

BILL ANALYSIS

H.B. 4070
By: Johnson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In Texas, some companies sell orthodontic devices directly to consumers without confirmation of an in-person dental examination. The bill author has informed the committee that, without such an examination, a patient can be pursuing orthodontics without evaluation to determine the proper treatment and can incur significant damage to their teeth as a result, since some devices may not be an adequate treatment option if an individual has gum disease, short roots, or other dental conditions. H.B. 4070 seeks to protect patients from unsafe medical practices by establishing requirements for a person selling an orthodontic device or providing a service related to the design or manufacture of such a device to patients in Texas, including an in-person examination requirement.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4070 amends the Health and Safety Code to prohibit a person from selling an orthodontic device or providing a service related to the design or manufacture of an orthodontic device to a patient in Texas who has not received the following:

- an in-person intraoral dental examination and an examination of the patient's head and neck;
- a review of recently performed x-rays, panoramic x-rays, computed tomography, bone imaging scans, or other appropriate diagnostic imaging sufficient to allow the dentist to detect patient conditions that preclude or contraindicate the provision of safe orthodontic treatment, including:
 - untreated caries;
 - gingivitis and periodontal disease;
 - issues with the roots of teeth in the periodontium, including short roots;
 - the presence of an osseointegrated dental implant or other fixed dental appliance;
 - fractured, cracked, or split teeth or roots; or
 - any other oral pathology or condition that precludes orthodontic treatment;
- a prescription for an orthodontic device issued by:
 - the dentist who provided the in-person intraoral dental examination and examination of the patient's head and neck and reviewed the appropriate diagnostic imaging; or

- the dentist who will conduct and monitor the patient's orthodontic treatment and has either received a referral from the patient's dentist who performed the examination or requested, received, and maintained clearance for orthodontic treatment from that dentist;
- counsel by an applicable dentist regarding available orthodontic treatment options and the risks associated with those treatments; and
- a review of the patient's medical and dental health histories.

The required counsel is valid only if the patient acknowledges and verifies in writing, with the patient's signature, that the patient received the counsel. The bill requires the dentist providing the counsel to attach and maintain the patient's written acknowledgment of counsel in the patient's file.

H.B. 4070 requires a person who sells an orthodontic device to a patient in Texas or provides a service related to the design or manufacture of an orthodontic device to either be a dentist who has provided the applicable services under the bill's provisions to the patient or have received written or electronic confirmation from a dentist who has provided those services to the patient.

H.B. 4070 requires a person who sells an orthodontic device to a patient or provides a service related to the design or manufacture of an orthodontic device to maintain any documents received for those purposes for not less than seven years after the date of sale or provision of services. The bill prohibits a dentist from requiring a patient to agree to use a particular type of orthodontic device as a condition of performing the applicable examination or review under the bill's provisions. The bill requires a dentist who provides such an examination and review to provide any records collected for those purposes to another dentist in accordance with Occupations Code provisions relating to a request for a dental record if the other dentist requests the records and if disclosure of a dental record is authorized under Occupations Code provisions relating to dental privilege.

H.B. 4070 defines "orthodontic device" as any class II or class III medical device, as defined by the FDA under applicable federal regulations, excluding a retainer used to keep teeth in a fixed position, that is used in orthodontic treatment to move a patient's teeth or jaw or correct a misalignment or malposition and is manufactured to address the specific orthodontic needs of an individual patient. The bill defines "dentist" as a person licensed to practice dentistry in Texas.

H.B. 4070 applies only to services related to the design or manufacture of an orthodontic device that are provided or an orthodontic device sold on or after the bill's effective date. Services related to the design or manufacture of an orthodontic device that are provided or an orthodontic device sold before the bill's effective date are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.