

H.247: An act relating to Vermont’s adoption of the Occupational Therapy Licensure Compact

Section-by-section summary of bill as introduced
Prepared by Jennifer Carbee, Office of Legislative Counsel
January 3, 2024

Sec. 1. Enacts 26 V.S.A. chapter 71, subchapter 2:

§ 3365. Adoption

- Subchapter is Vermont’s adoption of the Occupational Therapy Licensure Compact

§ 3366. Purpose

- Purpose of Compact is to facilitate interstate practice of occupational therapy (OT) with goal of improving public access to OT services
- Practice of OT occurs in state where patient/client is located at time of patient/client encounter
- Compact objectives:
 - Increase public’s access to OT services through mutual recognition of other member states’ licenses
 - Enhance states’ ability to protect public health and safety
 - Encourage cooperation of member states in regulating multistate OT practice
 - Support spouses of relocating military members
 - Enhance exchange of licensure, investigative, and disciplinary information between member states
 - Allow remote state to hold Compact-participating provider accountable to that state’s practice standards
 - Facilitate use of telehealth to increase access to OT services

§ 3367. Definitions

- Defines Compact terms, including:
 - “Compact privilege” – authorization equivalent to a license granted by remote state to allow licensee of another state to practice as occupational therapist or occupational therapy assistant in remote state under its laws and rules; practice occurs in member state where patient/client is located during encounter
 - “Home state” – member state that is a licensee’s primary state of residence
 - “Jurisprudence requirement” – assessment of individual’s knowledge of laws and rules governing OT practice in a state
 - “Member state” – a state that has enacted the Compact
 - “Remote state” – a member state other than the home state where licensee exercises or seeks to exercise the Compact privilege
 - “Single-state license” – occupational therapist or occupational therapy assistant license issued by a member state that authorizes practice only in the issuing state and does not include a Compact privilege in any other member state

§ 3368. State Participation in the Compact

- To participate in the Compact, a member state must:
 - License occupational therapists and occupational therapy assistants
 - Participate in the Compact Commission’s data system

- Have a mechanism in place to receive and investigate complaints about licensees
- Notify Commission of any adverse action against or investigative information about a licensee
- Consider criminal history records of applicants for initial Compact privilege
- Comply with Commission's rules
- Use only recognized national examination as requirement for license
- Require continuing competence/education for license renewal
- A member state must grant a Compact privilege to a licensee who has a valid, unencumbered license in another member state
- Member states may charge a fee for granting the Compact privilege
- Member states must provide for their state delegate to attend all Commission meetings
- Nonresidents can continue to apply for a member state's single-state license, but that does not grant them the Compact privilege in any other member state

§ 3369. Compact Privilege

- To exercise the Compact privilege, a licensee must:
 - Hold a license in their home state
 - Have a valid Social Security number or National Practitioner Identification number
 - Not have an encumbrance on any state license
 - Be eligible for the Compact privilege in any member state
 - Notify Commission of intent to seek the Compact privilege in remote state(s)
 - Pay applicable fees, including any state fee, for the Compact privilege
 - Complete required criminal background check
 - Meet any jurisprudence requirements of remote state(s) in which seeking the Compact privilege
 - Report to the Commission adverse action taken by any nonmember state within 30 days after the adverse action is taken
- Compact privilege is valid until expiration date of home state license (i.e., must keep active home state license)
- Licensee providing OT in remote state must function within remote state's laws and regulations
- Occupational therapy assistants practicing in remote state must be supervised by occupational therapist holding license or Compact privilege in that remote state
- Licensee providing OT in a remote state is subject to that state's regulatory authority
 - Includes ability for remote state to remove licensee's Compact privilege in that state for a specified period of time, impose fees, and take other actions to protect health and safety of its citizens
- If home state license is encumbered, licensee will lose Compact privilege in any remote state until two years after home state license is no longer encumbered
- If licensee's Compact privilege in any remote state is removed, licensee may lose Compact privilege in any other remote state until:
 - Specific period of time of removal has ended
 - All fines have been paid and all conditions met
 - Two years have passed from end of removal, payment of fines, and meeting of conditions
 - Commission reinstates Compact privileges and updates data system accordingly

§ 3370. Obtaining New Home State License by Virtue of Compact Privilege

- Practitioner can only hold a home state license, which allows Compact privileges in member states, in one member state at a time
 - Can still hold single-state license in multiple states, just only one “home” state
- If practitioner moves from one member state to another, must apply for new home state license by virtue of a Compact privilege, pay required fees, and notify current and new home states
- New home state can rely on Compact data system to verify relevant criteria except that licensee will to get need an FBI fingerprint-based criminal background check if not done previously, complete other criminal background checks required by the new home state, and submit any jurisprudence requirements of new home state
- Licensee must pay all applicable fees to new home state for new home state license
- If licensee moves from member state to nonmember state, or from nonmember state to member state, state criteria apply for issuance of single-state license in new state

§ 3371. Active Duty Military Personnel or Their Spouses

- Active-duty military personnel or their spouse must designate a home state in which currently licensed in good standing
 - Can keep that home state designation while service member on active duty
 - After designating a home state, can only change home state through application for licensure in new state or by process for obtaining by virtue of Compact privilege

§ 3372. Adverse Actions

- Home state retains exclusive authority to impose adverse action over home state license
- Remote states can take adverse action against licensee’s Compact privilege in that member state, can issue enforceable subpoenas for witnesses and evidence
- Home state must give same priority and effect to reported conduct received from member state as it would if conduct occurred in home state, applying home state laws to determine appropriate action
- Member state may take adverse action based on factual findings of remote state, but member state must follow its own procedures for taking adverse action
- Provisions relating to individual and joint investigations
- If adverse action taken by home state against an occupational therapist’s or occupational therapy assistant’s license, the licensee’s Compact privilege in all other member states is deactivated until all encumbrances removed from state license
- Member states must promptly notify administrator of data system if take adverse action; administrator must promptly notify home state of adverse actions taken by member states

§ 3373. Establishment of the Occupational Therapy Compact Commission

- Occupational Therapy Compact Commission created by member states
- Each member state has one delegate selected by its licensing board, who is either an administrator of the licensing board or a current member of the licensing board who is an occupational therapist, occupational therapy assistant, or public member
- Each delegate is entitled to one vote

- Description of Commission’s powers and duties, including establishing bylaws, promulgating rules that are binding on member states, establishing a budget, making expenditures, and establishing and electing the Executive Committee
- Nine-member Executive Committee; duties include recommending to the full Commission changes to rules, bylaws, Compact legislation, and member state fees
- Commission authorized to impose an annual assessment on each member state or fees on other parties

§ 3374. Data System

- Commission must provide for coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensees in member states
- Requires member states to submit uniform data set on all individuals to whom Compact applies, including identifying information, licensure data, adverse actions against license or Compact privilege, denials of applications for licensure, and current significant investigative information
- Commission must promptly notify all member states of any adverse action taken against a licensee or applicant

§ 3375. Rulemaking

- Commission must promulgate reasonable rules to effectively and efficiently achieve the Compact’s purposes
- A majority of the legislatures of the member states can reject a rule by enacting a statute or resolution within four years of the date of the rule’s adoption
- Rules and rule amendments will be adopted at Commission meetings; advance notice of purposed rulemaking to be issued and, upon request, opportunity provided for public hearing

§ 3376. Oversight, Dispute Resolution, and Enforcement

- Procedures if a member state defaults on performance of its duties under the Compact or Compact rules, including providing written notice to defaulting state and other member states on nature of default and proposed means of cure and remedial training and technical assistance
 - Defaulting state that fails to cure default may be terminated from Compact on affirmative vote of majority of member states, but termination is last resort
 - Defaulting state can appeal to federal court
- Commission will attempt to resolve Compact-related disputes between states, upon request

§ 3377. Date of Implementation of the Interstate Commission for Occupational Therapy Practice and Associated Rules, Withdrawal, and Amendment

- Compact comes into effect on date of enactment in 10th member state (28 states currently)
- A member state can withdraw from Compact by repealing enacting statute; withdrawal takes effect six months after enactment of repealing statute
- Amendments to Compact only effective and binding upon enactment by all member states

§ 3378. Construction and Severability

- If any provision of Compact is declared to conflict with a state constitution or the U.S. Constitution or its applicability in any circumstance is held invalid, the rest of the Compact remains valid; to the extent of conflict with a member state’s constitution, the Compact

remains in full force and effect as to the remaining states and the severable portions apply to the member state

§ 3379. Binding Effect of Compact and Other Laws

- Licensee providing OT in remote state under Compact privilege must operate within laws and regulations of remote state
- Compact is binding

Sec. 2. Effective Date

- Effective on January 1, 2024 (as drafted)