

BILL ANALYSIS

C.S.H.B. 3039
By: Klick
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have noted the difficulty in recruiting and retaining qualified dental healthcare professionals, especially dental hygienists, in the state of Texas, a phenomenon of particular concern in the state's rural areas. The House Public Health Committee's Interim Report to the 88th Legislature discusses these challenges encountered by rural patients seeking dental care and further discusses how delays in such care can result in preventable and costly emergency room visits. According to the report, in 2016, over \$226 million was incurred for emergency room visits for non-traumatic dental conditions in Texas, and another \$216 million was incurred via inpatient admissions during the same year. Most of the conditions creating this public cost are preventable with routine dental care and should be treated in a standard dental clinic as opposed to a hospital or emergency room setting. Moreover, with the passage last session of H.B. 2056 on teledentistry, the already strained supply of dental hygienists becomes that much more critical.

According to a September 2019 report by the Department of State Health Services, demand for dental hygienists is projected to exceed supply every year between 2018 and 2030. The supply of dental hygienists is projected to grow by 17.4 percent while demand is projected to grow by 18.6 percent, increasing the shortage of dental hygienists by 28.4 percent from 1,638 full-time equivalents in 2018 to 2,103 full-time equivalents in 2030. An interstate compact for licensed dental professionals would streamline the approval process when such professionals relocate to Texas, while still providing important patient safeguards. It's often stated that over 1,000 people move to Texas each day. Some of those are licensed dental professionals seeking to care for Texas patients. Others will surely at some time in their residence need the care of a licensed dental professional. Adopting the dental compact will ensure the freedom of qualified dental professionals to care for Texas patients and allow those Texas patients the freedom to seek this care where it is more appropriate--in a dental setting. C.S.H.B. 3039 seeks to address this issue by providing for an interstate dental and dental hygienist compact.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3039 amends the Occupations Code to enact and enter into the Dentist and Dental Hygienist Compact with all other jurisdictions that legally join in the compact to facilitate the interstate practice of dentistry and dental hygiene and improve public access to dentistry and

dental hygiene services by providing dentists and dental hygienists licensed in a participating state the ability to practice in participating states in which they are not licensed. The bill sets out the compact's provisions, including provisions that relate to the following:

- the purpose and intent of the compact;
- the scope of practice as defined by each participating state, with the bill providing that those provisions require dentists and dental hygienists who practice in a participating state pursuant to a compact privilege to practice within the scope of practice authorized in that state and further clarifying that in the event of any conflict between the compact commission's rules and a participating state's laws, the state's scope of practice laws prevail;
- individual state participation in the compact, with the bill establishing that providing alternative pathways for an individual to obtain an unrestricted license does not disqualify a state from participating in the compact;
- the manner in which an individual who has a qualifying license and credentials as a dentist or dental hygienist in a participating state may exercise the compact privilege to practice in a different participating state and the ways in which that privilege may be revoked or removed;
- the waiver or reduction of fees charged for a compact privilege for active duty military members and their spouses;
- the authority of participating states to take adverse actions against applicable licensees, including joint investigations with other participating states;
- the establishment of the Dentist and Dental Hygienist Compact Commission as a joint government agency whose membership consists of all participating states that have enacted the compact, with the commission acting as an instrumentality of the participating states through its administration and powers;
- the establishment of an executive board to act on the commission's behalf;
- the commission's rulemaking authority and the rejection by a majority of the legislatures of the participating states of a rule or portion of a rule within four years of the rule's adoption, thereby removing the force and effect of such rule as to any participating state or as to any state applying to participate in the compact;
- the inapplicability of a participating state's rulemaking requirements under the compact;
- a coordinated database and reporting system of information on all licensees and applicants for a license in participating states, including but not limited to examination, licensure, compact privilege, adverse action, and the presence of significant investigative information;
- oversight, dispute resolution, and enforcement of compact provisions by the commission and participating state governments, as applicable, including the manner of termination with respect to participation in the compact for a defaulting state;
- the process for participating states to amend or withdraw from the compact; and
- the construction and severability of the compact's provisions, as well as the binding effect of the compact and a participating state's laws.

The compact comes into effect on the date on which the compact statute is enacted into law in the seventh participating state.

C.S.H.B. 3039 designates the State Board of Dental Examiners (SBDE) as the compact administrator for the State of Texas and authorizes the SBDE to adopt rules necessary to implement the bill's provisions.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3039 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute and the introduced contain many provisions that are substantially the same but which the substitute revises and reorganizes, as subsequently described, to clarify the following matters:

- the compact's purpose;
- compact activities;
- reporting requirements;
- applicable definitions;
- requirements for joining the compact;
- compact privileges;
- the nature of the compact commission as a joint government agency;
- requirements regarding compact participation, voting, and compact commission meetings;
- compact commission powers;
- compact commission financing;
- the executive board of the compact commission;
- the qualified immunity granted to certain individuals under the compact;
- the compact's database and reporting system;
- compact commission rulemaking;
- the public hearing and attendant notices regarding proposed rules;
- emergency rules;
- matters of venue and default; and
- the effective date of and withdrawal from the compact.

Compact Purpose

The substitute restates the purpose of the compact in a substantially similar manner as the introduced but they differ as follows:

- the introduced expressed the purpose as a goal for improving public access to services and supporting the ability of dentists and dental hygienists to provide dentistry and dental hygiene services when relocating in participating states; but
- the substitute expressed the purpose as one of improving public access to such services by providing dentists and dental hygienists licensed in a participating state the ability to practice in participating states in which they are not licensed by establishing a pathway for dentists and dental hygienists to obtain a compact privilege that authorizes them to practice in another participating state in which they are not licensed.

Compact Activities

The substitute includes provisions, absent from the introduced, establishing that the compact does the following:

- enables dentists and dental hygienists who qualify for a compact privilege to practice in other participating states without satisfying burdensome and duplicative requirements associated with securing a license to practice in those states;
- promotes mobility and addresses workforce shortages through each participating state's acceptance of a compact privilege to practice in that state;
- increases public access to qualified, licensed dentists and dental hygienists by creating a responsible, streamlined pathway for licensees to practice in participating states;
- enhances the ability of participating states to protect the public's health and safety;
- does not interfere with licensure requirements established by a participating state;

- facilitates the sharing of licensure and disciplinary information among participating states;
- requires dentists and dental hygienists who practice in a participating state pursuant to a compact privilege to practice within the scope of practice authorized in that state;
- extends the authority of a participating state to regulate the practice of dentistry and dental hygiene within its borders to dentists and dental hygienists who practice in the state through a compact privilege;
- promotes the cooperation of participating state in regulating the practice of dentistry and dental hygiene within those states; and
- facilitates the relocation of military members and their spouses who are licensed to practice dentistry or dental hygiene.

Compact Commission Reporting

The substitute does not include the standalone provision in the introduced that required the commission to prepare and provide to the participating states an annual report of its activities, but the substitute instead grants the commission, in addition to the other powers granted by both the substitute and the introduced, the power to adopt and provide to participating states an annual report without specification as to the contents of the report as provided in the introduced.

Definitions Applicable to Compact

The substitute and introduced both set out the definitions applicable to the compact but the substitute adds a definition for "license" that was not in the introduced and changes certain of the definitions shared by both, as follows:

- "license," as added by the substitute, means current authorization by a state, other than authorization pursuant to a compact privilege, or other privilege, for an individual to practice as a dentist or dental hygienist in that state;
- the compact commission, as defined by both the substitute and the introduced, is specified by the substitute's definition as being a joint government agency but the introduced did not include that specification for the agency;
- with respect to the definition of "compact privilege" in the introduced that specifies that the Dentist and Dental Hygienist Compact Commission is the entity granting the authorization to allow a licensee from a participating state to practice as a dentist or dental hygienist in a remote state, the substitute instead provides that the remote state is the entity that grants that authorization; and
- with respect to the specification in the definition of "criminal background check" that references the agency in Texas responsible for retaining state criminal records from which information is obtained for a background check, the substitute clarifies that the information obtained is from the state's criminal history record repository as defined in federal law.

Requirements for Joining Compact

The substitute changes, as follows, certain provisions that are set out in both the substitute and the introduced that establish the requirements a state must fulfill in order to join the compact and thereafter continue as a participating state:

- with respect to the provision establishing compact requirements applicable to licensure of applicants graduated from a predoctoral dental education program and graduates of an accredited dental hygiene program, the substitute bifurcates those requirements as set out in the introduced to attribute the requirements separately to dentists and hygienists and to clarify the alternative means of accreditation as a compact requirement, as follows:
 - the substitute makes the requirement applicable to an applicant for a dentist license who must have graduated from a predoctoral dental education program accredited by the Commission on Dental Accreditation or, as an alternative,

another accrediting agency recognized for the accreditation of dentistry and dental hygiene education programs, leading to a D.D.S. or D.M.D. degree and does not include the specification in the introduced that the applicant have been graduated from an applicable program permitted by compact commission rule; and

- the substitute, with respect to acceptance of hygienist applicants, clarifies that the requirement is applicable to a graduate from a dental hygiene education program accredited by the Commission on Dental Accreditation as specified in the introduced or, in the alternative, by another accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental hygiene education programs and does not include the specification in the introduced that an applicant have been graduated from an applicable program permitted by compact commission rule;
- the substitute, but not the introduced, includes among the requirements for joining the compact a provision establishing that providing alternative pathways for an individual to obtain an unrestricted license does not disqualify a state from participating in the compact; and
- the substitute includes a requirement for joining the compact that a state licensing authority, after completing a criminal background check, report to the compact commission whether the individual was granted a license, whereas the introduced required the authority to report only the denial of a license.

Compact Privilege of Applicable Licensees

While the substitute and the introduced share the provisions establishing the requisite conditions under which an applicable licensee may obtain and exercise the compact privilege under the terms and provisions of the compact, the substitute revises certain of those provisions to align them with the accreditation requirements, as previously compared to the introduced, applicable to requirements for a state's participation in the compact, including the provision regarding alternative pathways that was not in the introduced and excluding the specification in the introduced that an applicant have been graduated from an applicable program permitted by compact commission rule.

While both the substitute and the introduced share the provisions conditioning continuation of a compact privilege on the maintenance of the requirements for such a privilege applicable to the maintenance of a qualifying license, the substitute, but not the introduced, adds the specification clarifying that the qualifying license is a license maintained in the state through which the licensee applied for the compact privilege.

Establishment of Compact Commission as a Joint Government Agency

The substitute and introduced both create and establish the commission as a joint government agency acting jointly and not as an instrumentality of any one state, but the substitute does not include the provision in the introduced that established the commission as a national administrative body and instead establishes it as such a joint agency whose membership consists of all participating states that have enacted the compact.

Participation, Voting, and Meetings

Both the substitute and the introduced provide a substantially similar framework for participation, voting, and meeting requirements with respect to the compact commission but they differ as follows:

- the substitute, but not the introduced, provides that each state's single commissioner be selected the participating state's applicable licensing authority or, if the state has more than one state licensing authority, selected collectively by the state licensing authorities;

- whereas both the substitute and the introduced contemplate the removal or suspension of a state's single commissioner:
 - the introduced authorized the commissioner be removed or suspended as provided by the law of the state from which the commissioner is appointed or the commission's rules or bylaws; but
 - the substitute authorizes the commission to recommend to a state licensing authority or authorities, as applicable, removal or suspension of an individual as the state's commissioner;
- the substitute does not include the provision in the introduced that required a commissioner to vote in person or by such other means as provided in the commission's bylaws;
- both the substitute and the introduced require at least one commission meeting during each calendar year and both provide for additional meetings as set forth in the bylaws, but the introduced made the additional meetings mandatory while the substitute makes the additional meetings permissive;
- with respect to those annual meetings and the additional meetings, the substitute, but not the introduced, authorizes the commission to meet by telecommunication, video conference, or other similar electronic means;
- the substitute, but not the introduced, requires notice of all commission meetings to provide the time, date, and location of the meeting, and specifies that, if the meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the notice must include the mechanism for access to the meeting through such means;
- with respect to the provision shared by both the substitute and the introduced authorizing the commission, after requisite notice, to convene an emergency public meeting for any of the reasons specified in the compact's provisions, the substitute, but not the introduced, requires the commission's legal counsel to certify that one of the reasons justifying an emergency public meeting has been met; and
- the substitute, but not the introduced, includes among the topics that may be discussed by the commission in a closed, nonpublic meeting the discussion of current or threatened discipline of a licensee or compact privilege holder by the commission or by a participating state's licensing authority.

Compact Commission Powers

Both the substitute and the introduced grant substantially the same powers to the compact commission but they differ as follows:

- in granting the power to meet and take action consistent with the compact and the bylaws, the substitute requires the actions to also be consistent with the commission's rules, whereas the introduced in making that grant of power to meet and take action:
 - did not specify consistency with those rules; but
 - set out instead, which the substitute does not, a standalone, general grant of power for the commission to promulgate commission rules to facilitate and coordinate implementation and administration of the compact, which provided that those rules have the force and effect of law and are binding on all participating states;
- the substitute, but not the introduced, grants the commission the power to do the following:
 - maintain and certify records and information provided to a participating state as the authenticated business records of the commission and designate a person to do so on the commission's behalf;
 - conduct an annual financial review; and
 - determine whether a state's enacted compact is materially different from the model compact language such that the state would not qualify for participation in the compact; and

- the substitute does not include the provisions in the introduced that granted the commission the power to do the following:
 - reserve for itself powers that the compact's executive board may not exercise;
 - approve or disapprove a state's participation in the compact; and
 - establish, in its discretion, a period of time a compact privilege is in effect without renewal.

Financing of the Compact Commission

Both the substitute and the introduced provide for a method by which the cost of the operations and activities of the commission and its staff is covered but they differ as follows:

- the substitute expressly authorizes the commission to levy on and collect an annual assessment from each participating state and impose fees on licensees of participating states when a compact privilege is granted; but
- the introduced did not make that specification of coverage through an express grant of authority, instead requiring the participating states' assessment fees and licensees' compact privilege fees and any applicable renewal fees to be used to cover those costs.

Executive Board of the Compact Commission

While both the substitute and the introduced provide, by definition, that the executive board comprises the chair, vice chair, secretary and treasurer and any other commissioners as may be determined by commission rule or bylaw and provide for substantially the same powers, duties, and responsibilities for the board, they differ as follows:

- the substitute expressly grants the commission the power to establish and elect the executive board whereas the introduced did not;
- the substitute, but not the introduced, includes a requirement among the powers, duties, and responsibilities for the board to oversee the day-to-day activity of the administration of the compact;
- the introduced granted the executive board the power to act on behalf of the commission according to the terms of both the compact and commission rules, but the substitute grants that power to act only according to the terms of the compact; and
- the substitute includes the following that are not included in the introduced:
 - a requirement for the executive board to be composed of up to seven members;
 - a provision establishing that the chair, vice chair, secretary, treasurer, and any other member of the commission who serve on the executive board are voting members of the board;
 - a provision establishing that, other than the chair, vice chair, secretary, and treasurer, the commission may elect up to three voting members from the current membership of the commission;
 - a requirement for the executive board to give five business days' notice of its public meetings, posted on its website and as it may otherwise determine to provide notice to persons with an interest in the public matters the board intends to address at those meetings; and
 - an authorization for the board to hold an emergency meeting when acting for the commission to meet an imminent threat to public health, safety, or welfare; prevent a loss of commission or participating state funds; or protect public health and safety.

Qualified Immunity for Certain Individuals

While both the substitute and the introduced set out substantially the same qualified immunity provisions, they differ as follows:

- the substitute provides for the immunity, defense, and indemnification of compact commission members, officers, executive director, employees, and representatives of the

commission both personally and in their official capacity as specified by those substantially same provisions; but

- the introduced did not include the executive director specifically as being so immune, defended, and indemnified and included references to the commissioners, rather the members of the commission as specified in the substitute, as being so immune, defended, and indemnified.

Database and Reporting System

The substitute and introduced both require the commission to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system but the introduced contained a reference in that requirement to an alternative program, whereas the substitute does not include that reference. In addition, both the substitute and the introduced require the submission of other information that may facilitate the administration of the compact as determined by rule of the commission, but the substitute also requires the submission of information that may facilitate the protection of the public, whereas the introduced does not include this requirement in its provision.

Compact Commission Rulemaking

The substitute and the introduced both set out substantially the same criteria governing the commission's exercise of its rulemaking power and both define a "rule" for purposes of the compact to mean a regulation promulgated by an entity that has the force of law, but the substitute includes a provision expressly granting the rules of the commission the force of law in each participating state, which the introduced did not include. Moreover, the introduced and substitute both set out provisions regarding conflicts between a commission rule and the laws of a participating state that establish a participating state's scope of practice of a licensee, but they differ as follows:

- the introduced provided that no rule of the commission conflicts with those state laws; but
- the substitute provides that the rules of the commission have the force of law in each participating state but provides that where the rules of the commission conflict with the laws of the participating state that establish the participating state's scope of practice as held by a court of competent jurisdiction, the rules of the commission are ineffective in that state to the extent of the conflict.

Furthermore, the substitute, but not the introduced, establishes that no participating state's rulemaking requirements apply under the compact.

Public Hearing Regarding Proposed Rules; Notice of Hearing

The substitute and the introduced both provide, in a substantially similar manner, for a public hearing before the adoption of a proposed rule at which persons may provide oral and written comments, data, facts, opinions and arguments but they differ as follows:

- the substitute allows persons to provide the oral and written comments, data, facts, opinions, and arguments at the public hearing, whereas the introduced, but not the substitute, provided that, as follows:
 - a hearing must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing;
 - prior to the adoption of a proposed rule, the commission must allow persons to submit written data, facts, opinion, and arguments, which must be made available to the public; and
 - all persons wishing to be heard at the public hearing must, as directed in the hearing notice, not less than five business days before the scheduled date of the hearing, notify the commission of their desire to appear and testify at the hearing;
- with respect to the recipients of the required notice of the public hearing, the introduced required the commission to provide written notice of proposed rulemaking to the state

licensing authority of each participating state, whereas the substitute did not include that provision but requires notice instead to be provided to persons who have requested notice of the commission's notices of proposed rulemaking and in such other ways as the commission may specify by rule;

- with respect to the required contents of the notice of the public hearing, both the substitute and the introduced require the inclusion of the time, date, and location of the hearing where the commission will consider and vote on a proposed rule, but the substitute provides for the applicable information to be included in the notice of a hearing at which the commission will hear public comment on the proposed rule;
- with respect to the requirement in both the substitute and the introduced that the notice include the manner in which interested persons may submit written comments, the introduced also required the notice to include the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing; and
- the introduced provided that, following the public hearing, the commission must consider all written and oral arguments received but the substitute does not include that provision.

With respect to the availability of copies of the recordings and written comments and documents received in response to the proposed rulemaking, the substitute and the introduced differ as follows:

- the introduced required a copy of the data, facts, opinions, and arguments received in response to the proposed rulemaking, but the substitute requires a copy of all written comments and documents received by the commission in response to the proposed rule; and
- the introduced required copies to be made available to a person upon request, but the substitute requires the copies to be made available to the public without specifying that a request must be made first.

The introduced provided that, if adopted, a rule must be posted on the commission's website, but the substitute does not include that provision.

Emergency Rules

Both the substitute and the introduced provide for the consideration and adoption of an emergency rule upon a determination by the commission that an emergency exists. However, the introduced provided that the commission may consider such a rule without the opportunity for comment or hearing, but the substitute instead provides that the commission may consider such a rule with opportunity to comment.

Venue; Default

The substitute and introduced provide for substantially the same venue provisions for judicial proceedings by or against the commission, but the substitute provides that its venue provision expressly does not affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any such similar matter.

The substitute and the introduced share the substantially same provisions regarding a participating state's default in the performance of its obligations or responsibilities under the compact or the promulgated commission rules, but the substitute, and not the introduced, requires the commission to provide a copy of a notice of default to the other participating states.

Effective Date; Withdrawal

The substitute provides that the compact comes into effect on the date on which the compact statute is enacted into law in the seventh participating state, whereas the introduced provided that the compact comes into effect on the date the 10th state enacts the compact statute into law.

Both the substitute and the introduced provide for the continuation of the compact and commission even if the number of participating states is less than their respective minimum number of states required for the compact to come into effect, but the introduced specified that the provision subjecting participating states enacting the compact to the process set forth in the compact for determining if their enactments are materially different from the model compact and whether they qualify for participation in the compact applied to states subsequent to the 10 initial charter participating states.

Both the substitute and the introduced provide that a participating state's withdrawal from the compact does not take effect until 180 days after enactment of the statute repealing the compact but the introduced, and not the substitute, further provided the following:

- during the 180-day period, all compact privileges that were in effect in the withdrawing state and were granted to licensees licensed in the withdrawing state remain in effect; and
- if any licensee licensed in the withdrawing state is also licensed in another participating state or obtains a license in another participating state within the 180 days, the licensee's compact privileges in other participating states are not affected by the passage of the 180 days.