

HOUSE BILL REPORT

ESHB 1576

As Passed House:

March 4, 2023

Title: An act relating to the dentist and dental hygienist compact.

Brief Description: Concerning the dentist and dental hygienist compact.

Sponsors: House Committee on Postsecondary Education & Workforce (originally sponsored by Representatives Caldier, Schmidt, Leavitt and Volz).

Brief History:

Committee Activity:

Postsecondary Education & Workforce: 2/8/23, 2/10/23 [DPS].

Floor Activity:

Passed House: 3/4/23, 95-0.

Brief Summary of Engrossed Substitute Bill

- Enacts the Dentist and Dental Hygienist Compact.

HOUSE COMMITTEE ON POSTSECONDARY EDUCATION & WORKFORCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Slatter, Chair; Entenman, Vice Chair; Reed, Vice Chair; Ybarra, Ranking Minority Member; Waters, Assistant Ranking Minority Member; Chandler, Hansen, Jacobsen, Klicker, Leavitt, McEntire, Paul, Pollet, Schmidt and Timmons.

Staff: Jim Morishima (786-7191).

Background:

Licensed Dentists.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

A licensed dentist may perform a variety of services, including diagnosing, treating, removing stains or concentrations from the teeth; operating or prescribing for any oral disease, pain, injury, deficiency, deformity, or physical condition; and furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth. Dentists are licensed and disciplined by the Dental Quality Assurance Commission (DQAC).

In order to be licensed, a dentist must:

- submit proof of graduation from a dental college, school, or dental department of an institution approved by the DQAC;
- submit a recent picture; and
- pass an examination.

An applicant who is a licensed dentist in another state may be granted a license without examination if he or she:

- is a graduate of an educational program approved by the DQAC;
- has practiced in the other state for at least four years; and
- has completed a one-year postdoctoral residency approved by the DQAC.

Licensed Dental Hygienists.

A dental hygienist may remove deposits and stains from the surfaces of teeth; apply topical, preventive, or prophylactic agents; polish and smooth restorations; and perform root planing, soft tissue curettage, and other operations and services delegated to him or her by a dentist. Generally, dental hygienists must be supervised by a licensed dentist. Dental hygienists are licensed and disciplined by the DQAC.

In order to be licensed, dental hygienists must complete an educational program, and pass an examination approved by the Dental Hygiene Examining Committee.

A dental hygienist licensed in another state or a Canadian province may be temporarily licensed without examination if the applicant provides the Department of Health with certain documentation and information, demonstrates a knowledge of Washington law pertaining to the practice of dental hygiene, shows that he or she is engaged in active practice in their home state or province, pays required fees, and meets requirements for AIDS education. The procedures a dental hygienist with an initial limited license may perform are limited, although the holder of an initial limited license may obtain endorsements for local anesthesia, restorative procedures, or nitrous oxide analgesia.

Summary of Engrossed Substitute Bill:

Compact Establishment.

The Dentist and Dental Hygienist Compact (Compact) is established, which allows licensed dentists and dental hygienists to practice across state lines in Compact states under a Compact privilege.

Compact Commission.

The Compact is administered by a Compact commission (Commission), which is a joint government agency established by the Compact's participating states. The membership of the Commission consists of one delegate selected by each participating state. The delegate must be the primary administrative officer of the state licensing authority.

The Commission must establish an executive board to act on behalf of the Commission consisting of up to seven members. The executive committee's duties include recommending changes to rules or bylaws, preparing a recommended budget, monitoring Compact compliance, and other duties provided in the bylaws.

The Commission and the executive board must meet at least once a year. Most meetings of the Commission and the executive board must be open to the public. The Commission must keep minutes of its meetings. The Commission may close meetings to the public to discuss certain matters, including noncompliance by participating states, employment matters, litigation, disclosure of trade secrets, law enforcement investigative records, and matters specifically exempt from disclosure by federal or state law.

The Commission's enumerated powers include:

- establishing bylaws;
- determining whether a state's enacted Compact is materially different from the model Compact language such that the state would not qualify for Compact participation;
- establishing a code of conduct and conflict of interest policies;
- appointing committees, including standing committees composed of members, state regulators, state legislators, consumer representatives, and other interested persons; and
- performing other functions necessary or appropriate to achieve the purposes of the Compact.

The Commission must promulgate reasonable rules to effectively and efficiently achieve the purpose of the Compact. At least 30 days prior to voting on a rule, the Commission must file a notice of proposed rulemaking, conduct a public hearing, and allow the submission of written input. The Commission may enact emergency rules with 24 hours' notice that must undergo the full rule-making process no later than 90 days after their effective dates. Rules adopted by the Commission may be rejected within four years of enactment by a majority of the legislatures of the Compact states through statute or resolution.

The Commission may levy an annual assessment on Compact states and levy fees on licensees to cover the costs of operations and activities.

Other Compact provisions relating to the Commission include provisions relating to:

- judicial proceedings against the Commission;
- financing the commission; and
- qualified immunity, defense, and indemnification of Commission members.

Data System.

The Commission must establish a coordinated database and reporting system containing licensure, adverse action, and presence of significant investigative information on all licensees and applicants for a license in participating states. Participating states must submit a uniform data set to the data system. It is the responsibility of a participating state to monitor the database to determine whether adverse action has been taken against a licensee or license applicant. Participating states may designate information that may not be shared without the states' permission. Any information that is subsequently required to be expunged by the laws of a participating state must be removed from the system.

State Membership Requirements.

The Compact becomes effective when enacted by at least seven states. To be eligible for Compact membership, a state must:

- enact a Compact that is not materially different than the model Compact as determined by Commission rules;
- participate fully in the data system;
- have a mechanism in place to receive and investigate complaints against licensees and license applicants;
- notify the commission of any adverse action or the availability of significant investigative information regarding a licensee or license applicant;
- fully implement a background check requirement;
- comply with applicable Commission rules;
- accept the national board examinations of the Joint Commission on National Dental Examinations or another examination accepted by the Commission;
- accept applicants who graduated from an accredited predoctoral dental education program leading to the Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree;
- accept applicants who graduated from an accredited dental hygiene education program;
- require for licensure that applicants successfully complete a clinical assessment;
- have continuing professional development requirements as a condition for license renewal; and
- pay a participation fee to the Commission.

When conducting a criminal background check, the state licensing authority must consider the information when making a licensing decision, maintain documentation of the

background check to the extent allowed by state and federal law, and report to the Commission whether it has completed the background check and whether the individual was granted or denied a license.

A licensee of a participating state who has a qualifying license in that state and does not hold an encumbered license in any other participating state must be issued a Compact privilege in a remote state.

Compact Privilege Requirements.

To exercise the Compact privilege, a licensee must:

- be licensed as a dentist or dental hygienist in a participating state;
- submit to an application process;
- pay applicable fees;
- meet any jurisprudence requirement established by the remote state in which the applicant is seeking the privilege;
- pass a national board examination of the Joint Commission on National Dental Examinations or another examination accepted by the Commission;
- for a dentist, have graduated from an accredited predoctoral dental education program leading to the DDS or DMD degree;
- for a dental hygienist, have graduated from an accredited dental hygiene education program;
- have successfully completed a clinical assessment for licensure;
- report to the Commission adverse actions taken by any non-participating state when applying for the privilege and, otherwise, within 30 days after the adverse action is taken;
- report to the Commission the applicant's primary residential address and any change in primary residential address; and
- consent to service of process by mail at the primary residence.

Active military members and their spouses may not be required to pay the Commission for the Compact privilege. Compact states may choose to charge no fee or a reduced fee to active military members and their spouses.

Discipline.

A licensee practicing in a participating state must function within the scope of practice authorized by that state for a dentist or dental hygienist licensed within the state. The licensee is also subject to the state's regulatory authority. A participating state may, in accordance with due process and the state's laws, remove the practitioner's Compact privileges, impose fines, or take any other action necessary to protect the health and safety of its citizens.

Only the state where the dentist or dental hygienist is licensed may take action against the

qualifying license issued by that state. States may participate in joint investigations and the home state may take actions based on the investigations and factual findings of another participating state. A remote state may take adverse actions on a licensee's privilege to practice, issue subpoenas, and recover costs from the licensee.

If adverse action is taken by a participating state, the adverse action applies in all other participating states. If the Compact privilege is removed, the licensee loses the Compact privilege in other participating states until the specific period of time for the removal has ended and all conditions for removal have been satisfied. If the dentist's or dental hygienist's license is encumbered, he or she loses the Compact privilege until the license is no longer encumbered.

The Compact does not override a participating state's decision that participation in an alternative program may be used in lieu of adverse action. Such participation must remain non-public if required by the participating state's laws. Participating states must require licensees taking part in alternative programs to agree not to practice under the privilege during the term of the program.

Oversight and Enforcement.

Upon request of a participating state, the Commission must attempt to resolve disputes between Compact states and adopt rules regarding mediation and binding arbitration. The executive and judicial branches of the participating states must enforce the Compact. If the Commission determines a state is in default, it must provide written notice to that state and provide it with remedial training and specific technical assistance regarding the default. In addition, the Commission may bring a legal action in federal court to enforce the Compact. After all other means of securing compliance have been exhausted, a defaulting state may be terminated from the Compact through a vote of the majority of Commission members.

Joining and Withdrawing.

The Compact comes into effect on the date when the seventh state joins. States may join the Compact by enacting the Compact's provisions into law. States that enact the Compact before the Compact comes into effect are subject to review after the effective date of the Compact. The Compact may be amended by enactments in all participating states. A state may withdraw from the Compact by repealing its enacting statute, but the withdrawal is not effective until 180 days after the statute's repeal.

Conflict of Laws.

State laws in conflict with the Compact are superseded to the extent of the Compact. The Compact does not prevent the enforcement of any other law of a participating state that is not inconsistent with the Compact. Permissible agreements between the Commission and the participating states are binding. If the Compact conflicts with the constitution of a

participating state, the Compact is ineffective to the extent of that conflict. If the constitutional provision in question is a material departure from the Compact, the state may be terminated from the Compact.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 6, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington is facing a critical dental workforce shortage, which may turn into a crisis. The pandemic only worsened this problem. Dental professionals want to move to Washington, but face significant barriers to getting licensed, including education requirements, fees, and processing delays. This is especially true for members of the military and their spouses, who often must maintain licenses in multiple states. The regulatory barriers can be so severe that some individuals just do not bother.

The Dentist and Dental Hygienist Compact (Compact) is part of a multifaceted approach to solving these problems. The Compact will reduce barriers, facilitate interstate licensing, increase portability, and preserve patient protections. If this bill passes, Washington may be the first state to adopt the Compact. The Compact provisions are similar to other compacts of which Washington is already a member. The Compact will also provide needed financial stability for military families and will be good for the economy.

(Opposed) None.

Persons Testifying: Representative Michelle Caldier, prime sponsor; Matt Shafer, The Council of State Governments; Melissa Johnson and Kathy Mueller, Washington Dental Hygienists Association; Emily Lovell, Washington State Dental Association; Roman Daniels-Brown, Association of Dental Support Organization; Renee Hanks; Amy Anderson, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.