

ESHB 1576 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 04/06/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act shall be known and cited as the
4 dentist and dental hygienist compact. The purposes of this compact
5 are to facilitate the interstate practice of dentistry and dental
6 hygiene and improve public access to dentistry and dental hygiene
7 services by providing dentists and dental hygienists licensed in a
8 participating state the ability to practice in participating states
9 in which they are not licensed. The compact does this by establishing
10 a pathway for dentists and dental hygienists licensed in a
11 participating state to obtain a compact privilege that authorizes
12 them to practice in another participating state in which they are not
13 licensed. The compact enables participating states to protect the
14 public health and safety with respect to the practice of such
15 dentists and dental hygienists, through the state's authority to
16 regulate the practice of dentistry and dental hygiene in the state.
17 The compact:

18 (1) Enables dentists and dental hygienists who qualify for a
19 compact privilege to practice in other participating states without
20 satisfying burdensome and duplicative requirements associated with
21 securing a license to practice in those states;

22 (2) Promotes mobility and addresses workforce shortages through
23 each participating state's acceptance of a compact privilege to
24 practice in that state;

25 (3) Increases public access to qualified, licensed dentists and
26 dental hygienists by creating a responsible, streamlined pathway for
27 licensees to practice in participating states;

28 (4) Enhances the ability of participating states to protect the
29 public's health and safety;

30 (5) Does not interfere with licensure requirements established by
31 a participating state;

1 (6) Facilitates the sharing of licensure and disciplinary
2 information among participating states;

3 (7) Requires dentists and dental hygienists who practice in a
4 participating state pursuant to a compact privilege to practice
5 within the scope of practice authorized in that state;

6 (8) Extends the authority of a participating state to regulate
7 the practice of dentistry and dental hygiene within its borders to
8 dentists and dental hygienists who practice in the state through a
9 compact privilege;

10 (9) Promotes the cooperation of participating states in
11 regulating the practice of dentistry and dental hygiene within those
12 states; and

13 (10) Facilitates the relocation of military members and their
14 spouses who are licensed to practice dentistry or dental hygiene.

15 NEW SECTION. **Sec. 2.** As used in this compact, unless the
16 context requires otherwise, the following definitions shall apply:

17 (1) "Active military member" means any individual in full-time
18 duty status in the armed forces of the United States including
19 members of the national guard and reserve.

20 (2) "Adverse action" means disciplinary action or encumbrance
21 imposed on a license or compact privilege by a state licensing
22 authority.

23 (3) "Alternative program" means a nondisciplinary monitoring or
24 practice remediation process applicable to a dentist or dental
25 hygienist approved by a state licensing authority of a participating
26 state in which the dentist or dental hygienist is licensed. This
27 includes, but is not limited to, programs to which licensees with
28 substance abuse or addiction issues are referred in lieu of adverse
29 action.

30 (4) "Clinical assessment" means an examination or process,
31 required for licensure as a dentist or dental hygienist as
32 applicable, that provides evidence of clinical competence in
33 dentistry or dental hygiene.

34 (5) "Commissioner" means the individual appointed by a
35 participating state to serve as the member of the commission for that
36 participating state.

37 (6) "Compact" means this dentist and dental hygienist compact.

1 (7) "Compact privilege" means the authorization granted by a
2 remote state to allow a licensee from a participating state to
3 practice as a dentist or dental hygienist in a remote state.

4 (8) "Continuing professional development" means a requirement, as
5 a condition of license renewal, to provide evidence of successful
6 participation in educational or professional activities relevant to
7 practice or area of work.

8 (9) "Criminal background check" means the submission of
9 fingerprints or other biometric-based information for a license
10 applicant for the purpose of obtaining that applicant's criminal
11 history record information, as defined in 28 C.F.R. Sec. 20.3(d) from
12 the federal bureau of investigation and the state's criminal history
13 record repository as defined in 28 C.F.R. Sec. 20.3(f).

14 (10) "Data system" means the commission's repository of
15 information about licensees, including but not limited to
16 examination, licensure, investigative, compact privilege, adverse
17 action, and alternative program information.

18 (11) "Dental hygienist" means an individual who is licensed by a
19 state licensing authority to practice dental hygiene.

20 (12) "Dentist" means an individual who is licensed by a state
21 licensing authority to practice dentistry.

22 (13) "Dentist and dental hygienist compact commission" or
23 "commission" means a joint government agency established by this
24 compact comprised of each state that has enacted the compact and a
25 national administrative body comprised of a commissioner from each
26 state that has enacted the compact.

27 (14) "Encumbered license" means a license that a state licensing
28 authority has limited in any way other than through an alternative
29 program.

30 (15) "Executive board" means the chair, vice chair, secretary,
31 treasurer, and any other commissioners as may be determined by
32 commission rule or bylaw.

33 (16) "Jurisprudence requirement" means the assessment of an
34 individual's knowledge of the laws and rules governing the practice
35 of dentistry or dental hygiene, as applicable, in a state.

36 (17) "License" means current authorization by a state, other than
37 authorization pursuant to a compact privilege or other privilege, for
38 an individual to practice as a dentist or dental hygienist in that
39 state.

1 (18) "Licensee" means an individual who holds an unrestricted
2 license from a participating state to practice as a dentist or dental
3 hygienist in that state.

4 (19) "Model compact" means the model for the dentist and dental
5 hygienist compact on file with the council of state governments or
6 other entity as designated by the commission.

7 (20) "Participating state" means a state that has enacted the
8 compact and been admitted to the commission in accordance with the
9 provisions herein and commission rules.

10 (21) "Qualifying license" means a license that is not an
11 encumbered license issued by a participating state to practice
12 dentistry or dental hygiene.

13 (22) "Remote state" means a participating state where a licensee
14 who is not licensed as a dentist or dental hygienist is exercising or
15 seeking to exercise the compact privilege.

16 (23) "Rule" means a regulation promulgated by an entity that has
17 the force of law.

18 (24) "Scope of practice" means the procedures, actions, and
19 processes a dentist or dental hygienist licensed in a state is
20 permitted to undertake in that state and the circumstances under
21 which the licensee is permitted to undertake those procedures,
22 actions, and processes. Such procedures, actions, and processes and
23 the circumstances under which they may be undertaken may be
24 established through means including, but not limited to, statutes,
25 regulations, case law, and other processes available to the state
26 licensing authority or other government agency.

27 (25) "Significant investigative information" means information,
28 records, and documents received or generated by a state licensing
29 authority pursuant to an investigation for which a determination has
30 been made that there is probable cause to believe that the licensee
31 has violated a statute or regulation that is considered more than a
32 minor infraction for which the state licensing authority could pursue
33 adverse action against the licensee.

34 (26) "State" means any state, commonwealth, district, or
35 territory of the United States of America that regulates the
36 practices of dentistry and dental hygiene.

37 (27) "State licensing authority" means an agency or other entity
38 of a state that is responsible for the licensing and regulation of
39 dentists or dental hygienists.

1 NEW SECTION. **Sec. 3.** (1) In order to join the compact and
2 thereafter continue as a participating state, a state must:

3 (a) Enact a compact that is not materially different from the
4 model compact as determined in accordance with commission rules;

5 (b) Participate fully in the commission's data system;

6 (c) Have a mechanism in place for receiving and investigating
7 complaints about its licensees and license applicants;

8 (d) Notify the commission, in compliance with the terms of the
9 compact and commission rules, of any adverse action or the
10 availability of significant investigative information regarding a
11 licensee and license applicant;

12 (e) Fully implement a criminal background check requirement,
13 within a time frame established by commission rule, by receiving the
14 results of a qualifying criminal background check;

15 (f) Comply with the commission rules applicable to a
16 participating state;

17 (g) Accept the national board examinations of the joint
18 commission on national dental examinations or another examination
19 accepted by commission rule as a licensure examination;

20 (h) Accept for licensure that applicants for a dentist license
21 graduate from a predoctoral dental education program accredited by
22 the commission on dental accreditation or another accrediting agency
23 recognized by the United States department of education for the
24 accreditation of dentistry and dental hygiene education programs,
25 leading to the doctor of dental surgery or doctor of dental medicine
26 degree;

27 (i) Accept for licensure that applicants for a dental hygienist
28 license graduate from a dental hygiene education program accredited
29 by the commission on dental accreditation or another accrediting
30 agency recognized by the United States department of education for
31 the accreditation of dentistry and dental hygiene education programs;

32 (j) Require for licensure that applicants successfully complete a
33 clinical assessment;

34 (k) Have continuing professional development requirements as a
35 condition for license renewal; and

36 (l) Pay a participation fee to the commission as established by
37 commission rule.

38 (2) Providing alternative pathways for an individual to obtain an
39 unrestricted license does not disqualify a state from participating
40 in the compact.

1 (3) When conducting a criminal background check the state
2 licensing authority shall:

3 (a) Consider that information in making a licensure decision;

4 (b) Maintain documentation of completion of the criminal
5 background check and background check information to the extent
6 allowed by state and federal law; and

7 (c) Report to the commission whether it has completed the
8 criminal background check and whether the individual was granted or
9 denied a license.

10 (4) A licensee of a participating state who has a qualifying
11 license in that state and does not hold an encumbered license in any
12 other participating state shall be issued a compact privilege in a
13 remote state in accordance with the terms of the compact and
14 commission rules. If a remote state has a jurisprudence requirement a
15 compact privilege will not be issued to the licensee unless the
16 licensee has satisfied the jurisprudence requirement.

17 NEW SECTION. **Sec. 4.** (1) To obtain and exercise the compact
18 privilege under the terms and provisions of the compact, the licensee
19 shall:

20 (a) Have a qualifying license as a dentist or dental hygienist in
21 a participating state;

22 (b) Be eligible for a compact privilege in any remote state in
23 accordance with subsections (4), (7), and (8) of this section;

24 (c) Submit to an application process whenever the licensee is
25 seeking a compact privilege;

26 (d) Pay any applicable commission and remote state fees for a
27 compact privilege in the remote state;

28 (e) Meet any jurisprudence requirement established by a remote
29 state in which the licensee is seeking a compact privilege;

30 (f) Have passed a national board examination of the joint
31 commission on national dental examinations or another examination
32 accepted by commission rule;

33 (g) For a dentist, have graduated from a predoctoral dental
34 education program accredited by the commission on dental
35 accreditation or another accrediting agency recognized by the United
36 States department of education for the accreditation of dentistry and
37 dental hygiene education programs, leading to the doctor of dental
38 surgery or doctor of dental medicine degree;

1 (h) For a dental hygienist, have graduated from a dental hygiene
2 education program accredited by the commission on dental
3 accreditation or another accrediting agency recognized by the United
4 States department of education for the accreditation of dentistry and
5 dental hygiene education programs;

6 (i) Have successfully completed a clinical assessment for
7 licensure;

8 (j) Report to the commission adverse action taken by any
9 nonparticipating state when applying for a compact privilege and,
10 otherwise, within 30 days from the date the adverse action is taken;

11 (k) Report to the commission when applying for a compact
12 privilege the address of the licensee's primary residence and
13 thereafter immediately report to the commission any change in the
14 address of the licensee's primary residence; and

15 (1) Consent to accept service of process by mail at the
16 licensee's primary residence on record with the commission with
17 respect to any action brought against the licensee by the commission
18 or a participating state, and consent to accept service of a subpoena
19 by mail at the licensee's primary residence on record with the
20 commission with respect to any action brought or investigation
21 conducted by the commission or a participating state.

22 (2) The licensee must comply with the requirements of subsection
23 (1) of this section to maintain the compact privilege in the remote
24 state. If those requirements are met, the compact privilege will
25 continue as long as the licensee maintains a qualifying license in
26 the state through which the licensee applied for the compact
27 privilege and pays any applicable compact privilege renewal fees.

28 (3) A licensee providing dentistry or dental hygiene in a remote
29 state under the compact privilege shall function within the scope of
30 practice authorized by the remote state for a dentist or dental
31 hygienist licensed in that state.

32 (4) A licensee providing dentistry or dental hygiene pursuant to
33 a compact privilege in a remote state is subject to that state's
34 regulatory authority. A remote state may, in accordance with due
35 process and that state's laws, by adverse action revoke or remove a
36 licensee's compact privilege in the remote state for a specific
37 period of time and impose fines or take any other necessary actions
38 to protect the health and safety of its citizens. If a remote state
39 imposes an adverse action against a compact privilege that limits the
40 compact privilege, that adverse action applies to all compact

1 privileges in all remote states. A licensee whose compact privilege
2 in a remote state is removed for a specified period of time is not
3 eligible for a compact privilege in any other remote state until the
4 specific time for removal of the compact privilege has passed and all
5 encumbrance requirements are satisfied.

6 (5) If a license in a participating state is an encumbered
7 license, the licensee shall lose the compact privilege in a remote
8 state and shall not be eligible for a compact privilege in any remote
9 state until the license is no longer encumbered.

10 (6) Once an encumbered license in a participating state is
11 restored to good standing, the licensee must meet the requirements of
12 subsection (1) of this section to obtain a compact privilege in a
13 remote state.

14 (7) If a licensee's compact privilege in a remote state is
15 removed by the remote state, the individual shall lose or be
16 ineligible for the compact privilege in any remote state until the
17 following occur:

18 (a) The specific period of time for which the compact privilege
19 was removed has ended; and

20 (b) All conditions for removal of the compact privilege have been
21 satisfied.

22 (8) Once the requirements of subsection (7) of this section have
23 been met, the licensee must meet the requirements in subsection (1)
24 of this section to obtain a compact privilege in a remote state.

25 NEW SECTION. **Sec. 5.** An active military member and their spouse
26 shall not be required to pay to the commission for a compact
27 privilege the fee otherwise charged by the commission. If a remote
28 state chooses to charge a fee for a compact privilege, it may choose
29 to charge a reduced fee or no fee to an active military member and
30 their spouse for a compact privilege.

31 NEW SECTION. **Sec. 6.** (1) A participating state in which a
32 licensee is licensed shall have exclusive authority to impose adverse
33 action against the qualifying license issued by that participating
34 state.

35 (2) A participating state may take adverse action based on the
36 significant investigative information of a remote state, so long as
37 the participating state follows its own procedures for imposing
38 adverse action.

1 (3) Nothing in this compact shall override a participating
2 state's decision that participation in an alternative program may be
3 used in lieu of adverse action and that such participation shall
4 remain nonpublic if required by the participating state's laws.
5 Participating states must require licensees who enter any alternative
6 program in lieu of discipline to agree not to practice pursuant to a
7 compact privilege in any other participating state during the term of
8 the alternative program without prior authorization from such other
9 participating state.

10 (4) Any participating state in which a licensee is applying to
11 practice or is practicing pursuant to a compact privilege may
12 investigate actual or alleged violations of the statutes and
13 regulations authorizing the practice of dentistry or dental hygiene
14 in any other participating state in which the dentist or dental
15 hygienist holds a license or compact privilege.

16 (5) A remote state shall have the authority to:

17 (a) Take adverse actions as set forth in section 4(4) of this act
18 against a licensee's compact privilege in the state;

19 (b) In furtherance of its rights and responsibilities under the
20 compact and the commission's rules, issue subpoenas for both hearings
21 and investigations that require the attendance and testimony of
22 witnesses and the production of evidence. Subpoenas issued by a state
23 licensing authority in a participating state for the attendance and
24 testimony of witnesses or the production of evidence from another
25 participating state shall be enforced in the latter state by any
26 court of competent jurisdiction, according to the practice and
27 procedure of that court applicable to subpoenas issued in proceedings
28 pending before it. The issuing authority shall pay any witness fees,
29 travel expenses, mileage, and other fees required by the service
30 statutes of the state where the witnesses or evidence is located; and

31 (c) If otherwise permitted by state law, recover from the
32 licensee the costs of investigations and disposition of cases
33 resulting from any adverse action taken against that licensee.

34 (6) (a) In addition to the authority granted to a participating
35 state by its dentist or dental hygienist licensure act or other
36 applicable state law, a participating state may jointly investigate
37 licensees with other participating states.

38 (b) Participating states shall share any significant
39 investigative information, litigation, or compliance materials in

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

3 (7) (a) After a licensee's compact privilege in a remote state is
4 terminated, the remote state may continue an investigation of the
5 licensee that began when the licensee had a compact privilege in that
6 remote state.

7 (b) If the investigation yields what would be significant
8 investigative information had the licensee continued to have a
9 compact privilege in that remote state, the remote state shall report
10 the presence of such information to the data system as required by
11 section 8(2)(f) of this act as if it was significant investigative
12 information.

13 NEW SECTION. **Sec. 7.** (1) The compact participating states
14 hereby create and establish a joint government agency whose
15 membership consists of all participating states that have enacted the
16 compact. The commission is an instrumentality of the participating
17 states acting jointly and not an instrumentality of any one state.
18 The commission shall come into existence on or after the effective
19 date of the compact as set forth in section 11(1) of this act.

20 (2) (a) Each participating state shall have and be limited to one
21 commissioner selected by that participating state's state licensing
22 authority or, if the state has more than one state licensing
23 authority, selected collectively by the state licensing authorities.

24 (b) The commissioner shall be a member or designee of such
25 authority or authorities.

26 (c) The commission may by rule or bylaw establish a term of
27 office for commissioners and may by rule or bylaw establish term
28 limits.

29 (d) The commission may recommend to a state licensing authority
30 or authorities, as applicable, removal or suspension of an individual
31 as the state's commissioner.

32 (e) A participating state's state licensing authority or
33 authorities, as applicable, shall fill any vacancy of its
34 commissioner on the commission within 60 days of the vacancy.

35 (f) Each commissioner shall be entitled to one vote on all
36 matters that are voted upon by the commission.

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

1 commission may meet by telecommunication, videoconference, or other
2 similar electronic means.

3 (3) The commission shall have the following powers:

4 (a) Establish the fiscal year of the commission;

5 (b) Establish a code of conduct and conflict of interest
6 policies;

7 (c) Adopt rules and bylaws;

8 (d) Maintain its financial records in accordance with the bylaws;

9 (e) Meet and take such actions as are consistent with the
10 provisions of this compact, the commission's rules, and the bylaws;

11 (f) Initiate and conclude legal proceedings or actions in the
12 name of the commission, provided that the standing of any state
13 licensing authority to sue or be sued under applicable law shall not
14 be affected;

15 (g) Maintain and certify records and information provided to a
16 participating state as the authenticated business records of the
17 commission, and designate a person to do so on the commission's
18 behalf;

19 (h) Purchase and maintain insurance and bonds;

20 (i) Borrow, accept, or contract for services of personnel
21 including, but not limited to, employees of a participating state;

22 (j) Conduct an annual financial review;

23 (k) Hire employees, elect or appoint officers, fix compensation,
24 define duties, grant such individuals appropriate authority to carry
25 out the purposes of the compact, and establish the commission's
26 personnel policies and programs relating to conflicts of interest,
27 qualifications of personnel, and other related personnel matters;

28 (l) As set forth in the commission rules, charge a fee to a
29 licensee for the grant of a compact privilege in a remote state and
30 thereafter, as may be established by commission rule, charge the
31 licensee a compact privilege renewal fee for each renewal period in
32 which that licensee exercises or intends to exercise the compact
33 privilege in that remote state. Nothing herein shall be construed to
34 prevent a remote state from charging a licensee a fee for a compact
35 privilege or renewals of a compact privilege, or a fee for the
36 jurisprudence requirement if the remote state imposes such a
37 requirement for the grant of a compact privilege;

38 (m) Accept any and all appropriate gifts, donations, grants of
39 money, other sources of revenue, equipment, supplies, materials, and
40 services, and receive, utilize, and dispose of the same; provided

1 that at all times the commission shall avoid any appearance of
2 impropriety and/or conflict of interest;

3 (n) Lease, purchase, retain, own, hold, improve, or use any
4 property, real, personal, or mixed, or any undivided interest
5 therein;

6 (o) Sell, convey, mortgage, pledge, lease, exchange, abandon, or
7 otherwise dispose of any property, real, personal, or mixed;

8 (p) Establish a budget and make expenditures;

9 (q) Borrow money;

10 (r) Appoint committees, including standing committees, which may
11 be composed of members, state regulators, state legislators or their
12 representatives, consumer representatives, and such other interested
13 persons as may be designated in this compact and the bylaws;

14 (s) Provide and receive information from, and cooperate with, law
15 enforcement agencies;

16 (t) Elect a chair, vice chair, secretary, treasurer, and such
17 other officers of the commission as provided in the commission's
18 bylaws;

19 (u) Establish and elect an executive board;

20 (v) Adopt and provide to the participating states an annual
21 report;

22 (w) Determine whether a state's enacted compact is materially
23 different from the model compact language such that the state would
24 not qualify for participation in the compact; and

25 (x) Perform such other functions as may be necessary or
26 appropriate to achieve the purposes of this compact.

27 (4)(a) All meetings of the commission that are not closed
28 pursuant to this subsection shall be open to the public. Notice of
29 public meetings shall be posted on the commission's website at least
30 30 days prior to the public meeting.

31 (b) Notwithstanding (a) of this subsection, the commission may
32 convene an emergency public meeting by providing at least 24 hours
33 prior notice on the commission's website, and any other means as
34 provided in the commission's rules, for any of the reasons it may
35 dispense with notice of proposed rule making under section 9(12) of
36 this act. The commission's legal counsel shall certify that one of
37 the reasons justifying an emergency public meeting has been met.

38 (c) Notice of all commission meetings shall provide the time,
39 date, and location of the meeting, and if the meeting is to be held
40 or accessible via telecommunication, videoconference, or other

1 electronic means, the notice shall include the mechanism for access
2 to the meeting through such means.

3 (d) The commission may convene in a closed, nonpublic meeting for
4 the commission to receive legal advice or to discuss:

5 (i) Noncompliance of a participating state with its obligations
6 under the compact;

7 (ii) The employment, compensation, discipline, or other matters,
8 practices, or procedures related to specific employees or other
9 matters related to the commission's internal personnel practices and
10 procedures;

11 (iii) Current or threatened discipline of a licensee or compact
12 privilege holder by the commission or by a participating state's
13 licensing authority;

14 (iv) Current, threatened, or reasonably anticipated litigation;

15 (v) Negotiation of contracts for the purchase, lease, or sale of
16 goods, services, or real estate;

17 (vi) Accusing any person of a crime or formally censuring any
18 person;

19 (vii) Trade secrets or commercial or financial information that
20 is privileged or confidential;

21 (viii) Information of a personal nature where disclosure would
22 constitute a clearly unwarranted invasion of personal privacy;

23 (ix) Investigative records compiled for law enforcement purposes;

24 (x) Information related to any investigative reports prepared by,
25 on behalf of, or for use of the commission or other committee charged
26 with responsibility of investigation or determination of compliance
27 issues pursuant to the compact;

28 (xi) Legal advice;

29 (xii) Matters specifically exempted from disclosure to the public
30 by federal or participating state law; and

31 (xiii) Other matters as promulgated by the commission by rule.

32 (e) If a meeting, or portion of a meeting, is closed, the
33 presiding officer shall state that the meeting will be closed and
34 reference each relevant exempting provision, and such reference shall
35 be recorded in the minutes.

36 (f) The commission shall keep minutes that fully and clearly
37 describe all matters discussed in a meeting and shall provide a full
38 and accurate summary of actions taken and the reasons therefore,
39 including a description of the views expressed. All documents
40 considered in connection with an action shall be identified in such

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

4 (5) (a) The commission shall pay, or provide for the payment of,
5 the reasonable expenses of its establishment, organization, and
6 ongoing activities.

7 (b) The commission may accept any and all appropriate sources of
8 revenue, donations, and grants of money, equipment, supplies,
9 materials, and services.

10 (c) The commission may levy on and collect an annual assessment
11 from each participating state and impose fees on licensees of
12 participating states when a compact privilege is granted to cover the
13 cost of the operations and activities of the commission and its
14 staff, which must be in a total amount sufficient to cover its annual
15 budget as approved each fiscal year for which sufficient revenue is
16 not provided by other sources. The aggregate annual assessment amount
17 for participating states shall be allocated based upon a formula that
18 the commission shall promulgate by rule.

19 (d) The commission shall not incur obligations of any kind prior
20 to securing the funds adequate to meet the same; nor shall the
21 commission pledge the credit of any participating state, except by
22 and with the authority of the participating state.

23 (e) The commission shall keep accurate accounts of all receipts
24 and disbursements. The receipts and disbursements of the commission
25 shall be subject to the financial review and accounting procedures
26 established under its bylaws. All receipts and disbursements of funds
27 handled by the commission shall be subject to an annual financial
28 review by a certified or licensed public accountant, and the report
29 of the financial review shall be included in and become part of the
30 annual report of the commission.

31 (6) (a) The executive board shall have the power to act on behalf
32 of the commission according to the terms of this compact. The powers,
33 duties, and responsibilities of the executive board shall include:

34 (i) Overseeing the day-to-day activities of the administration of
35 the compact including compliance with the provisions of the compact
36 and the commission's rules and bylaws;

37 (ii) Recommending to the commission changes to the rules or
38 bylaws, changes to this compact legislation, fees charged to compact
39 participating states, fees charged to licensees, and other fees;

1 (iii) Ensuring compact administration services are appropriately
2 provided, including by contract;

3 (iv) Preparing and recommending the budget;

4 (v) Maintaining financial records on behalf of the commission;

5 (vi) Monitoring compact compliance of participating states and
6 providing compliance reports to the commission;

7 (vii) Establishing additional committees as necessary;

8 (viii) Exercising the powers and duties of the commission during
9 the interim between commission meetings, except for adopting or
10 amending rules, adopting or amending bylaws, and exercising any other
11 powers and duties expressly reserved to the commission by rule or
12 bylaw; and

13 (ix) Other duties as provided in the rules or bylaws of the
14 commission.

15 (b) The executive board shall be composed of up to seven members:

16 (i) The chair, vice chair, secretary, and treasurer of the
17 commission, and any other members of the commission who serve on the
18 executive board, shall be voting members of the executive board; and

19 (ii) Other than the chair, vice chair, secretary, and treasurer,
20 the commission may elect up to three voting members from the current
21 membership of the commission.

22 (c) The commission may remove any member of the executive board
23 as provided in the commission's bylaws.

24 (d) The executive board shall meet at least annually.

25 (i) An executive board meeting at which it takes or intends to
26 take formal action on a matter shall be open to the public, except
27 that the executive board may meet in a closed, nonpublic session of a
28 public meeting when dealing with any of the matters covered under
29 subsection (4) (d) of this section.

30 (ii) The executive board shall give five business days' notice of
31 its public meetings, posted on its website and as it may otherwise
32 determine to provide notice to persons with an interest in the public
33 matters the executive board intends to address at those meetings.

34 (e) The executive board may hold an emergency meeting when acting
35 for the commission to:

36 (i) Meet an imminent threat to public health, safety, or welfare;

37 (ii) Prevent a loss of commission or participating state funds;

38 or

39 (iii) Protect public health and safety.

1 (7) (a) The members, officers, executive director, employees, and
2 representatives of the commission shall be immune from suit and
3 liability, both personally and in their official capacity, for any
4 claim for damage to or loss of property or personal injury or other
5 civil liability caused by or arising out of any actual or alleged
6 act, error, or omission that occurred, or that the person against
7 whom the claim is made had a reasonable basis for believing occurred
8 within the scope of commission employment, duties, or
9 responsibilities; provided that nothing in this subsection (7) (a)
10 shall be construed to protect any such person from suit or liability
11 for any damage, loss, injury, or liability caused by the intentional
12 or willful or wanton misconduct of that person. The procurement of
13 insurance of any type by the commission shall not in any way
14 compromise or limit the immunity granted hereunder.

15 (b) The commission shall defend any member, officer, executive
16 director, employee, and representative of the commission in any civil
17 action seeking to impose liability arising out of any actual or
18 alleged act, error, or omission that occurred within the scope of
19 commission employment, duties, or responsibilities, or as determined
20 by the commission that the person against whom the claim is made had
21 a reasonable basis for believing occurred within the scope of
22 commission employment, duties, or responsibilities; provided that
23 nothing herein shall be construed to prohibit that person from
24 retaining their own counsel at their own expense; and provided
25 further, that the actual or alleged act, error, or omission did not
26 result from that person's intentional or willful or wanton
27 misconduct.

28 (c) Notwithstanding (a) of this subsection, should any member,
29 officer, executive director, employee, or representative of the
30 commission be held liable for the amount of any settlement or
31 judgment arising out of any actual or alleged act, error, or omission
32 that occurred within the scope of that individual's employment,
33 duties, or responsibilities for the commission, or that the person to
34 whom that individual is liable had a reasonable basis for believing
35 occurred within the scope of the individual's employment, duties, or
36 responsibilities for the commission, the commission shall indemnify
37 and hold harmless such individual, provided that the actual or
38 alleged act, error, or omission did not result from the intentional
39 or willful or wanton misconduct of the individual.

1 (d) Nothing herein shall be construed as a limitation on the
2 liability of any licensee for professional malpractice or misconduct,
3 which shall be governed solely by any other applicable state laws.

4 (e) Nothing in this compact shall be interpreted to waive or
5 otherwise abrogate a participating state's state action immunity or
6 state action affirmative defense with respect to antitrust claims
7 under the Sherman act, Clayton act, or any other state or federal
8 antitrust or anticompetitive law or regulation.

9 (f) Nothing in this compact shall be construed to be a waiver of
10 sovereign immunity by the participating states or by the commission.

11 NEW SECTION. **Sec. 8.** (1) The commission shall provide for the
12 development, maintenance, operation, and utilization of a coordinated
13 database and reporting system containing licensure, adverse action,
14 and the presence of significant investigative information on all
15 licensees and applicants for a license in participating states.

16 (2) Notwithstanding any other provision of state law to the
17 contrary, a participating state shall submit a uniform data set to
18 the data system on all individuals to whom this compact is applicable
19 as required by the rules of the commission, including:

20 (a) Identifying information;

21 (b) Licensure data;

22 (c) Adverse actions against a licensee, license applicant, or
23 compact privilege and information related thereto;

24 (d) Nonconfidential information related to alternative program
25 participation, the beginning and ending dates of such participation,
26 and other information related to such participation;

27 (e) Any denial of an application for licensure, and the reason or
28 reasons for such denial, excluding the reporting of any criminal
29 history record information where prohibited by law;

30 (f) The presence of significant investigative information; and

31 (g) Other information that may facilitate the administration of
32 this compact or the protection of the public, as determined by the
33 rules of the commission.

34 (3) The records and information provided to a participating state
35 pursuant to this compact or through the data system, when certified
36 by the commission or an agent thereof, shall constitute the
37 authenticated business records of the commission, and shall be
38 entitled to any associated hearsay exception in any relevant

1 judicial, quasi-judicial, or administrative proceedings in a
2 participating state.

3 (4) Significant investigative information pertaining to a
4 licensee in any participating state will only be available to other
5 participating states.

6 (5) It is the responsibility of the participating states to
7 monitor the database to determine whether adverse action has been
8 taken against a licensee or license applicant. Adverse action
9 information pertaining to a licensee or license applicant in any
10 participating state will be available to any other participating
11 state.

12 (6) Participating states contributing information to the data
13 system may designate information that may not be shared with the
14 public without the express permission of the participating state.

15 (7) Any information submitted to the data system that is
16 subsequently expunged pursuant to federal law or the laws of the
17 participating state contributing the information shall be removed
18 from the data system.

19 NEW SECTION. **Sec. 9.** (1) The commission shall promulgate
20 reasonable rules in order to effectively and efficiently implement
21 and administer the purposes and provisions of the compact. A
22 commission rule shall be invalid and have no force or effect only if
23 a court of competent jurisdiction holds that the rule is invalid
24 because the commission exercised its rule-making authority in a
25 manner that is beyond the scope and purposes of the compact, or the
26 powers granted hereunder, or based upon another applicable standard
27 of review.

28 (2) The rules of the commission shall have the force of law in
29 each participating state, provided however that where the rules of
30 the commission conflict with the laws of the participating state that
31 establish the participating state's scope of practice as held by a
32 court of competent jurisdiction, the rules of the commission shall be
33 ineffective in that state to the extent of the conflict.

34 (3) The commission shall exercise its rule-making powers pursuant
35 to the criteria set forth in this section and the rules adopted
36 thereunder. Rules shall become binding as of the date specified by
37 the commission for each rule.

38 (4) If a majority of the legislatures of the participating states
39 rejects a commission rule or portion of a commission rule, by

1 enactment of a statute or resolution in the same manner used to adopt
2 the compact, within four years of the date of adoption of the rule,
3 then such rule shall have no further force and effect in any
4 participating state or to any state applying to participate in the
5 compact.

6 (5) Rules shall be adopted at a regular or special meeting of the
7 commission.

8 (6) Prior to adoption of a proposed rule, the commission shall
9 hold a public hearing and allow persons to provide oral and written
10 comments, data, facts, opinions, and arguments.

11 (7) Prior to adoption of a proposed rule by the commission, and
12 at least 30 days in advance of the meeting at which the commission
13 will hold a public hearing on the proposed rule, the commission shall
14 provide a notice of proposed rule making:

15 (a) On the website of the commission or other publicly accessible
16 platform;

17 (b) To persons who have requested notice of the commission's
18 notices of proposed rule making; and

19 (c) In such other way or ways as the commission may by rule
20 specify.

21 (8) The notice of proposed rule making shall include:

22 (a) The time, date, and location of the public hearing at which
23 the commission will hear public comments on the proposed rule and, if
24 different, the time, date, and location of the meeting where the
25 commission will consider and vote on the proposed rule;

26 (b) If the hearing is held via telecommunication,
27 videoconference, or other electronic means, the commission shall
28 include the mechanism for access to the hearing in the notice of
29 proposed rule making;

30 (c) The text of the proposed rule and the reason therefor;

31 (d) A request for comments on the proposed rule from any
32 interested person; and

33 (e) The manner in which interested persons may submit written
34 comments.

35 (9) All hearings will be recorded. A copy of the recording and
36 all written comments and documents received by the commission in
37 response to the proposed rule shall be available to the public.

38 (10) Nothing in this section shall be construed as requiring a
39 separate hearing on each commission rule. Rules may be grouped for

1 the convenience of the commission at hearings required by this
2 section.

3 (11) The commission shall, by majority vote of all commissioners,
4 take final action on the proposed rule based on the rule-making
5 record.

6 (a) The commission may adopt changes to the proposed rule
7 provided the changes do not enlarge the original purpose of the
8 proposed rule.

9 (b) The commission shall provide an explanation of the reasons
10 for substantive changes made to the proposed rule as well as reasons
11 for substantive changes not made that were recommended by commenters.

12 (c) The commission shall determine a reasonable effective date
13 for the rule. Except for an emergency as provided in subsection (12)
14 of this section, the effective date of the rule shall be no sooner
15 than 30 days after the commission issuing the notice that it adopted
16 or amended the rule.

17 (12) Upon determination that an emergency exists, the commission
18 may consider and adopt an emergency rule with 24 hours' notice, with
19 opportunity to comment, provided that the usual rule-making
20 procedures provided in the compact and in this section shall be
21 retroactively applied to the rule as soon as reasonably possible, in
22 no event later than 90 days after the effective date of the rule. For
23 the purposes of this provision, an emergency rule is one that must be
24 adopted immediately in order to:

25 (a) Meet an imminent threat to public health, safety, or welfare;

26 (b) Prevent a loss of commission or participating state funds;

27 (c) Meet a deadline for the promulgation of a rule that is
28 established by federal law or rule; or

29 (d) Protect public health and safety.

30 (13) The commission or an authorized committee of the commission
31 may direct revisions to a previously adopted rule for purposes of
32 correcting typographical errors, errors in format, errors in
33 consistency, or grammatical errors. Public notice of any revisions
34 shall be posted on the website of the commission. The revision shall
35 be subject to challenge by any person for a period of 30 days after
36 posting. The revision may be challenged only on grounds that the
37 revision results in a material change to a rule. A challenge shall be
38 made in writing and delivered to the commission prior to the end of
39 the notice period. If no challenge is made, the revision will take

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

3 (14) No participating state's rule-making requirements shall
4 apply under this compact.

5 NEW SECTION. **Sec. 10.** (1)(a) The executive and judicial
6 branches of state government in each participating state shall
7 enforce this compact and take all actions necessary and appropriate
8 to implement the compact.

9 (b) Venue is proper and judicial proceedings by or against the
10 commission shall be brought solely and exclusively in a court of
11 competent jurisdiction where the principal office of the commission
12 is located. The commission may waive venue and jurisdictional
13 defenses to the extent it adopts or consents to participate in
14 alternative dispute resolution proceedings. Nothing herein shall
15 affect or limit the selection or propriety of venue in any action
16 against a licensee for professional malpractice, misconduct, or any
17 such similar matter.

18 (c) The commission shall be entitled to receive service of
19 process in any proceeding regarding the enforcement or interpretation
20 of the compact or commission rule and shall have standing to
21 intervene in such a proceeding for all purposes. Failure to provide
22 the commission service of process shall render a judgment or order
23 void as to the commission, this compact, or promulgated rules.

24 (2)(a) If the commission determines that a participating state
25 has defaulted in the performance of its obligations or
26 responsibilities under this compact or the promulgated rules, the
27 commission shall provide written notice to the defaulting state. The
28 notice of default shall describe the default, the proposed means of
29 curing the default, and any other action that the commission may
30 take, and shall offer training and specific technical assistance
31 regarding the default.

32 (b) The commission shall provide a copy of the notice of default
33 to the other participating states.

34 (3) If a state in default fails to cure the default, the
35 defaulting state may be terminated from the compact upon an
36 affirmative vote of a majority of the commissioners, and all rights,
37 privileges, and benefits conferred on that state by this compact may
38 be terminated on the effective date of termination. A cure of the

1 default does not relieve the offending state of obligations or
2 liabilities incurred during the period of default.

3 (4) Termination of participation in the compact shall be imposed
4 only after all other means of securing compliance have been
5 exhausted. Notice of intent to suspend or terminate shall be given by
6 the commission to the governor, the majority and minority leaders of
7 the defaulting state's legislature, the defaulting state's state
8 licensing authority or authorities, as applicable, and each of the
9 participating states' state licensing authority or authorities, as
10 applicable.

11 (5) A state that has been terminated is responsible for all
12 assessments, obligations, and liabilities incurred through the
13 effective date of termination, including obligations that extend
14 beyond the effective date of termination.

15 (6) Upon the termination of a state's participation in this
16 compact, that state shall immediately provide notice to all licensees
17 of the state, including licensees of other participating states
18 issued a compact privilege to practice within that state, of such
19 termination. The terminated state shall continue to recognize all
20 compact privileges then in effect in that state for a minimum of 180
21 days after the date of said notice of termination.

22 (7) The commission shall not bear any costs related to a state
23 that is found to be in default or that has been terminated from the
24 compact, unless agreed upon in writing between the commission and the
25 defaulting state.

26 (8) The defaulting state may appeal the action of the commission
27 by petitioning the United States district court for the District of
28 Columbia or the federal district where the commission has its
29 principal offices. The prevailing party shall be awarded all costs of
30 such litigation, including reasonable attorneys' fees.

31 (9)(a) Upon request by a participating state, the commission
32 shall attempt to resolve disputes related to the compact that arise
33 among participating states and between participating states and
34 nonparticipating states.

35 (b) The commission shall promulgate a rule providing for both
36 mediation and binding dispute resolution for disputes as appropriate.

37 (10)(a) The commission, in the reasonable exercise of its
38 discretion, shall enforce the provisions of this compact and the
39 commission's rules.

1 (b) By majority vote, the commission may initiate legal action
2 against a participating state in default in the United States
3 district court for the District of Columbia or the federal district
4 where the commission has its principal offices to enforce compliance
5 with the provisions of the compact and its promulgated rules. The
6 relief sought may include both injunctive relief and damages. In the
7 event judicial enforcement is necessary, the prevailing party shall
8 be awarded all costs of such litigation, including reasonable
9 attorneys' fees. The remedies herein shall not be the exclusive
10 remedies of the commission. The commission may pursue any other
11 remedies available under federal or the defaulting participating
12 state's law.

13 (c) A participating state may initiate legal action against the
14 commission in the United States district court for the District of
15 Columbia or the federal district where the commission has its
16 principal offices to enforce compliance with the provisions of the
17 compact and its promulgated rules. The relief sought may include both
18 injunctive relief and damages. In the event judicial enforcement is
19 necessary, the prevailing party shall be awarded all costs of such
20 litigation, including reasonable attorneys' fees.

21 (d) No individual or entity other than a participating state may
22 enforce this compact against the commission.

23 NEW SECTION. **Sec. 11.** (1) The compact shall come into effect on
24 the date on which the compact statute is enacted into law in the
25 seventh participating state.

26 (a) On or after the effective date of the compact, the commission
27 shall convene and review the enactment of each of the states that
28 enacted the compact prior to the commission convening ("charter
29 participating states") to determine if the statute enacted by each
30 such charter participating state is materially different than the
31 model compact.

32 (i) A charter participating state whose enactment is found to be
33 materially different from the model compact shall be entitled to the
34 default process set forth in section 10 of this act.

35 (ii) If any participating state is later found to be in default,
36 or is terminated or withdraws from the compact, the commission shall
37 remain in existence and the compact shall remain in effect even if
38 the number of participating states should be less than seven.

1 (b) Participating states enacting the compact subsequent to the
2 charter participating states shall be subject to the process set
3 forth in section 7(3)(w) of this act to determine if their enactments
4 are materially different from the model compact and whether they
5 qualify for participation in the compact.

6 (c) All actions taken for the benefit of the commission or in
7 furtherance of the purposes of the administration of the compact
8 prior to the effective date of the compact or the commission coming
9 into existence shall be considered to be actions of the commission
10 unless specifically repudiated by the commission.

11 (d) Any state that joins the compact subsequent to the
12 commission's initial adoption of the rules and bylaws shall be
13 subject to the commission's rules and bylaws as they exist on the
14 date on which the compact becomes law in that state. Any rule that
15 has been previously adopted by the commission shall have the full
16 force and effect of law on the day the compact becomes law in that
17 state.

18 (2) Any participating state may withdraw from this compact by
19 enacting a statute repealing that state's enactment of the compact.

20 (a) A participating state's withdrawal shall not take effect
21 until 180 days after enactment of the repealing statute.

22 (b) Withdrawal shall not affect the continuing requirement of the
23 withdrawing state's licensing authority or authorities to comply with
24 the investigative and adverse action reporting requirements of this
25 compact prior to the effective date of withdrawal.

26 (c) Upon the enactment of a statute withdrawing from this
27 compact, the state shall immediately provide notice of such
28 withdrawal to all licensees within that state. Notwithstanding any
29 subsequent statutory enactment to the contrary, such withdrawing
30 state shall continue to recognize all compact privileges to practice
31 within that state granted pursuant to this compact for a minimum of
32 180 days after the date of such notice of withdrawal.

33 (3) Nothing contained in this compact shall be construed to
34 invalidate or prevent any licensure agreement or other cooperative
35 arrangement between a participating state and a nonparticipating
36 state that does not conflict with the provisions of this compact.

37 (4) This compact may be amended by the participating states. No
38 amendment to this compact shall become effective and binding upon any
39 participating state until it is enacted into the laws of all
40 participating states.

1 NEW SECTION. **Sec. 12.** (1) This compact and the commission's
2 rule-making authority shall be liberally construed so as to
3 effectuate the purposes, and the implementation and administration,
4 of the compact. Provisions of the compact expressly authorizing or
5 requiring the promulgation of rules shall not be construed to limit
6 the commission's rule-making authority solely for those purposes.

7 (2) The provisions of this compact shall be severable and if any
8 phrase, clause, sentence, or provision of this compact is held by a
9 court of competent jurisdiction to be contrary to the constitution of
10 any participating state, a state seeking participation in the
11 compact, or of the United States, or the applicability thereof to any
12 government, agency, person, or circumstance is held to be
13 unconstitutional by a court of competent jurisdiction, the validity
14 of the remainder of this compact and the applicability thereof to any
15 other government, agency, person, or circumstance shall not be
16 affected thereby.

17 (3) Notwithstanding subsection (2) of this section, the
18 commission may deny a state's participation in the compact or, in
19 accordance with the requirements of section 10(2) of this act,
20 terminate a participating state's participation in the compact, if it
21 determines that a constitutional requirement of a participating state
22 is a material departure from the compact. Otherwise, if this compact
23 shall be held to be contrary to the constitution of any participating
24 state, the compact shall remain in full force and effect as to the
25 remaining participating states and in full force and effect as to the
26 participating state affected as to all severable matters.

27 NEW SECTION. **Sec. 13.** (1) Nothing in this chapter shall prevent
28 or inhibit the enforcement of any other law of a participating state
29 that is not inconsistent with the compact.

30 (2) Any laws, statutes, regulations, or other legal requirements
31 in a participating state in conflict with the compact are superseded
32 to the extent of the conflict.

33 (3) All permissible agreements between the commission and the
34 participating states are binding in accordance with their terms.

35 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
36 constitute a new chapter in Title 18 RCW."

ESHB 1576 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 04/06/2023

1 On page 1, line 1 of the title, after "compact;" strike the
2 remainder of the title and insert "adding a new chapter to Title 18
3 RCW; and providing a contingent effective date."

EFFECT: Corrects the reference to eligibility for obtaining and exercising the compact privilege.

--- END ---