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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 40  
135<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsor:** Sen. Roegner

Emma Carroll, Research Analyst

### SUMMARY

- Enters Ohio as a party to the Dentist and Dental Hygienist Compact, the purpose of which is to facilitate the interstate practice of dentistry and dental hygiene and improve public access to dentistry and dental hygiene services.
- As a member of the Compact, requires Ohio to allow a dentist or dental hygienist licensed in another participating state to practice in Ohio, subject to Ohio's laws and rules governing the practice of dentistry and dental hygiene.
- Requires the State Dental Board to appoint a member to the Dentist and Dental Hygienist Compact Commission, a joint public agency created by the Compact to enforce the provisions and rules of the Compact.
- Requires Ohio to submit data regarding dentist and dental hygienist licensees to the Commission's data system, including information related to licensure, adverse action, and the presence of significant investigative information.

### DETAILED ANALYSIS

#### Dentist and Dental Hygienist Compact

The bill enacts the Dentist and Dental Hygienist Compact in Ohio. The Dentist and Dental Hygienist Compact is an agreement between participating states that improves public access to dentistry and dental hygiene services by permitting eligible dentistry and dental hygiene providers to work in multiple states.<sup>1</sup> The Compact goes into effect when it is enacted by the seventh participating state.<sup>2</sup> Each state's enacting statute cannot be materially different

<sup>1</sup> R.C. 4715.271; Section 1 ("Section" references in this analysis are to the Compact).

<sup>2</sup> Section 11.A.

from the Model Compact. Nothing in the Compact impacts Ohio's requirements for a license to practice as a dentist or dental hygienist.<sup>3</sup>

### **State participation in the Compact**

To participate in the Compact, a state – including Ohio – must:<sup>4</sup>

1. Enact a compact that is not materially different than the Model Compact;
2. Fully participate in the Commission's data system (see "**Dentist and Dental Hygienist Compact Commission**" and "**Data system**" below);
3. Have a mechanism for receiving and investigating complaints;
4. Notify the Commission of any adverse action or the availability of investigative information about a licensee;
5. Fully implement a criminal background check requirement and use the results in making licensing decisions in accordance with the Compact;
6. Comply with the rules of the Commission;
7. Use a recognized national examination as a license requirement;
8. Require licensees to graduate from a program accredited by an approved accreditation agency;
9. Require all licensees to successfully complete a clinical assessment;
10. Have continuing professional development requirements as a condition of license renewal;
11. Pay a participation fee to the Commission as established by Commission rule.

### **Compact privilege**

Compact privilege is authorization granted by a remote state to allow a dentist or dental hygienist licensee from another participating state to practice as a dentist or dental hygienist in the remote state under its laws and rules.<sup>5</sup> A dentist or dental hygienist working under compact privilege must function within the scope of practice authorized by that state.<sup>6</sup>

Each participating state is required to grant compact privilege to a licensee holding a valid, unencumbered license in another participating state. Participating states may charge a fee for granting compact privilege. The Dentist and Dental Hygienist Compact Commission (see "**Dentist and Dental Hygienist Compact Commission**" below) also may charge a fee for granting compact privilege. The Commission's fee is waived for active military members

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<sup>3</sup> Section 1.E.

<sup>4</sup> Section 3.A.

<sup>5</sup> Section 2.G.

<sup>6</sup> Section 4.C.

and their spouses, and states may choose to waive fees for active military members and their spouses as well.

If a licensee's license is encumbered, the licensee automatically loses compact privilege in all remote states until the license is no longer encumbered. Once a restricted license is restored to good standing, the licensee must meet all requirements to obtain compact privilege in a remote state.

### **Requirements to grant privilege**

To exercise the compact privilege, a licensee must:<sup>7</sup>

1. Be licensed as a dentist or dental hygienist in a participating state;
2. Have no adverse action imposed on their compact privilege in the remote state they will be practicing in;
3. Submit to an application process in every state the licensee is seeking compact privilege;
4. Pay any applicable fees to the Dentist and Dental Hygienist Compact Commission and the remote state;
5. Meet any jurisprudence requirement established by a remote state where the licensee is seeking compact privilege;
6. Have passed a National Board Examination of the Joint Commission on National Dental Examinations or another examination accepted by Dentist and Dental Hygienist Compact Commission rule;
7. If a dentist, have graduated with a Doctor of Dental Surgery or Doctor of Dental Medicine degree from a predoctoral dental education program accredited by an approved accreditation agency;
8. If a dental hygienist, have graduated from a dental hygiene education program accredited by an approved accreditation agency;
9. Have successfully completed a clinical assessment;
10. Report to the Dentist and Dental Hygienist Compact Commission any adverse action taken by a nonparticipating state;
11. Report their address to the Dentist and Dental Hygienist Compact Commission and consent to accept service of process and service of subpoena at that address.

### **Practicing in a remote state**

The Compact requires any licensee practicing dentistry or dental hygiene in a remote state under compact privilege to practice in accordance with the laws and regulations of the

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<sup>7</sup> Section 4.A.

remote state. The Compact provides that licensees practicing dentistry or dental hygiene in a remote state are subject to the remote state's regulatory authority, meaning a remote state may temporarily remove a licensee's compact privilege, impose fines, or take other actions that are necessary to protect the health and safety of the citizens of the state. A licensee is ineligible for compact privilege in any state until a remote state has reinstated the licensee's compact privilege in the remote state.<sup>8</sup>

### **Adverse actions**

The Compact provides that a participating state in which a licensee is licensed has the exclusive power to impose adverse action against a license it issues. Adverse action is defined as disciplinary action or encumbrance imposed on a license or compact privilege by a state licensing authority.<sup>9</sup>

A participating state may take adverse action based on investigative information from a remote state, so long as the participating state follows its own procedures. While states that are not the participating state that issued the license cannot impose adverse action against the license, a participating state may take adverse action against a licensee's compact privilege in that state. Joint investigations between participating states also are permissible.<sup>10</sup>

In addition to imposing adverse action against a licensee's compact privilege, a remote state may (1) issue subpoenas for hearings and investigations and (2) recover from the licensee the costs related to the adverse action against the licensee (if authorized by state law).<sup>11</sup>

The Compact preserves a state's ability to permit participation in an alternative program in lieu of adverse action, but the state must require licensees who enter into alternative programs in lieu of discipline to agree not to practice in other participating states during the term of the alternative program, unless prior authorization from the other participating state is given.<sup>12</sup> "Alternative program" is defined as a nondisciplinary monitoring or practice remediation process approved by a state licensing authority.<sup>13</sup>

If a participating state imposes adverse action against a licensee, it must immediately notify the administrator of the Commission's data system (see "**Data system**" below).<sup>14</sup>

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<sup>8</sup> Section 4.C and D.

<sup>9</sup> Sections 6.A and 2.B.

<sup>10</sup> Section 6.E.1 and F.

<sup>11</sup> Section 6.E.

<sup>12</sup> Section 6.C.

<sup>13</sup> Section 2.C.

<sup>14</sup> Section 6.G.2.

## **Impact of compact privilege removal by a remote state**

If a remote state removes a licensee's compact privilege, the licensee's compact privilege in any other participating state is removed until the time for which compact privilege was removed has ended, all fines have been paid, and all other conditions imposed by the remote state have been met. The licensee must again meet the above requirements to obtain compact privilege.<sup>15</sup>

## **Dentist and Dental Hygiene Compact Commission**

The bill requires states participating in the Compact to establish a joint public agency known as the Dentist and Dental Hygiene Compact Commission.<sup>16</sup> Each participating state must appoint one commissioner. The commissioner is entitled to one vote regarding all matters that are voted on by the Commission, and is to participate in the business and affairs of the Commission. Meetings may take place by telecommunication, video conference, or other similar electronic means.<sup>17</sup>

As a party to the Compact, the State Dental Board must select one commissioner to the Commission within 60 days of Ohio entering the Compact and fill any subsequent vacancy within 60 days.<sup>18</sup>

## **Powers and duties**

The Commission must enforce the provisions and rules of the Compact.<sup>19</sup> It is required to meet annually. Generally, meetings must be open to the public. The Compact permits closed, nonpublic meetings of the Commission, the Executive Board, or other committees in limited circumstances, such as to discuss noncompliance of participating states, employment matters, licensee discipline, litigation, contract negotiation, criminal accusations, trade secrets, investigative records, and legal advice.<sup>20</sup>

The Commission has numerous powers and duties specified in the bill, some of which include:<sup>21</sup>

1. Establishing bylaws and a code of ethics for the Commission;
2. Electing a chair, vice chair, secretary, and treasurer, and any other officer provided by the Commission's bylaws;

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<sup>15</sup> Section 4.D, G, and H.

<sup>16</sup> Section 7.

<sup>17</sup> Section 7.B.

<sup>18</sup> Section 7.B and R.C. 4715.272(A).

<sup>19</sup> Section 10.J.

<sup>20</sup> Section 7.

<sup>21</sup> Section 7.C.

3. Maintaining financial records, establishing a budget, making expenditures, and borrowing money;
4. Adopting rules to facilitate and coordinate implementation and administration of the Compact, including emergency rules;
5. Hiring employees and performing matters related to personnel;
6. Accepting donations and gifts and taking actions regarding real and personal property;
7. Electing the Executive Board and appointing committees;
8. Performing other functions as necessary and appropriate to achieve the purposes of the Compact.

### **Data system**

The Commission must provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and significant investigative information regarding licensed individuals in participating states. All participating states must submit a uniform data set to the data system regarding licensees that are subject to the Compact. The data set includes: (1) identifying information, (2) licensure data, (3) adverse actions against a licensee, license applicant, or compact privilege, (4) nonconfidential information related to alternative program participation, (5) any denial of an application for licensure and reasons for the denial, (6) the presence of significant investigative information, and (7) other information specified in Commission rules.<sup>22</sup>

Participating states contributing information to the data system may designate information that may not be shared with the public without express permission from that state. Investigative information received by a dental licensing board pertaining to the investigation of a licensee in a participating state will always only be available to other participating states.<sup>23</sup>

### **Commission finances**

The Commission is required to pay the reasonable expenses of its establishment, organization, and ongoing activities. The Commission may accept monetary and nonmonetary donations and grants. It may impose annual assessments on participating states and fees on licensees of participating states to cover costs of granting compact privilege. The Commission must keep accurate records of receipts and disbursements, which must be audited annually.

The Commission is not permitted to incur obligations before securing funds to meet those obligations and it may not pledge the credit of participating states without authority.<sup>24</sup>

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<sup>22</sup> Section 8.

<sup>23</sup> Section 8.E. and F.

<sup>24</sup> Section 7.E.

## **Executive Board**

The Compact creates a Compact Commission Executive Board, and provides that the Executive Board has the power to act on behalf of the Commission. Board meetings with formal action on a matter must be public, with at least five days' notice. The Executive Board, which must meet annually, is comprised of the following seven members:<sup>25</sup>

- The chair, vice chair, secretary, and treasurer of the Commission, and any other officer provided by the Commission's bylaws;
- Up to three other voting members from the Commission, elected by the Commission.

Duties and responsibilities of the Executive Board include:

1. Overseeing the day-to-day activities of the administration of the Compact;
2. Recommending changes to rules, bylaws, Compact legislation, and fees paid by participating states and licensees;
3. Ensuring Compact administration services are appropriately provided;
4. Preparing and recommending the budget;
5. Maintaining financial records;
6. Monitoring Compact compliance of participating states and providing compliance reports;
7. Establishing additional committees;
8. Exercising the powers and duties of the Commission during the interim period between Commission meetings;
9. Any other duties provided in the bylaws.

## **Rulemaking**

The Commission has the power to adopt rules by majority vote pursuant to the criteria and process set forth in the Compact. The Commission must hold a public meeting before adopting a rule, with advanced notice of the proposed rulemaking and other specified information. If a majority of state legislatures of participating states reject a rule by enacting a statute or resolution within four years of the date the rule was adopted, the rule has no further force or effect.<sup>26</sup>

## **Qualified immunity, defense, and indemnification**

The Compact provides that the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability for damages caused by or arising out of acts or omissions occurring within the scope of Commission employment, duties,

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<sup>25</sup> Section 7.F.2.

<sup>26</sup> Section 9.

or responsibilities, so long as the loss is not caused by intentional or willful or wanton misconduct. The Commission must defend individuals entitled to immunity, but individuals also may retain their own counsel.

The Commission must indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of a settlement or judgment obtained against the individual arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, except in the case of intentional or willful or wanton misconduct.<sup>27</sup>

### **Enforcement and dispute resolution**

The Compact requires each participating state's executive, legislative, and judicial branches of government to enforce it.<sup>28</sup>

The Commission must attempt to resolve Compact disputes that arise among participating states and between participating states and nonparticipating states. The Commission is required to adopt a rule providing for both mediation and binding dispute resolution.<sup>29</sup>

### **Conflict with state law**

The Compact does not prevent or inhibit the enforcement of laws in a participating state that do not conflict with the Compact. Any laws, statutes, regulations, or other legal requirements in a participating state that are in conflict with the Compact are superseded.<sup>30</sup>

### **Compact amendment**

Participating states may amend the Compact by enacting legislation. An amendment is not effective until it has been enacted by all participating states.<sup>31</sup>

### **Withdrawal and termination**

The Compact permits participating states to withdraw by enacting a statute repealing the Compact. Such a withdrawal is effective 180 days after the repeal.<sup>32</sup>

The Compact provides a process for notifying a participating state if the state has defaulted in performing its obligations or duties under the Compact. If the defaulting state fails to cure the default, it may be terminated from the Compact upon an affirmative vote of a majority of all participating states. The defaulting state may appeal the action of the

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<sup>27</sup> Section 7.G.

<sup>28</sup> Section 10.A.

<sup>29</sup> Section 10.I.

<sup>30</sup> Section 13.

<sup>31</sup> Section 11.D.

<sup>32</sup> Section 11.B.

Commission to the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party is to be awarded costs of litigation, including attorney's fees.<sup>33</sup>

### **Construction and severability**

The Compact provides that it is to be liberally construed, and its provisions are severable.<sup>34</sup>

### **Delayed effective date**

The bill's provisions take effect on January 1, 2025.

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## **HISTORY**

Action	Date
Introduced	01-31-23
Reported, S. Health	05-31-23
Passed Senate (31-0)	06-07-23

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<sup>33</sup> Section 10.B, C, and H.

<sup>34</sup> Section 12.B.