by a remote state to allow a licensee from another member

29 state to practice as an occupational therapist or practice as an occupational therapy assistant

30 in the remote state under its laws and rules. The practice of occupational therapy occurs in

31 the member state where the patient is located at the time of the patient encounter.

32 5. Continuing education. "Continuing education" means a requirement, as a

33 condition of license renewal, to provide evidence of participation in, or completion of,

34 educational and professional activities relevant to practice or area of work.

35 6. Current significant investigative information. "Current significant investigative

36 information" means investigative information that a licensing board, after an inquiry or

37 investigation that includes notification and an opportunity for the occupational therapist or

38 occupational therapy assistant to respond, if required by state law, has reason to believe is

39 not groundless and, if proved true, would indicate more than a minor infraction.

40 7. Data system. "Data system" means a repository of information about licensees,

41 including, but not limited to, license status, investigative information, compact privileges

42 and adverse actions.

COMMITTEE AMENDMENT

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8. Encumbered license. "Encumbered license" means a license with respect to which an adverse action restricts the practice of occupational therapy by the licensee or the adverse action has been reported to the National Practitioner Data Bank operated by the United States Department of Health and Human Services.

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

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

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

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

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

14. Member state. "Member state" means a state that has enacted the compact.

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

16. Occupational therapy assistant. "Occupational therapy assistant" means an individual who is licensed by a state to assist in the practice of occupational therapy.

17. Occupational therapy; occupational therapy practice; practice of occupational therapy. "Occupational therapy," "occupational therapy practice" or "practice of occupational therapy" means the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the member state's statutes and regulations.

18. Occupational therapy compact commission; commission. "Occupational therapy compact commission" or "commission" means the Occupational Therapy Compact Commission established in section 2294, whose membership consists of all states that have enacted the compact.

19. Occupational therapy licensing board; licensing board. "Occupational therapy licensing board" or "licensing board" means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

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

21. Remote state. "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

COMMITTEE AMENDMENT

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22. Rule. "Rule" means a regulation promulgated by the commission that has the force of law.

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

24. State. "State" means any state, commonwealth, district or territory of the United States that regulates the practice of occupational therapy.

25. Telehealth. "Telehealth" means the application of telecommunications technology to deliver occupational therapy services for assessment, intervention or consultation.

§2289. State participation in compact

1. Participation in compact. To participate in the compact, a member state shall:

A. License occupational therapists and occupational therapy assistants;

B. Participate fully in the commission's data system, including, but not limited to, using the commission's unique identifier as defined in rules of the commission;

C. Have a mechanism in place for receiving and investigating complaints about licensees;

D. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

E. Implement or use procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

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

(2) Communication with the commission and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1973, Title II, Public Law 92-544 (1972);

F. Comply with the rules of the commission;

G. Use only a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

H. Have continuing education requirements as a condition for license renewal.

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

3. Fee. A member state may charge a fee for granting a compact privilege.

4. Delegate to commission. A member state shall provide for the state's delegate to attend all occupational therapy compact commission meetings.

5. Nonresidents. An individual not residing in a member state is able to apply for a member state's single-state license as provided under the laws of that member state. However, the single-state license granted to these individuals may not be recognized as granting the compact privilege in any other member state.

6. No effect on single-state license authority. Nothing in this compact affects the requirements established by a member state for the issuance of a single-state license.

§2290. Compact privilege

1. Exercise of compact privilege. To exercise the compact privilege under the terms and provisions of the compact, a licensee:

- A. Must hold a license in the home state;
- B. Must have a valid United States social security number or National Practitioner Data Bank identification number;
- C. May not have an encumbrance on any state license;
- D. Must be eligible for a compact privilege in any member state in accordance with subsections 4, 6, 7 and 8;
- E. Must have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege and 2 years must have elapsed from the date of completion;
- F. Must notify the commission that the licensee is seeking the compact privilege within a remote state;
- G. Must pay any applicable fees, including any state fee for the compact privilege;
- H. Must complete a criminal background check in accordance with section 2289, subsection 1, paragraph E. The licensee is responsible for the payment of any fee associated with the completion of a criminal background check;
- I. Must meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and
- J. Must report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

2. Validity of compact privilege. The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection 1 to maintain the compact privilege in the remote state.

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

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4. Supervision of occupational therapy assistant. An occupational therapy assistant practicing in a remote state must be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

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

6. Loss of compact privilege. If a home state license is encumbered, the licensee loses the compact privilege in any remote state until the following occur:

- A. The home state license is no longer encumbered; and
- B. Two years have elapsed from the date on which the home state license is no longer encumbered in accordance with paragraph A.

7. Restoration of compact privilege. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection 1 to obtain a compact privilege in any remote state.

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

- A. The specific period of time for which the compact privilege was removed has ended;
- B. All fines have been paid and all conditions have been met;
- C. Two years have elapsed from the date of completing requirements for paragraphs A and B; and
- D. The compact privileges are reinstated by the commission and the compact data system is updated to reflect reinstatement.

9. Error. If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges must be restored through the compact data system.

10. Restoration of compact privilege. Once the requirements of subsection 8 have been met, the licensee must meet the requirements in subsection 1 to obtain a compact privilege in a remote state.

§2291. Obtaining new home state license by virtue of compact privilege

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

2. Change of residence. If an occupational therapist or occupational therapy assistant changes the therapist's or the assistant's primary state of residence by moving between 2 member states, the following requirements apply.

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COMMITTEE AMENDMENT "A" to S.P. 39, L.D. 31 (S-365)

- 1 A. The occupational therapist or occupational therapy assistant shall file an application
2 for obtaining a new home state license by virtue of a compact privilege, pay all
3 applicable fees and notify the current and the new home state in accordance with
4 applicable rules adopted by the commission.
- 5 B. Upon receipt of an application for obtaining a new home state license by virtue of
6 compact privilege, the new home state shall verify that the occupational therapist or
7 occupational therapy assistant meets the pertinent criteria outlined in section 2290 via
8 the data system, without need for primary source verification except for:
- 9 (1) A Federal Bureau of Investigation fingerprint-based criminal background check
10 if not previously performed or updated pursuant to applicable rules adopted by the
11 commission in accordance with the Departments of State, Justice, and Commerce,
12 the Judiciary, and Related Agencies Appropriations Act, 1973, Title II, Public Law
13 92-544 (1972);
- 14 (2) Any other criminal background check as required by the new home state; and
- 15 (3) Submission of any requisite jurisprudence requirements of the new home state.
- 16 C. The former home state shall convert the former home state license into a compact
17 privilege once the new home state has activated the new home state license in
18 accordance with applicable rules adopted by the commission.
- 19 D. Notwithstanding any other provision of this compact, if the occupational therapist
20 or occupational therapy assistant cannot meet the criteria in section 2290, the new home
21 state shall apply its requirements for issuing a new single-state license.
- 22 E. The occupational therapist or the occupational therapy assistant shall pay all
23 applicable fees to the new home state in order to be issued a new home state license.
- 24 3. Criteria for single-state license. If an occupational therapist or occupational
25 therapy assistant changes the therapist's or the assistant's primary state of residence by
26 moving from a member state to a nonmember state, or from a nonmember state to a member
27 state, the state criteria apply for issuance of a single-state license in the new state.
- 28 4. Ability to hold single-state license in more than one state. This compact does
29 not interfere with a licensee's ability to hold a single-state license in multiple states;
30 however, for the purposes of this compact, a licensee may have only one home state license.
- 31 5. Requirements for single-state license. This compact does not affect the
32 requirements established by a member state for the issuance of a single-state license.
- 33 §2292. Active duty military personnel or military spouses
- 34 An active duty military member or the military member's spouse shall designate a home
35 state where the individual has a current license in good standing. The individual may retain
36 the home state designation during the period the service member is on active duty.
37 Subsequent to designating a home state, the individual may change the individual's home
38 state only through application for licensure in the new state or through the process described
39 in section 2291.
- 40 §2293. Adverse actions

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- 1 **1. Authority of home state.** A home state has exclusive power to impose adverse
2 action against an occupational therapist's or occupational therapy assistant's license issued
3 by the home state.
- 4 **2. Authority of remote state.** In addition to the other powers conferred by state law,
5 a remote state has the authority, in accordance with existing state due process law, to:
 - 6 **A. Take adverse action against an occupational therapist's or occupational therapy**
7 **assistant's compact privilege within that member state; and**
 - 8 **B. Issue subpoenas for both hearings and investigations that require the attendance and**
9 **testimony of witnesses as well as the production of evidence. A subpoena issued by a**
10 **licensing board in a member state for the attendance and testimony of witnesses or the**
11 **production of evidence from another member state may be enforced in the latter state**
12 **by any court of competent jurisdiction, according to the practice and procedure of that**
13 **court applicable to subpoenas issued in proceedings pending before it. The issuing**
14 **authority shall pay any witness fees, travel expenses, mileage and other fees required**
15 **by the service statutes of the state in which the witnesses or evidence are located.**
- 16 **3. Application of law in home state.** For the purposes of taking adverse action, the
17 home state shall give the same priority and effect to reported conduct received from a
18 member state as it would if the conduct had occurred within the home state and shall apply
19 its own state laws to determine appropriate action.
- 20 **4. Investigations.** The home state shall complete any pending investigations of an
21 occupational therapist or occupational therapy assistant who changes the therapist's or the
22 assistant's primary state of residence during the course of the investigations. The home
23 state where the investigations were initiated also has the authority to take appropriate action
24 and shall promptly report the conclusions of the investigations to the data system. The data
25 system administrator shall promptly notify the new home state of any adverse action.
- 26 **5. Recovery of costs of investigations.** A member state, if otherwise permitted by
27 state law, may recover from the affected occupational therapist or occupational therapy
28 assistant the costs of investigations and disposition of cases resulting from any adverse
29 action taken against that occupational therapist or occupational therapy assistant.
- 30 **6. Factual findings.** A member state may take adverse action based on the factual
31 findings of a remote state, as long as the member state follows its own procedures for taking
32 the adverse action.
- 33 **7. Joint investigations.** The following requirements apply to joint investigations.
 - 34 **A. In addition to the authority granted to a member state by its respective state**
35 **occupational therapy laws and regulations or other applicable state law, any member**
36 **state may participate with other member states in joint investigations of licensees.**
 - 37 **B. Member states shall share any investigative, litigation or compliance materials in**
38 **furtherance of any joint or individual investigation initiated under the compact.**
- 39 **8. Deactivation of compact privilege.** If an adverse action is taken by the home state
40 against an occupational therapist's or occupational therapy assistant's license, the
41 occupational therapist's or occupational therapy assistant's compact privilege in all other
42 member states must be deactivated until all encumbrances have been removed from the
43 state license. All home state disciplinary orders that impose adverse action against an

1 occupational therapist's or occupational therapy assistant's license must include a statement
2 that the occupational therapist's or occupational therapy assistant's compact privilege is
3 deactivated in all member states during the pendency of the order.

4 9. Notice of adverse action. If a member state takes adverse action, it shall promptly
5 notify the administrator of the data system. The administrator of the data system shall
6 promptly notify the home state of any adverse actions by remote states.

7 10. Alternative program. This compact does not override a member state's decision
8 that participation in an alternative program may be used in lieu of adverse action.

9 **§2294. Establishment of Occupational Therapy Compact Commission**

10 1. Commission established. The member states hereby create and establish a joint
11 public agency known as the Occupational Therapy Compact Commission as follows.

12 A. The commission is an instrumentality of the compact states.

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

18 C. This compact may not be construed to be a waiver of sovereign immunity.

19 2. Membership, voting and meetings. This subsection governs the membership,
20 voting and meetings of the commission.

21 A. Each member state is limited to one delegate selected by that member state's
22 licensing board.

23 B. The delegate must be either:

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

26 (2) An administrator of the licensing board.

27 C. A member state's delegate may be removed or suspended from office as provided
28 by the law of the state from which the delegate is appointed.

29 D. The member state's licensing board shall fill any vacancy occurring in the
30 commission within 90 days.

31 E. Each delegate is entitled to one vote with regard to the promulgation of rules and
32 creation of bylaws and must otherwise have an opportunity to participate in the
33 business and affairs of the commission. A delegate shall vote in person or by such
34 other means as provided in the bylaws. The bylaws may provide for delegates'
35 participation in meetings by telephone or other means of communication.

36 F. The commission shall meet at least once during each calendar year. Additional
37 meetings may be held as set forth in the bylaws.

38 G. The commission shall establish by rule a term of office for delegates.

39 3. Powers and duties of commission. The commission has the following powers and
40 duties:

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COMMITTEE AMENDMENT "A" to S.P. 39, L.D. 31 (S.305)

- 1 A. Establish a code of ethics for the commission;
- 2 B. Establish the fiscal year of the commission;
- 3 C. Establish bylaws;
- 4 D. Maintain the commission's financial records in accordance with the bylaws;
- 5 E. Meet and take such actions as are consistent with the provisions of this compact and
6 the bylaws;
- 7 F. Promulgate uniform rules to facilitate and coordinate implementation and
8 administration of this compact. The rules have the force and effect of law and are
9 binding in all member states;
- 10 G. Bring and prosecute legal proceedings or actions in the name of the commission,
11 except that the standing of any occupational therapy licensing board to sue or be sued
12 under applicable law is not affected;
- 13 H. Purchase and maintain insurance and bonds;
- 14 I. Borrow, accept or contract for services of personnel, including, but not limited to,
15 employees of a member state;
- 16 J. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
17 individuals appropriate authority to carry out the purposes of the compact and establish
18 the commission's personnel policies and programs relating to conflicts of interest,
19 qualifications of personnel and other related personnel matters;
- 20 K. Accept any and all appropriate donations and grants of money, equipment, supplies,
21 materials and services and receive, use and dispose of the same, as long as at all times
22 the commission avoids any appearance of impropriety or conflict of interest;
- 23 L. Lease, purchase, accept appropriate gifts or donations of or otherwise own, hold,
24 improve or use any property, real, personal or mixed, as long as at all times the
25 commission avoids any appearance of impropriety;
- 26 M. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
27 any property, real, personal or mixed;
- 28 N. Establish a budget and make expenditures;
- 29 O. Borrow money;
- 30 P. Appoint committees, including standing committees, composed of members, state
31 regulators, state legislators or their representatives and consumer representatives and
32 such other interested persons as may be designated in this compact and the bylaws;
- 33 Q. Provide and receive information from, and cooperate with, law enforcement
34 agencies;
- 35 R. Establish and elect an executive committee; and
- 36 S. Perform such other functions as may be necessary or appropriate to achieve the
37 purposes of this compact consistent with the state regulation of occupational therapy
38 licensure and practice.
- 39 4. Executive committee. The executive committee has the power to act on behalf of
40 the commission according to the terms of this compact in accordance with this subsection.

COMMITTEE AMENDMENT

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- 1 A. The executive committee is composed of the following 9 members:
2 (1) Seven voting members who are elected by the commission from the current
3 membership of the commission;
4 (2) One ex officio, nonvoting member from a recognized national occupational
5 therapy professional association; and
6 (3) One ex officio, nonvoting member from a recognized national occupational
7 therapy certification organization.
8 B. The ex officio members under paragraph A must be selected by their respective
9 organizations.
10 C. The commission may remove any member of the executive committee as provided
11 in the bylaws.
12 D. The executive committee shall meet at least annually.
13 E. The executive committee shall:
14 (1) Recommend to the entire commission changes to the rules or bylaws, changes
15 to this compact, fees paid by member states such as annual dues and any
16 commission compact fee charged to licensees for the compact privilege;
17 (2) Ensure compact administration services are appropriately provided,
18 contractually or otherwise;
19 (3) Prepare and recommend the budget;
20 (4) Maintain financial records on behalf of the commission;
21 (5) Monitor compact compliance of member states and provide compliance reports
22 to the commission;
23 (6) Establish additional committees as necessary; and
24 (7) Perform other duties as provided in the rules or bylaws.
25 **5. Public and nonpublic meetings.** This subsection governs the requirements for
26 public and nonpublic meetings of the commission.
27 A. All meetings must be open to the public, and public notice of meetings must be
28 given in the same manner as required under the rule-making provisions in section 2296.
29 B. The commission or the executive committee or other committees of the commission
30 may convene in a closed, nonpublic meeting if the commission or executive committee
31 or other committees of the commission must discuss:
32 (1) Noncompliance of a member state with its obligations under the compact;
33 (2) The employment, compensation, discipline or other matters, practices or
34 procedures related to specific employees or other matters related to the
35 commission's internal personnel practices and procedures;
36 (3) Current, threatened or reasonably anticipated litigation;
37 (4) Negotiation of contracts for the purchase, lease or sale of goods, services or
38 real estate;
39 (5) Accusing any person of a crime or formally censuring any person;

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- 1 (6) Disclosure of trade secrets or commercial or financial information that is
- 2 privileged or confidential;
- 3 (7) Disclosure of information of a personal nature if disclosure would constitute a
- 4 clearly unwarranted invasion of personal privacy;
- 5 (8) Disclosure of investigative records compiled for law enforcement purposes;
- 6 (9) Disclosure of information related to any investigative reports prepared by or
- 7 on behalf of or for use of the commission or other committee charged with
- 8 responsibility of investigation or determination of compliance issues pursuant to
- 9 the compact; or
- 10 (10) Matters specifically exempted from disclosure by federal or member state
- 11 statute.
- 12 C. If a meeting, or portion of a meeting, is closed pursuant to this subsection, the
- 13 commission's legal counsel or legal counsel's designee shall certify that the meeting
- 14 may be closed and shall reference each relevant exempting provision.
- 15 D. The commission shall keep minutes that fully and clearly describe all matters
- 16 discussed in a meeting and shall provide a full and accurate summary of actions taken,
- 17 and the reasons for those actions, including a description of the views expressed. All
- 18 documents considered in connection with an action must be identified in the minutes.
- 19 All minutes and documents of a closed meeting must remain under seal, subject to
- 20 release by a majority vote of the commission or order of a court of competent
- 21 jurisdiction.
- 22 **6. Financing of commission.** This subsection governs the financial operations of the
- 23 commission.
- 24 A. The commission shall pay, or provide for the payment of, the reasonable expenses
- 25 of its establishment, organization and ongoing activities.
- 26 B. The commission may accept any and all appropriate revenue sources, donations and
- 27 grants of money, equipment, supplies, materials and services.
- 28 C. The commission may levy on and collect from each member state an annual
- 29 assessment or impose fees on other parties to cover the cost of the operations and
- 30 activities of the commission and its staff, which must be in a total amount sufficient to
- 31 cover its annual budget as approved by the commission each year for which revenue is
- 32 not provided by other sources. The aggregate annual assessment amount must be
- 33 allocated based upon a formula to be determined by the commission, which shall
- 34 promulgate a rule binding upon all member states.
- 35 D. The commission may not incur obligations of any kind prior to securing the funds
- 36 adequate to meet the obligations, and the commission may not pledge the credit of any
- 37 of the member states, except by and with the authority of the member state.
- 38 E. The commission shall keep accurate accounts of all receipts and disbursements.
- 39 The receipts and disbursements of the commission are subject to the audit and
- 40 accounting procedures established under its bylaws. However, all receipts and
- 41 disbursements of funds handled by the commission must be audited yearly by a
- 42 certified or licensed public accountant, and the report of the audit must be included in
- 43 and become part of the annual report of the commission.

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7. Qualified immunity, defense and indemnification. This subsection governs immunity provisions and defense and indemnification requirements of the commission.

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

B. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct and except that nothing in this paragraph may be construed to prohibit that person from retaining that person's own counsel.

C. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

§2295. Data system

This subsection governs the requirements for the data system used by the commission.

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

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

- A. Identifying information;
- B. Licensure data;
- C. Adverse actions against a license or compact privilege;
- D. Nonconfidential information related to alternative program participation;
- E. Any denial of application for licensure and the reason for the denial;

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1 F. Other information that may facilitate the administration of this compact, as
2 determined by the rules of the commission; and

3 G. Current significant investigative information.

4 **3. Availability of investigative information.** Current significant investigative
5 information and other investigative information pertaining to a licensee in any member
6 state may be available only to other member states.

7 **4. Notification of adverse action.** The commission shall promptly notify all member
8 states of any adverse action taken against a licensee or an individual applying for a license.
9 Adverse action information pertaining to a licensee in any member state must be available
10 to any other member state.

11 **5. Designation of nonpublic information.** A member state contributing information
12 to the data system may designate information that may not be shared with the public
13 without the express permission of the contributing member state.

14 **6. Expungement of information.** Any information submitted to the data system that
15 is subsequently required to be expunged by the laws of the member state contributing the
16 information must be removed from the data system.

17 **§2296. Rulemaking**

18 **1. Rule-making authority.** The commission shall exercise its rule-making powers
19 pursuant to the criteria set forth in this section and the rules adopted pursuant to this section.
20 Rules and amendments become binding as of the date specified in each rule or amendment.

21 **2. Adoption.** The commission shall promulgate reasonable rules in order to effectively
22 and efficiently achieve the purposes of the compact. If the commission exercises its rule-
23 making authority in a manner that is beyond the scope of the purposes of the compact, or
24 the powers granted in the compact, such an action by the commission is invalid and has no
25 force and effect.

26 **3. Rejection of rules.** If a majority of the legislatures of the member states rejects a
27 rule, by enactment of a statute or resolution in the same manner used to adopt the compact
28 within 4 years of the date of adoption of the rule, the rule has no further force and effect in
29 any member state.

30 **4. Adoption at meeting.** Rules or amendments to the rules must be adopted at a
31 regular or special meeting of the commission.

32 **5. Notice.** Prior to promulgation and adoption of a final rule or rules by the
33 commission, and at least 30 days in advance of the meeting at which the rule will be
34 considered and voted upon, the commission shall file a notice of proposed rulemaking:

35 A. On the website of the commission or other publicly accessible platform; and

36 B. On the website of each member state occupational therapy licensing board or other
37 publicly accessible platform or the publication in which each state would otherwise
38 publish proposed rules.

39 **6. Notice requirements.** The notice of proposed rulemaking under subsection 5 must
40 include:

41 A. The proposed time, date and location of the meeting at which the rule will be
42 considered and voted upon;

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- 1 B. The text of the proposed rule and the reason for the proposed rule;
2 C. A request for comments on the proposed rule from any interested person; and
3 D. The manner in which interested persons may submit notice to the commission of
4 their intention to attend the public hearing and any written comments.
- 5 7. Comments. Prior to adoption of a proposed rule, the commission shall allow
6 persons to submit written data, facts, opinions and arguments, which must be made
7 available to the public.
- 8 8. Opportunity for public hearing. The commission shall grant an opportunity for a
9 public hearing before it adopts a rule or amendment if a hearing is requested by:
- 10 A. At least 25 persons;
11 B. A state or federal governmental subdivision or agency; or
12 C. An association or organization having at least 25 members.
- 13 9. Notice of hearing. If a hearing is held on the proposed rule or amendment, the
14 commission shall publish the place, time and date of the scheduled public hearing. If the
15 hearing is held via electronic means, the commission shall publish the mechanism for
16 access to the electronic hearing.
- 17 A. A person wishing to be heard at the hearing shall notify the executive director of
18 the commission or other designated member in writing of the person's desire to appear
19 and testify at the hearing not less than 5 business days before the scheduled date of the
20 hearing.
- 21 B. A hearing must be conducted in a manner that provides each person who wishes to
22 comment a fair and reasonable opportunity to comment orally or in writing.
- 23 C. All hearings must be recorded. A copy of the recording must be made available on
24 request.
- 25 D. Nothing in this subsection may be construed as requiring a separate hearing on each
26 rule. Rules may be grouped for the convenience of the commission at hearings required
27 by this section.
- 28 10. Consideration of comments. Following the scheduled hearing date, or by the
29 close of business on the scheduled hearing date if the hearing was not held, the commission
30 shall consider all written and oral comments received.
- 31 11. No public hearing. If no written notice of intent to attend the public hearing by
32 interested persons is received, the commission may proceed with promulgation of the
33 proposed rule without a public hearing.
- 34 12. Final action. The commission shall, by majority vote of all members, take final
35 action on the proposed rule and shall determine the effective date of the rule, if any, based
36 on the rule-making record and the full text of the rule.
- 37 13. Emergency rules. Upon determination that an emergency exists, the commission
38 may consider and adopt an emergency rule without prior notice, opportunity for comment
39 or hearing, as long as the usual rulemaking procedures provided in the compact and in this
40 section are retroactively applied to the rule as soon as reasonably possible, in no event later

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than 90 days after the effective date of the rule. For the purposes of this subsection, an emergency rule is a rule that must be adopted immediately in order to:

- A. Meet an imminent threat to public health, safety or welfare;
- B. Prevent a loss of commission or member state funds;
- C. Meet a deadline for the promulgation of an administrative rule that is established by federal law or regulation; or
- D. Protect public health and safety.

14. Revisions. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions must be posted on the publicly accessible website of the commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

§2297. Oversight, dispute resolution and enforcement

1. Oversight. This subsection governs enforcement and proceedings under the compact.

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

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

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

2. Default, technical assistance and termination. This subsection governs default, technical assistance and termination under the compact.

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

- (1) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and any other action to be taken by the commission; and
- (2) Provide remedial training and specific technical assistance regarding the default.

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

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

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

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

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

3. Dispute resolution. This subsection governs dispute resolution under the compact.

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

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

4. Enforcement. This subsection governs enforcement under the compact.

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

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

C. The remedies in this chapter are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

§2298. Date of implementation of compact; associated rules; withdrawal; construction; amendments

1. Effective date. This compact becomes effective on the date on which the compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to

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1 assembly and the promulgation of rules. Thereafter, the commission shall meet and
2 exercise rule-making powers necessary to the implementation and administration of the
3 compact.

4 **2. Effect of rules adopted by compact on member states.** A state that joins the
5 compact subsequent to the commission's initial adoption of the rules is subject to the rules
6 as they exist on the date on which the compact becomes law in that state. Any rule that has
7 been previously adopted by the commission has the full force and effect of law on the date
8 the compact becomes law in that state.

9 **3. Withdrawal.** A member state may withdraw from this compact by enacting a
10 statute repealing the compact.

11 A. A member state's withdrawal does not take effect until 6 months after enactment of
12 the repealing statute.

13 B. Withdrawal does not affect the continuing requirement of the withdrawing state's
14 occupational therapy licensing board to comply with the investigative and adverse
15 action reporting requirements of this Act prior to the effective date of withdrawal.

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

20 **5. Amendments.** This compact may be amended by the member states. An
21 amendment to this compact does not become effective and binding upon any member state
22 until it is enacted into the statutes of all member states.

23 **§2299. Construction and severability**

24 This compact must be liberally construed so as to effectuate its purposes. The
25 provisions of this compact are severable and if any phrase, clause, sentence or provision of
26 this compact is declared to be contrary to the constitution of any member state or of the
27 United States or the applicability of this compact to any government, agency, person or
28 circumstance is held invalid, the validity of the remainder of this compact and the
29 applicability of this compact to any government, agency, person or circumstance are not
30 affected. If this compact is held to be contrary to the constitution of any member state, the
31 compact remains in full force and effect as to the remaining member states and in full force
32 and effect as to the member state affected as to all severable matters.

33 **§2300. Binding effect of compact and other laws**

34 A licensee providing occupational therapy in a remote state under the compact
35 privilege shall function within the laws and regulations of the remote state. Nothing in this
36 compact prevents the enforcement of any other law of a member state that is not
37 inconsistent with the compact. Any laws in a member state in conflict with the compact
38 are superseded to the extent of the conflict. Any lawful actions of the commission,
39 including all rules and bylaws promulgated by the commission, are binding upon the
40 member states. All agreements between the commission and the member states are binding
41 in accordance with their terms. If any provision of the compact exceeds the constitutional
42 limits imposed on the legislature of any member state, the provision is ineffective to the
43 extent of the conflict with the constitutional provision in question in that member state.

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Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF
Licensing and Enforcement 0352**

Initiative: Allocates ongoing funds for the cost of participating in the Occupational Therapy Licensure Compact.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$3,500	\$3,500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$3,500	\$3,500

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill, which is a concept draft. The amendment enacts the Occupational Therapy Licensure Compact, an interstate compact designed to facilitate the practice of occupational therapy across state boundaries to improve access to occupational therapy services where the patient is located at the time of the encounter. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED
(See attached)



130th MAINE LEGISLATURE

LD 31

LR 242(02)

An Act To Adopt the Occupational Therapy Licensure Compact

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-365)
Committee: Health Coverage, Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Potential future biennium revenue decrease - Other Special Revenue Funds

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Appropriations/Allocations				
Other Special Revenue Funds	\$3,500	\$3,500	\$3,500	\$3,500

Fiscal Detail and Notes

This bill includes ongoing Other Special Revenue Funds allocations of \$3,500 per year beginning in fiscal year 2021-22 to the Licensing and Enforcement program within the Department of Professional and Financial Services for the costs associated with participating in the Occupational Therapy Licensure Compact. The Board of Occupational Therapy has sufficient revenue to support these costs without raising fees. There is a potential that the board may see a decrease in revenue from licensing fees in future biennia if participation in the compact results in fewer applications