

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2453

As Recommended by House Committee on
Health and Human Services

Brief*

HB 2453 would enact the Dentist and Dental Hygienist Compact (Compact) to provide interstate practice privileges for dentists and dental hygienists. The bill contains uniform language that would enact the Compact in Kansas.

Purpose (Section 1)

The bill would state the purposes of the Compact are to facilitate the interstate practice of dentistry and dental hygiene and improve public access to dentistry and dental hygiene services. The Compact would establish a pathway for dentists and dental hygienists licensed in a participating state to obtain privilege to practice in other participating states where they are not licensed, while states would be able to protect public health and safety through the State's authority to regulate the practice of dentistry and dental hygiene. The Compact would:

- Enable dentists and dental hygienists who qualify for Compact privilege to practice in other participating states without satisfying burdensome and duplicative requirements associated with securing a license to practice in those states;
- Promote mobility and address workforce shortages through each participating state's acceptance of a Compact privilege to practice in that state;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Increase public access to qualified, licensed dentists and dental hygienists by creating a responsible, streamlined pathway for licensees to practice in participating states;
- Enhance the ability of participating states to protect the public's health and safety;
- Not interfere with licensure requirements established by a participating state;
- Facilitate the sharing of licensure and disciplinary information among participating states;
- 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;
- Extend 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;
- Promote the cooperation of a participating state in regulating the practice of dentistry and dental hygiene within those states; and
- Facilitate the relocation of military members and their spouses who are licensed to practice dentistry or dental hygiene.

Definitions (Section 2)

The Compact would define various terms used throughout the Compact. Key terms would include the following:

- “Compact privilege,” defined as the authorization granted by a remote state to allow a licensee from a participating state to practice as a dentist or dental hygienist in a remote state; and
- “Dentist and Dental Hygienist Compact Commission,” (Commission) defined as a joint government agency established by the Compact comprised of each state that has enacted the Compact and a national administrative body comprised of a Commissioner from each state that has enacted the Compact.

State Participation in the Compact (Section 3)

In order to join the Compact and continue as a participating state, states would be required to:

- Enact a Compact that is not materially different from the model compact as determined in accordance with Commission rules;
- Participate fully in the Commission’s data system;
- Have a mechanism in place for receiving and investigating complaints about its licensees and license applicants;
- Notify the Commission, in compliance with the terms of the Compact and Commission rules, of any adverse action or the availability of significant investigative information regarding a licensee and license applicant;
- Fully implement a criminal background check requirement, within a time frame established by Commission rule, by receiving the results of a qualifying criminal background check;

- Comply with the Commission rules applicable to a participating state;
- Accept the National Board Examinations of the Joint Commission on National Dental Examinations or another examination accepted by Commission rule as a licensure examination;
- Accept for licensure that applicants for a dental license graduate from a predoctoral dental education program accredited by the Commission on Dental Accreditation, or another accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental hygiene education programs, leading to a doctor of dental surgery (DDS) or doctor of dental medicine (DMD) degree;
- Accept for licensure that applicants for a dental hygienist license graduate from a dental hygiene education program accredited by the Commission on Dental Accreditation or another accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental hygiene education programs;
- 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 as established by Commission rule.

The Compact would state that providing alternative pathways for an individual to receive an unrestricted license would not disqualify a state from participating in the Compact.

Criminal Background Check

When conducting a criminal background check, the Compact would require the state licensing authority to:

- Consider that information in making a licensure decision;
- Maintain documentation of completion of the criminal background check and background check information to the extent allowed by state and federal law; and
- Report to the Commission whether it has completed the criminal background check and whether the individual was granted or denied a license.

Compact Licensure

The Compact would state 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 would be issued a Compact privilege in a remote state in accordance with the terms of the Compact and Commission rules. If a remote state has a jurisprudence requirement, a Compact privilege would not be issued to the licensee unless the licensee has satisfied the jurisprudence requirement.

Compact Privilege (Section 4)

The Compact would require a licensee to do the following in order to obtain and exercise the Compact privilege:

- Have a qualifying license as a dentist or dental hygienist in a participating state;

- Be eligible for Compact privilege in any remote state in accordance with the Compact;
- Submit to an application process whenever the licensee is seeking a Compact privilege;
- Pay any applicable Commission and remote state fees for a Compact privilege in the remote state;
- Meet any jurisprudence requirement established by a remote state in which the licensee is seeking a Compact privilege;
- Have passed a national board examination of the Joint Commission on National Dental Examinations or another examination accepted by Commission rule;
- For a dentist, have graduated from a predoctoral dental education program accredited by the Commission on Dental Accreditation, or another accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental hygiene education programs, leading to the DDS or DMD degree;
- For a dental hygienist, have graduated from a dental hygiene education program accredited by the Commission on Dental Accreditation or another accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental hygiene education programs;
- Have successfully completed a clinical assessment for licensure;
- Report to the Commission any adverse action taken by any non-participating state when applying for a Compact privilege and, otherwise, within 30 days after the date the adverse action is taken;

- Report to the Commission, when applying for a Compact privilege, the address of the licensee's primary residence and thereafter immediately report to the Commission any change in address of the licensee's primary residence; and
- Consent to accept service of process by mail at the licensee's primary residence on record with the Commission with respect to any action brought against the licensee by the Commission or a participating state and consent to accept service of a subpoena by mail at the licensee's primary residence on record with the Commission with respect to any action brought on investigation conducted by the Commission or a participating state.

Compact Privilege

Licensees would be required to comply with the requirements of the Compact to maintain Compact privilege in the remote state. If those requirements are met, the Compact privilege would continue if the licensee maintains a qualifying license in the state through which the licensee applied for the Compact privilege and pays any applicable Compact privilege renewal fees.

A licensee providing dentistry or dental hygiene in a remote state under the Compact privilege would be required to function within the scope of practice authorized by the remote state for a dentist or dental hygienist licensed in that state.

A licensee providing dentistry or dental hygiene pursuant to a Compact privilege in a remote state would be subject to that state's regulatory authority. A remote state would be able to, in accordance with due process and that state's laws, by adverse action revoke or remove a licensee's Compact privilege in the remote state for a specific period of time and

impose fines or take any other necessary actions to protect the health and safety of its citizens. If a remote state imposes an adverse action against a Compact privilege that limits the Compact privilege, that adverse action would apply to all Compact privileges in all remote states. A licensee whose Compact privilege in a remote state is removed for a specified period of time would not be eligible for a Compact privilege in any other remote state until the specific time for removal of the Compact privilege has passed, and all encumbrance requirements are satisfied.

If a license in a participating state is an encumbered license, the licensee would lose the Compact privilege in a remote state and would not be eligible for a Compact privilege in any remote state until the license is unencumbered.

Once an encumbered license in a participating state is restored to good standing, the licensee would need to meet the requirements for licensees under the Compact to obtain privilege in a remote state.

If a licensee's Compact privilege in a remote state is removed by the remote state, the individual would lose or be ineligible for the Compact privilege in any remote state until:

- The specific period for which the Compact privilege was removed has ended; and
- All conditions for removal of the Compact privilege have been satisfied.

Once these requirements have been met, the licensee would also need to meet the requirements for licensees under the Compact to obtain privilege in a remote state.

Active Military Member or Their Spouses (Section 5)

An active military member and their spouse would not be required to pay the fee charged by the Commission for a Compact privilege. If a remote state chooses to charge a fee for a Compact privilege, it would be able to charge a reduced fee or no fee to an active military member and their spouse for a Compact privilege.

Adverse Actions (Section 6)

A participating state in which a licensee is licensed would have exclusive authority to impose adverse action against the qualifying license issued by that participating state.

A participating state would be able to take adverse action based on the significant investigative information of a remote state, if the participating state follows its own procedures for imposing adverse action.

Nothing in the Compact would override a participating state's decision that participation in an alternative program may be used in lieu of adverse action and that participation would remain non-public if required by the participating state's laws. Participating states would be required to require licensees who enter any alternative program in lieu of discipline to agree not to practice pursuant to a Compact privilege in any other participating state during the term of the alternative program without prior authorization from the other participating state.

Any participating state in which a licensee is applying to practice or is practicing pursuant to a Compact privilege would be able to investigate actual or alleged violations of the statutes and regulations authorizing the practice of dentistry or dental hygiene in any other participating state in which the dentist or dental hygienist holds a license or Compact privilege.

A remote state would have the authority to:

- Take adverse actions as set forth in the Compact against a licensee's compact privilege in the state;
- In furtherance of its rights and responsibilities under the Compact and the Commission's rules, issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a state licensing authority in a participating state for the attendance and testimony of witnesses, or the production of evidence from another participating state, would be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority would be required to pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located; and
- If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

In addition to the authority granted to a participating state by its dentist or dental hygienist licensure act or other applicable state law, a participating state would be able to jointly investigate licensees with other participating states.

Participating states would be required to share any significant investigative information, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

After a licensee's Compact privilege in a remote state is terminated, the remote state could continue an investigation of the licensee that began when the licensee had a Compact privilege in that remote state.

If the investigation yields what would be a significant investigative information had the licensee continued to have a Compact privilege in that remote state, the remote state would report the presence of the information to the data system as required by the Compact as if it was significant investigative information.

***Establishment and Operation of the Commission
(Section 7)***

The Compact would provide for participating states to create and establish a joint government agency whose membership would consist of all participating states that have enacted the Compact. The Commission would be an instrumentality of the participating states acting jointly and not an instrumentality of any one state. The Commission would come into existence on or after the effective date of Compact.

Each participating state would have and be limited to one Commissioner selected by that state's licensing authority or, if the state has more one state licensing authority, selected collectively by the state licensing authorities.

The Commissioner would be a member or designee of such authority or authorities.

The Commission would, by rule or bylaw, establish a term of office for commissioners and could establish term limits.

The Commission could recommend to a state licensing authority or authorities, as applicable, removal or suspension of an individual as the state's commissioner.

A participating state's state licensing authority or authorities, as applicable, would fill any vacancy of its commissioner or the Commission within 60 days after the vacancy.

Each commissioner would be entitled to one vote on all matters voted upon by the Commission.

The Commission would meet at least once during each calendar year. Additional meetings could be held as set forth in the bylaws. The Commission would be able to meet by telecommunication, video conference, or other similar electronic means.

Commission Powers

The Commission would have the following powers:

- Establish the fiscal year of the Commission;
- Establish a code of conduct and conflict of interest policies;
- Adopt rules and bylaws;
- Maintain its financial records in accordance with the bylaws;
- Meet and take actions as are consistent with the provisions of the Compact and the Commission's rules and bylaws;
- Initiate and conclude legal proceedings or actions in the name of the Commission, provided the standing of any state licensing authority to sue or be sued under applicable law would not be affected;
- 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;

- Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a participating state;
- Conduct an annual financial review;
- Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the Compact and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- As set forth in Commission rules, charge a fee to a licensee for the grant of a Compact privilege in a remote state and charge the licensee a Compact privilege renewal fee for each renewal period in which that licensee exercises or intends to exercise the Compact privilege in that remote state. A remote state would not be prevented from charging a licensee a fee for a Compact privilege or renewals of a Compact privilege, or a fee for the jurisprudence requirement, if the remote state imposes a requirement for the grant of a Compact privilege;
- Accept any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services and receive, utilize, and dispose of the same, and at all times the Commission would avoid any appearance of impropriety or conflict of interest;

- Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest in property;
- Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
- Establish a budget and make expenditures;
- Borrow money;
- Appoint committees, including standing committees, which may be composed of members, state regulators, state legislators or their representatives, consumer representatives, and other interested persons as may be designated in this Compact and the bylaws;
- Provide and receive information from, and cooperate with, law enforcement agencies;
- Elect a chairperson, vice-chairperson, secretary, and treasurer and other officers of the Commission as provided in the Commission's bylaws;
- Establish and elect an executive board;
- Adopt and provide to the participating states an annual report;
- 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
- Perform other functions as may be necessary or appropriate to achieve the purposes of the Compact.

Meeting Notice

All meetings of the Commission not closed pursuant to the Compact would be open to the public. Notice of public meetings would be posted on the Commission's website at least 30 days prior to the public meeting.

Notice of all Commission meetings would provide the time, date, and location of the meeting, and if the meeting is to be held or accessible via telecommunication, video conference, or other electronic means, the notice would include the mechanism for access to the meeting through those means.

Notwithstanding the above, the Commission could convene an emergency public meeting by providing at least 24 hours' prior notice on the Commission's website and any other means as provided in the Commission's rules. Emergency meetings would be permissible in order to:

- Meet an imminent threat to public health, safety, or welfare;
- Prevent a loss of Commission or participating state funds;
- Meet a deadline for the promulgation of a rule that is established by federal law or rule; or
- Protect public health and safety.

The Commission's legal counsel would certify that one of the reasons justifying an emergency public meeting has been met.

Closed Meetings

The Commission could convene in a closed, non-public meeting for the Commission to receive legal advice to discuss:

- Non-compliance of a participating state with its obligations under the Compact;
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- Current or threatened discipline of a licensee or Compact privilege holder by the Commission or by a participating state's licensing authority;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- Accusing any person of a crime or formally censuring any person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Investigative records compiled for law enforcement purposes;
- Information related to any investigative reports prepared by, on behalf of, or for use of the Commission or any other committee charged with

responsibility of investigation or determination of compliance issues pursuant to the Compact;

- Legal advice;
- Matters specifically exempted from disclosure to the public by federal or participating state law; and
- Other matters as promulgated by the Commission by rule.

If a meeting, or portion of a meeting, is closed, the presiding officer would state the meeting will be closed and reference each relevant exempting provision, and this reference would be recorded in the minutes.

The Commission would keep minutes that fully and clearly describe all matters discussed in a meeting and would provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action would be identified in the minutes. All minutes and documents of a closed meeting would remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

Commission Finances

The Commission would pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

The Commission could accept any and all appropriate sources of revenue, donations, and grants of money, equipment, supplies, materials, and services.

The Commission could 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 to cover the cost of the operations and activities of

the Commission and its staff, which would be in a total amount sufficient to cover its annual budget as approved each fiscal year for which sufficient revenue is not provided by other sources. The aggregate annual assessment amount for participating states would be allocated based upon a formula that the Commission would promulgate by rule.

The Commission would not incur obligations of any kind prior to securing the funds adequate to meet the same nor would the Commission pledge the credit of any participating state except by and with the authority of the participating state.

The Commission would keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission would be subject to the financial review and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission would be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review would be included in and become part of the annual report of the Commission.

Executive Board

The Executive Board would have the power to act on behalf of the Commission according to the terms of the Compact. The powers, duties, and responsibilities of the Executive Board would include:

- Overseeing the day-to-day activities of the administration of the Compact, including compliance with the provisions of the Compact, the Commission's rules, and bylaws;
- Recommending the Commission changes to the rules or bylaws, changes to this Compact legislation, fees charged to Compact participating states, fees charged to licensees, and other fees;

- Ensuring Compact administration services are appropriately provided, including by contract;
- Preparing and recommending the budget;
- Maintaining financial records on behalf of the Commission;
- Monitoring Compact compliance of participating states and providing compliance reports to the Commission;
- Establishing additional committees as necessary;
- Exercising powers and duties of the Commission during the interim between Commission meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the Commission by rule or bylaw; and
- Other duties as provided in the rules and bylaws of the Commission.

Executive Board Membership

The Executive Board would be composed of up to seven members. The chairperson, vice-chairperson, secretary, and treasurer of the Commission and any other members of the Commission who serve on the Executive Board would be voting members of the Executive Board. Other than the chairperson, vice chairperson, secretary, and treasurer, the Commission could elect up to three voting members from the current membership of the Commission.

The Commission could remove any member of the Executive Board as provided in the Commission's bylaws.

Executive Board Meetings

The Executive Board would meet at least annually.

An Executive Board meeting at which it takes or intends to take formal action on a matter would be open to the public, except the Executive Board could meet in a closed, non-public session of a public meeting when dealing with:

- Non-compliance of a participating state with its obligations under the Compact;
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- Current or threatened discipline of a licensee or Compact privilege holder by the Commission or by a participating state's licensing authority;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- Accusing any person of a crime or formally censuring any person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Investigative records compiled for law enforcement purposes;

- Information related to any investigative reports prepared by, on behalf of, or for use of the Commission or any other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact;
- Legal advice;
- Matters specifically exempted from disclosure to the public by federal or participating state law; and
- Other matters as promulgated by the Commission by rule.

The Executive Board would provide five business days' notice of its public meetings, published on its website, and as it may otherwise determine, to provide notice to persons with an interest in the public matters the Executive Board intends to address at those meetings.

The Executive Board could 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.

Commission Liability and Protections

The members, officers, executive director, employees, and representatives of the Commission would be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a

reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. Nothing in this section would be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person. The procurement of insurance of any type by the Commission would not in any way compromise or limit this immunity.

The Commission would defend any member, officer, executive director, employee, and representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or as determined by the Commission the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that nothing in this paragraph would be construed to prohibit that person from retaining their own counsel at their own expense, and provided further, the actual or alleged act, error, or omission did not result in that person's intentional, willful, or wanton misconduct.

Should any member, officer, executive director, employee, or representative of the Commission be held liable for the amount of any settlement or judgment arising out of any actual or alleged act, error, or omission that occurred within the scope of that individual's employment, duties, or responsibilities for the Commission, the Commission would indemnify and hold harmless the individual, provided the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of the individual.

Nothing in this subsection would be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which would be governed solely by any other applicable state laws.

Nothing in the Compact would be interpreted to waive or otherwise abrogate a participating state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other state or federal antitrust or anti-competitive law or regulation.

[*Note:* The Sherman Act and Clayton Act are federal antitrust laws.]

Nothing in the Compact would be construed to be a waiver of sovereign immunity by the participating states or by the Commission.

Data System (Section 8)

The bill would require the Commission to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and the presence of significant investigative information on all licensees and applicants for a license in participating states.

The bill would require, notwithstanding any provision of state law to the contrary, a participating state to submit a uniform data set to the data system on all individuals to whom the Compact is applicable, as required by the rules of the Commission, including:

- Identifying information;
- Licensure data;
- Adverse actions against a licensee, license applicant, or Compact privilege;
- Non-confidential information related to alternative program participation, the beginning and ending

dates of the participation, and other related information;

- Any denial of an application for licensure and the reasons for denial;
- The presence of significant investigative information; and
- Other information that may facilitate the administration of the Compact or the protection of the public, as determined by the rules of the Commission.

Records and information provided to a participating state pursuant to the Compact through the data system would constitute the authenticated business records of the Commission and would be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a participating state. Significant investigative information pertaining to a licensee in any participating state would be only available to other participating states.

Participating states would be responsible for monitoring the database to determine whether adverse action has been taken against a licensee or license applicant. Adverse action information pertaining to a license or license applicant in any participating state would be available to any other participating state. Participating states would be able to designate information that may not be shared with the public without the express permission of the contributing state. Any information submitted to the data system and subsequently expunged pursuant to federal law or the laws of the participating state would be removed from the data system.

Rulemaking (Section 9)

The bill would provide for the Commission to promulgate reasonable rules in order to effectively and efficiently

implement and administer the Compact. A Commission rule would be invalid and have no force or effect only if a court of competent jurisdiction holds the rule is invalid because the Commission exercised its rulemaking authority in a manner beyond the scope and purposes of the Compact or based on another applicable standard of review.

The rules of the Commission would have the force of law in each participating state unless the rules 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 would be ineffective in that state to the extent of the conflict.

The bill would state the Commission could exercise its rulemaking powers pursuant to the Compact and the rules adopted thereunder. Rules would become binding as of the date specified by the Commission for each rule.

If a majority of legislatures of the participating states reject a Commission rule or portion of a Commission rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, within four years of the date of adoption of the rule, then the rule would have no further force and effect in any participating state or to any state applying to participate in the Compact.

Rules would be adopted at regular or special meetings of the Commission. Prior to adoption of a proposed rule, the Commission would hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

Notice of Public Hearing

At least 30 days in advance of the meeting at which the Commission would hold a public hearing on the proposed rule, the Commission would provide a notice of proposed rulemaking:

- On the website of the Commission or other publicly available platform;
- To persons who have requested notice of the Commission's notices of proposed rulemaking; and
- In other ways as the Commission may specify by rule.

The notice of proposed rulemaking would include:

- The time, date, and location of the public hearing at which the Commission would hear public comments on the proposed rule and, if different, the time, date, and location of the meeting where the Commission would consider and vote on the proposed rule;
- If the hearing is held via telecommunication, video conference, or other electronic means, the Commission would include the mechanism for access to the hearing in the notice of proposed rulemaking;
- The text of the proposed rule and the reason therefor;
- A request for comments on the proposed rule from any interested person; and
- The manner in which interested persons may submit written comments.

Public Hearings

All hearings would be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed rule would be available to the public.

Nothing in the Compact would be construed as requiring a separate hearing on each Commission rule. Rules would be grouped for the convenience of the Commission at hearings required by this section.

The Commission would, by majority vote of all Commissioners, take final action on the proposed rule based on the rulemaking record.

The Commission could adopt changes to the proposed rule if the changes would not enlarge the original purpose of the proposed rule.

The Commission would provide an explanation of the reasons for substantive changes made to the proposed rule as well as reasons for substantive changes not made that were recommended by commenters.

The Commission would determine a reasonable effective date for the rule. Except for an emergency, the effective date of the rule would be no sooner than 30 days after the Commission issuing the notice that it adopted or amended the rule.

Emergency Rulemaking

Upon determination that an emergency exists, the Commission could consider and adopt an emergency rule with 24 hours' notice, with opportunity to comment, and the usual rulemaking procedures provided in the Compact would be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this subsection, an emergency rule would be one that must be adopted immediately in order to:

- Meet an imminent threat to public health, safety, or welfare;

- Prevent a loss of Commission or participating state funds;
- Meet a deadline for the promulgation of a rule that is established by federal law or rule; or
- Protect public health and safety.

The Commission or an authorized committee of the Commission could direct revisions to a previously adopted rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions would be posted on the website of the Commission. The revision would be subject to challenge by any person for a period of 30 days after posting. The revision could be challenged only on grounds the revision results in a material change to a rule. A challenge would be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision would take effect without further action. If the revision is challenged, the revision would not take effect without the approval of the Commission.

No participating state's rulemaking requirements would apply under the Compact.

Oversight, Dispute Resolution, and Enforcement (Section 10)

The Compact would provide for the executive and judicial branches of state government in each participating state to enforce the Compact and take all actions necessary and appropriate to implement the Compact.

The Compact would establish proper venue for judicial proceedings by or against the Commission to be solely and exclusively a court of competent jurisdiction where the principal office of the Commission is located. The Commission could waive venue and jurisdictional defenses to

the extent it would adopt or consent to participate in alternative dispute resolution proceedings. These provisions would not affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any similar matter.

The Commission would be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact or Commission rule and would have standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process would render a judgment or order void as to the Commission, the Compact, or promulgated rules.

Defaulting States

If the Commission determines that a participating state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission would provide written notice to the defaulting state. The notice of default would describe the default, the proposed means of curing the default, and any other action the Commission could take and would offer training and specific technical assistance regarding the default.

The Commission would provide a copy of the notice of default to the other participating state.

If a state in default fails to cure the default, the defaulting state would be terminated from the Compact upon an affirmative vote of a majority of the Commissioners, and all rights, privileges, and benefits conferred on that state by the Compact would be terminated on the effective date of termination. A cure of the default would not relieve the offending state of obligations or liabilities incurred during the period of default.

Termination of participation in the Compact would be imposed only after all other means of securing compliance

were exhausted. Notice of intent to suspend or terminate would be given by the Commission to:

- The governor;
- The majority and minority leaders of the defaulting state's legislature;
- The defaulting state's state licensing authority or authorities, as applicable; and
- Each of the participating states' state licensing authority or authorities, as applicable.

A state that has been terminated would be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

Upon the termination of a state's participation in the Compact, that state would immediately provide notice to all licensees of the state, including licensees of other participating states issued a Compact privilege to practice within that state of termination. The terminated state would continue to recognize all Compact privileges then in effect in that state for a minimum of 180 days after the date of said notice of termination.

The Commission would not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

The defaulting state could appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party would be awarded all costs of litigation, including reasonable attorney fees.

Upon request by a participating state, the Commission would attempt to resolve disputes related to the Compact that arise among participating states and between participating states and non-participating states.

The Compact would require the Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

The Commission, in the reasonable exercise of its discretion, would enforce the provisions of the Compact and the Commission's rules.

By majority vote, the Commission could initiate legal action against a participating state in default in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated rules. The relief sought could include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party would be awarded all costs of litigation, including reasonable attorney fees. The remedies included in this section would not be the exclusive remedies of the Commission, and the Commission could pursue any other remedies available under federal or the defaulting participating state's law.

A participating state could initiate legal action against the Commission in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated rules. The relief sought could include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party would be awarded all costs of litigation, including reasonable attorney fees.

No individual or entity other than a participating state could enforce this Compact against the Commission.

Effective Date, Withdrawal, and Amendment (Section 11)

The Compact would come into effect on the date on which the Compact statute is enacted into law in the seventh participating state. [Note: As of February 6, 2024, four states have enacted the Compact: Iowa, Tennessee, Washington, and Wisconsin. Legislation is pending in 12 states, including Kansas.]

On or after the effective date of the Compact, the Commission would convene and review the enactment of each of the states that enacted the Compact prior to the Commission convening, the charter participating states, to determine if the statute enacted by each charter participating state is materially different than the model Compact.

A charter participating state whose enactment is found to be materially different from the model Compact would be entitled to the default process described in Section 10 of the bill.

If any participating state is later found to be in default, or is terminated or withdraws from the Compact, the Commission would remain in existence, and the Compact would remain in effect even if the number of participating states would be fewer than seven.

Participating states enacting the Compact after the charter participating states would be subject to evaluation by the Commission to determine if their enactments are materially different from the model Compact and whether they qualify for participation in the Compact.

All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the Compact or the Commission coming into existence would be actions of the Commission unless specifically repudiated by the Commission.

Any state that joins the Compact after the Commission's initial adoption of the rules and bylaws would be subject to the Commission's rules and bylaws as they exist on the date on which the Compact becomes law in that state. Any rules previously adopted by the Commission would have the full force and effect of law on the day the Compact becomes law in that state.

State Withdrawal

Any participating state would be able to withdraw from the Compact by enacting a statute repealing that state's enactment of the Compact. A participating state's withdrawal would not take effect until 180 days after enactment of the repealing statute.

Withdrawal would not affect the continuing requirement of the withdrawing state's licensing authority or authorities to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

Upon the enactment of a statute withdrawing from this Compact, the state would immediately provide notice of withdrawal to all licensees within that state. Notwithstanding any subsequent statutory enactment to the contrary, the withdrawing state would continue to recognize all Compact privileges to practice within that state granted pursuant to this Compact for a minimum of 180 days after the date of notice of withdrawal.

Nothing contained in the Compact would be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a participating state and a non-participating state that does not conflict with the provisions of this Compact.

This Compact would be amendable by the participating states. No amendment to the Compact would become

effective and binding upon any participating state until it is enacted into the laws of all participating states.

Construction and Severability (Section 12)

The Compact and the Commission's rulemaking authority would be liberally construed so as to effectuate the purposes and the implementation and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of rules would not be construed to limit the Commission's rulemaking authority solely for those purposes.

The provisions of this Compact would be severable, and if any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any participating state, a state seeking participation in the Compact or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person, or circumstance would not be affected by such holding.

The Commission would be able to deny a state's participation in the Compact or terminate a participating state if it determines a constitutional requirement of a participating state is a material departure from the Compact. If the Compact would be held to be contrary to the constitution of any participating state, the Compact would remain in full force and effect as to the remaining participating states and in full force and effect as to the participating state affected as to all severable matters.

***Consistent Effect and Conflict with Other State Laws
(Section 13)***

The Compact would state that nothing within it would prevent or inhibit the enforcement of any other law of a participating state that is not consistent with the Compact. Laws, statutes, regulations, and other legal requirements in a participating state in conflict with the Compact would be superseded to the extent of the conflict. Permissible agreements between the Commission and participating states would be binding.

Background

The bill was introduced by the House Committee on Appropriations at the request of a representative of the Association of Dental Support Organizations.

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by representatives of the Association of Dental Support Organizations, Council of State Governments, Kansas Dental Association, and Oral Health Kansas. The proponents generally stated dental licensing is complex, and the Compact can help bridge the patchwork of licensing requirements in various states. The conferees stated that areas of the state suffer from a lack of dental providers, and enacting the Compact could help ensure more Kansans have access to consistent, comprehensive oral health care.

Written-only proponent testimony was provided by a practicing dentist and representatives of the U.S. Department of Defense and Kansas Dental Hygienists Association.

The Executive Director of the Kansas Dental Board (Board), when questioned, stated the Board had a neutral position and made themselves available for questions.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Board states that enactment of the bill would increase fee fund expenditures by approximately \$200,000 beginning in FY 2024. While exact costs are unknown, the estimate includes the Compact participation fee, participation in and use of the coordinated database, and compliance with other Compact requirements. The Board notes enactment of the Compact should be revenue neutral as the Compact allows the same fee structure for remote state applicants as what is established for originating state applicants. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Dentists; dental hygienists; Dentist and Dental Hygienist Compact; interstate practice privileges; licensure