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SENATE BILL NO. 22

Offered January 10, 2024

Prefiled December 10, 2023

A BILL to amend the Code of Virginia by adding in Chapter 27 of Title 54.1 an article numbered 5, consisting of a section numbered 54.1-2729.02, relating to the Dentist and Dental Hygienist Compact.

Patron—Locke

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 27 of Title 54.1 an article numbered 5, consisting of a section numbered 54.1-2729.02, as follows:

Article 5.

Dentist and Dental Hygienist Compact.

§ 54.1-2729.02. Dentist and Dental Hygienist Compact.

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Dentist and Dental Hygienist Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

DENTIST AND DENTAL HYGIENIST COMPACT.

Article 1.

Title; Purpose.

This article shall be known and cited as the Dentist and Dental Hygienist Compact. The purposes of this Compact are 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 Compact does this by establishing a pathway for dentists and dental hygienists licensed in a participating state to obtain a compact privilege that authorizes them to practice in another participating state in which they are not licensed. The Compact enables participating states to protect the public health and safety with respect to the practice of such dentists and dental hygienists, through the state's authority to regulate the practice of dentistry and dental hygiene in the state. The Compact:

1. 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;

2. Promotes mobility and addresses workforce shortages through each participating state's acceptance of a compact privilege to practice in that state;

3. Increases public access to qualified licensed dentists and dental hygienists by creating a responsible, streamlined pathway for licensees to practice in participating states;

4. Enhances the ability of participating states to protect the public's health and safety;

5. Does not interfere with licensure requirements established by a participating state;

6. Facilitates the sharing of licensure and disciplinary information among participating states;

7. 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;

8. 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;

9. Promotes the cooperation of participating states in regulating the practice of dentistry and dental hygiene within those states; and

10. Facilitates the relocation of military members and their spouses who are licensed to practice dentistry or dental hygiene.

Article 2.

Definitions.

As used in this Compact, unless the context requires otherwise, the following definitions shall apply:

"Active military member" means any person with full-time duty status in the Armed Forces of the United States, including members of the National Guard and Reserve.

"Adverse action" means disciplinary action or encumbrance imposed on a license or compact privilege by a state licensing authority.

"Alternative program" means a nondisciplinary monitoring or practice remediation process

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59 applicable to a dentist or dental hygienist approved by a state licensing authority of a participating
60 state in which the dentist or dental hygienist is licensed. This includes, but is not limited to, programs to
61 which licensees with substance abuse or addiction issues are referred in lieu of adverse action.

62 "Clinical assessment" means an examination or process required for licensure as a dentist or dental
63 hygienist, as applicable, that provides evidence of clinical competence in dentistry or dental hygiene.

64 "Commissioner" means the individual appointed by a participating state to serve as the member of
65 the Commission for that participating state.

66 "Compact" means this Dentist and Dental Hygienist Compact.

67 "Compact privilege" means the authorization granted by a remote state to allow a licensee from a
68 participating state to practice as a dentist or dental hygienist in a remote state.

69 "Continuing professional development" means a requirement, as a condition of license renewal to
70 provide evidence of successful participation in educational or professional activities relevant to practice
71 or area of work.

72 "Criminal background check" means the submission of fingerprints or other biometric-based
73 information for a license applicant for the purpose of obtaining that applicant's criminal history record
74 information as defined in 28 C.F.R. § 20.3(d) from the Federal Bureau of Investigation and the state's
75 criminal history record repository as defined in 28 C.F.R. § 20.3(f).

76 "Data system" means the Commission's repository of information about licensees, including but not
77 limited to examination, licensure, investigative, compact privilege, adverse action, and alternative
78 program information.

79 "Dental hygienist" means an individual who is licensed by a state licensing authority to practice
80 dental hygiene.

81 "Dentist" means an individual who is licensed by a state licensing authority to practice dentistry.

82 "Dentist and Dental Hygienist Compact Commission" or "Commission" means a joint government
83 agency established by this Compact comprised of each state that has enacted the Compact and a
84 national administrative body comprised of a commissioner from each state that has enacted this
85 Compact.

86 "Encumbered license" means a license that a state licensing authority has limited in any way other
87 than through an alternative program.

88 "Executive board" means the chair, vice chair, secretary, and treasurer and any other commissioners
89 as may be determined by commission rule or bylaw.

90 "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and
91 rules governing the practice of dentistry or dental hygiene, as applicable, in a state.

92 "License" means current authorization by a state, other than authorization pursuant to a compact
93 privilege, or other privilege, for an individual to practice as a dentist or dental hygienist in that state.

94 "Licensee" means an individual who holds an unrestricted license from a participating state to
95 practice as a dentist or dental hygienist in that state.

96 "Model compact" means the model for the Dentist and Dental Hygienist Compact on file with the
97 Council of State Governments or other entity as designated by the Commission.

98 "Participating state" means a state that has enacted this Compact and been admitted to the
99 Commission in accordance with the provisions herein and commission rules.

100 "Qualifying license" means a license that is not an encumbered license issued by a participating
101 state to practice dentistry or dental hygiene.

102 "Remote state" means a participating state where a licensee who is not licensed as a dentist or
103 dental hygienist is exercising or seeking to exercise the compact privilege.

104 "Rule" means a regulation promulgated by an entity that has the force of law.

105 "Scope of practice" means the procedures, actions, and processes a dentist or dental hygienist
106 licensed in a state is permitted to undertake in that state and the circumstances under which the licensee
107 is permitted to undertake those procedures, actions, and processes. Such procedures, actions, and
108 processes and the circumstances under which they may be undertaken may be established through
109 means, including, but not limited to, statute, regulations, case law, and other processes, available to the
110 state licensing authority or other government agency.

111 "Significant investigative information" means information, records, and documents received or
112 generated by a state licensing authority pursuant to an investigation for which a determination has been
113 made that there is probable cause to believe that the licensee has violated a statute or regulation that is
114 considered more than a minor infraction for which the state licensing authority could pursue adverse
115 action against the licensee.

116 "State" means any state, commonwealth, district, or territory of the United States that regulates the
117 practices of dentistry and dental hygiene.

118 "State licensing authority" means an agency or other entity of a state that is responsible for the
119 licensing and regulation of dentists or dental hygienists.

120

State Participation in the Compact.

- 121
- 122 A. *In order to join this Compact and thereafter continue as a participating state, a state must:*
- 123 1. *Enact a compact that is not materially different from the model compact as determined in*
- 124 *accordance with Commission rules;*
- 125 2. *Participate fully in the Commission's data system;*
- 126 3. *Have a mechanism in place for receiving and investigating complaints about its licensees and*
- 127 *license applicants;*
- 128 4. *Notify the Commission, in compliance with the terms of this Compact and Commission rules, of*
- 129 *any adverse action or the availability of significant investigative information regarding a licensee and*
- 130 *license applicant;*
- 131 5. *Fully implement a criminal background check requirement, within a time frame established by*
- 132 *Commission rule, by receiving the results of a qualifying criminal background check;*
- 133 6. *Comply with the Commission rules applicable to a participating state;*
- 134 7. *Accept the National Board Examinations of the Joint Commission on National Dental*
- 135 *Examinations or another examination accepted by Commission rule as a licensure examination;*
- 136 8. *Accept for licensure such applicants for a dentist license who graduate from a predoctoral dental*
- 137 *education program accredited by the Commission on Dental Accreditation, or another accrediting*
- 138 *agency recognized by the U.S. Department of Education for the accreditation of dentistry and dental*
- 139 *hygiene education programs, leading to the Doctor of Dental Surgery (D.D.S.) or Doctor of Dental*
- 140 *Medicine (D.M.D.) degree;*
- 141 9. *Accept for licensure such applicants for a dental hygienist license who graduate from a dental*
- 142 *hygiene education program accredited by the Commission on Dental Accreditation or another*
- 143 *accrediting agency recognized by the U.S. Department of Education for the accreditation of dentistry*
- 144 *and dental hygiene education programs;*
- 145 10. *Require for licensure that applicants successfully complete a clinical assessment;*
- 146 11. *Have continuing professional development requirements as a condition for license renewal; and*
- 147 12. *Pay a participation fee to the Commission as established by Commission rule.*
- 148 B. *Providing alternative pathways for an individual to obtain an unrestricted license does not*
- 149 *disqualify a state from participating in this Compact.*
- 150 C. *When conducting a criminal background check, the state licensing authority shall:*
- 151 1. *Consider such information in making a licensure decision;*
- 152 2. *Maintain documentation of completion of the criminal background check and background check*
- 153 *information to the extent allowed by state and federal law; and*
- 154 3. *Report to the Commission whether it has completed the criminal background check and whether*
- 155 *the individual was granted or denied a license.*
- 156 D. *A licensee of a participating state who has a qualifying license in that state and does not hold an*
- 157 *encumbered license in any other participating state shall be issued a compact privilege in a remote state*
- 158 *in accordance with the terms of this Compact and Commission rules. If a remote state has a*
- 159 *jurisprudence requirement, a compact privilege will not be issued to the licensee unless the licensee has*
- 160 *satisfied the jurisprudence requirement.*

Article 4.

Compact Privilege.

- 161
- 162
- 163 A. *To obtain and exercise the compact privilege under the terms and provisions of this Compact, the*
- 164 *licensee shall:*
- 165 1. *Have a qualifying license as a dentist or dental hygienist in a participating state;*
- 166 2. *Be eligible for a compact privilege in any remote state in accordance with subsections D, G, and*
- 167 *H of this section;*
- 168 3. *Submit to an application process whenever the licensee is seeking a compact privilege;*
- 169 4. *Pay any applicable Commission and remote state fees for a compact privilege in the remote state;*
- 170 5. *Meet any jurisprudence requirement established by a remote state in which the licensee is seeking*
- 171 *a compact privilege;*
- 172 6. *Have passed a National Board Examination of the Joint Commission on National Dental*
- 173 *Examinations or another examination accepted by Commission rule;*
- 174 7. *For a dentist, have graduated from a predoctoral dental education program accredited by the*
- 175 *Commission on Dental Accreditation, or another accrediting agency recognized by the U.S. Department*
- 176 *of Education for the accreditation of dentistry and dental hygiene education programs, leading to the*
- 177 *Doctor of Dental Surgery (D.D.S.) or Doctor of Dental Medicine (D.M.D.) degree;*
- 178 8. *For a dental hygienist, have graduated from a dental hygiene education program accredited by*
- 179 *the Commission on Dental Accreditation or another accrediting agency recognized by the U.S.*
- 180 *Department of Education for the accreditation of dentistry and dental hygiene education programs;*
- 181 9. *Have successfully completed a clinical assessment for licensure;*

182 10. Report to the Commission adverse action taken by any nonparticipating state when applying for
 183 a compact privilege and, otherwise, within 30 days from the date the adverse action is taken;

184 11. Report to the Commission when applying for a compact privilege the address of the licensee's
 185 primary residence and thereafter immediately report to the Commission any change in the address of the
 186 licensee's primary residence; and

187 12. Consent to accept service of process by mail at the licensee's primary residence on record with
 188 the Commission with respect to any action brought against the licensee by the Commission or a
 189 participating state, and consent to accept service of a subpoena by mail at the licensee's primary
 190 residence on record with the Commission with respect to any action brought or investigation conducted
 191 by the Commission or a participating state.

192 B. The licensee must comply with the requirements of subsection A of this section to maintain the
 193 compact privilege in the remote state. If those requirements are met, the compact privilege will continue
 194 as long as the licensee maintains a qualifying license in the state through which the licensee applied for
 195 the compact privilege and pays any applicable compact privilege renewal fees.

196 C. A licensee providing dentistry or dental hygiene in a remote state under the compact privilege
 197 shall function within the scope of practice authorized by the remote state for a dentist or dental
 198 hygienist licensed in that state.

199 D. A licensee providing dentistry or dental hygiene pursuant to a compact privilege in a remote state
 200 is subject to that state's regulatory authority. A remote state may, in accordance with due process and
 201 that state's laws, by adverse action revoke or remove a licensee's compact privilege in the remote state
 202 for a specific period of time and impose fines or take any other necessary actions to protect the health
 203 and safety of its citizens. If a remote state imposes an adverse action against a compact privilege that
 204 limits the compact privilege, that adverse action applies to all compact privileges in all remote states. A
 205 licensee whose compact privilege in a remote state is removed for a specified period of time is not
 206 eligible for a compact privilege in any other remote state until the specific time for removal of the
 207 compact privilege has passed and all encumbrance requirements are satisfied.

208 E. If a license in a participating state is an encumbered license, the licensee shall lose the compact
 209 privilege in a remote state and shall not be eligible for a compact privilege in any remote state until the
 210 license is no longer encumbered.

211 F. Once an encumbered license in a participating state is restored to good standing, the licensee
 212 must meet the requirements of subsection A of this section to obtain a compact privilege in a remote
 213 state.

214 G. If a licensee's compact privilege in a remote state is removed by the remote state, the individual
 215 shall lose or be ineligible for the compact privilege in any remote state until the following occur:

216 1. The specific period of time for which the compact privilege was removed has ended; and

217 2. All conditions for removal of the compact privilege have been satisfied.

218 H. Once the requirements of subsection G of this section have been met, the licensee must meet the
 219 requirements in subsection A of this section to obtain a compact privilege in a remote state.

220 Article 5.

221 Active Military Members or Their Spouses.

222 Active military members and their spouses shall not be required to pay to the Commission the fee
 223 otherwise charged by the Commission for a compact privilege. If a remote state chooses to charge a fee
 224 for a compact privilege, it may choose to charge a reduced fee or no fee to active military members and
 225 their spouses for a compact privilege.

226 Article 6.

227 Adverse Actions.

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

230 B. A participating state may take adverse action based on the significant investigative information of
 231 a remote state, so long as the participating state follows its own procedures for imposing adverse
 232 action.

233 C. Nothing in this Compact shall override a participating state's decision that participation in an
 234 alternative program may be used in lieu of adverse action and that such participation shall remain
 235 nonpublic if required by the participating state's laws. Participating states must require licensees who
 236 enter any alternative program in lieu of discipline to agree not to practice pursuant to a compact
 237 privilege in any other participating state during the term of the alternative program without prior
 238 authorization from such other participating state.

239 D. Any participating state in which a licensee is applying to practice or is practicing pursuant to a
 240 compact privilege may investigate actual or alleged violations of the statutes and regulations authorizing
 241 the practice of dentistry or dental hygiene in any other participating state in which the dentist or dental
 242 hygienist holds a license or compact privilege.

243 E. A remote state shall have the authority to:

244 1. Take adverse actions as set forth in subsection D of Article 4 against a licensee's compact
245 privilege in the state;

246 2. In furtherance of its rights and responsibilities under this Compact and the Commission's rules
247 issue subpoenas for both hearings and investigations that require the attendance and testimony of
248 witnesses and the production of evidence. Subpoenas issued by a state licensing authority in a
249 participating state for the attendance and testimony of witnesses, or the production of evidence from
250 another participating state, shall be enforced in the latter state by any court of competent jurisdiction,
251 according to the practice and procedure of that court applicable to subpoenas issued in proceedings
252 pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other
253 fees required by the service statutes of the state where the witnesses or evidence are located; and

254 3. If otherwise permitted by state law, recover from the licensee the costs of investigations and
255 disposition of cases resulting from any adverse action taken against that licensee.

256 F. Joint investigations.

257 1. In addition to the authority granted to a participating state by its dentist or dental hygienist
258 licensure act or other applicable state law, a participating state may jointly investigate licensees with
259 other participating states.

260 2. Participating states shall share any significant investigative information, litigation, or compliance
261 materials in furtherance of any joint or individual investigation initiated under this Compact.

262 G. Authority to continue investigation.

263 1. After a licensee's compact privilege in a remote state is terminated, the remote state may continue
264 an investigation of the licensee that began when the licensee had a compact privilege in that remote
265 state.

266 2. If the investigation yields what would be significant investigative information had the licensee
267 continued to have a compact privilege in that remote state, the remote state shall report the presence of
268 such information to the data system as required by subdivision B 6 of Article 8 as if it was significant
269 investigative information.

270 Article 7.

271 Establishment and Operation of the Dentist and Dental Hygienist Compact Commission.

272 A. The Compact participating states hereby create and establish a joint government agency whose
273 membership consists of all participating states that have enacted the Compact. The Dentist and Dental
274 Hygienist Compact Commission is an instrumentality of the participating states acting jointly and not an
275 instrumentality of any one state. The Commission shall come into existence on or after the effective date
276 of the Compact as set forth in subsection A of Article 11.

277 B. Participation, voting, and meetings.

278 1. Each participating state shall have and be limited to one commissioner selected by that
279 participating state's state licensing authority or, if the state has more than one state licensing authority,
280 selected collectively by the state licensing authorities.

281 2. The commissioner shall be a member or designee of such authority or authorities.

282 3. The Commission may by rule or bylaw establish a term of office for commissioners and may by
283 rule or bylaw establish term limits.

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

286 5. A participating state's state licensing authority, or authorities, as applicable, shall fill any vacancy
287 of its commissioner on the Commission within 60 days of the vacancy.

288 6. Each commissioner shall be entitled to one vote on all matters that are voted upon by the
289 Commission.

290 7. The Commission shall meet at least once during each calendar year. Additional meetings may be
291 held as set forth in the bylaws. The Commission may meet by telecommunication, video conference, or
292 other similar electronic means.

293 C. The Commission shall have the following powers:

294 1. Establish the fiscal year of the Commission;

295 2. Establish a code of conduct and conflict of interest policies;

296 3. Adopt rules and bylaws;

297 4. Maintain its financial records in accordance with the bylaws;

298 5. Meet and take such actions as are consistent with the provisions of this Compact, the
299 Commission's rules, and the bylaws;

300 6. Initiate and conclude legal proceedings or actions in the name of the Commission, provided that
301 the standing of any state licensing authority to sue or be sued under applicable law shall not be
302 affected;

303 7. Maintain and certify records and information provided to a participating state as the
304 authenticated business records of the Commission and designate a person to do so on the Commission's

- 305 *behalf;*
306 8. *Purchase and maintain insurance and bonds;*
307 9. *Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a*
308 *participating state;*
309 10. *Conduct an annual financial review;*
310 11. *Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals*
311 *appropriate authority to carry out the purposes of this Compact, and establish the Commission's*
312 *personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other*
313 *related personnel matters;*
314 12. *As set forth in the Commission rules, charge a fee to a licensee for the grant of a compact*
315 *privilege in a remote state and thereafter, as may be established by Commission rule, charge the*
316 *licensee a compact privilege renewal fee for each renewal period in which that licensee exercises or*
317 *intends to exercise the compact privilege in that remote state. Nothing herein shall be construed to*
318 *prevent a remote state from charging a licensee a fee for a compact privilege or renewals of a compact*
319 *privilege, or a fee for the jurisprudence requirement if the remote state imposes such a requirement for*
320 *the grant of a compact privilege;*
321 13. *Accept any and all appropriate gifts, donations, grants of money, other sources of revenue,*
322 *equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that*
323 *at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;*
324 14. *Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or*
325 *any undivided interest therein;*
326 15. *Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property,*
327 *real, personal, or mixed;*
328 16. *Establish a budget and make expenditures;*
329 17. *Borrow money;*
330 18. *Appoint committees, including standing committees, which may be composed of members, state*
331 *regulators, state legislators or their representatives, and consumer representatives, and such other*
332 *interested persons as may be designated in this Compact and the bylaws;*
333 19. *Provide and receive information from, and cooperate with, law-enforcement agencies;*
334 20. *Elect a chair, vice chair, secretary, and treasurer and such other officers of the Commission as*
335 *provided in the Commission's bylaws;*
336 21. *Establish and elect an executive board;*
337 22. *Adopt and provide to the participating states an annual report;*
338 23. *Determine whether a state's enacted compact is materially different from the model compact*
339 *language such that the state would not qualify for participation in this Compact; and*
340 24. *Perform such other functions as may be necessary or appropriate to achieve the purposes of this*
341 *Compact.*
342 *D. Meetings of the Commission.*
343 1. *All meetings of the Commission that are not closed pursuant to this subsection shall be open to*
344 *the public. Notice of public meetings shall be posted on the Commission's website at least 30 days prior*
345 *to the public meeting.*
346 2. *Notwithstanding subdivision 1 of this subsection, the Commission may convene an emergency*
347 *public meeting by providing at least 24 hours prior notice on the Commission's website, and any other*
348 *means as provided in the Commission's rules, for any of the reasons it may dispense with notice of*
349 *proposed rulemaking under subsection L of Article 9. The Commission's legal counsel shall certify that*
350 *one of the reasons justifying an emergency public meeting has been met.*
351 3. *Notice of all Commission meetings shall provide the time, date, and location of the meeting, and if*
352 *the meeting is to be held or accessible via telecommunication, video conference, or other electronic*
353 *means, the notice shall include the mechanism for access to the meeting through such means.*
354 4. *The Commission may convene in a closed, nonpublic meeting for the Commission to receive legal*
355 *advice or to discuss:*
356 a. *Noncompliance of a participating state with its obligations under this Compact;*
357 b. *The employment, compensation, discipline, or other matters, practices, or procedures related to*
358 *specific employees or other matters related to the Commission's internal personnel practices and*
359 *procedures;*
360 c. *Current or threatened discipline of a licensee or compact privilege holder by the Commission or*
361 *by a participating state's licensing authority;*
362 d. *Current, threatened, or reasonably anticipated litigation;*
363 e. *Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;*
364 f. *Accusing any person of a crime or formally censuring any person;*
365 g. *Trade secrets or commercial or financial information that is privileged or confidential;*
366 h. *Information of a personal nature where disclosure would constitute a clearly unwarranted*

367 invasion of personal privacy;

368 i. Investigative records compiled for law-enforcement purposes;

369 j. Information related to any investigative reports prepared by or on behalf of or for use of the

370 Commission or other committee charged with responsibility of investigation or determination of

371 compliance issues pursuant to this Compact;

372 k. Legal advice;

373 l. Matters specifically exempted from disclosure to the public by federal or participating state law;

374 and

375 m. Other matters as promulgated by the Commission by rule.

376 5. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting

377 will be closed and reference each relevant exempting provision, and such reference shall be recorded in

378 the minutes.

379 6. The Commission shall keep minutes that fully and clearly describe all matters discussed in a

380 meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor,

381 including a description of the views expressed. All documents considered in connection with an action

382 shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under

383 seal, subject to release only by a majority vote of the Commission or order of a court of competent

384 jurisdiction.

385 E. Financing of the Commission.

386 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its

387 establishment, organization, and ongoing activities.

388 2. The Commission may accept any and all appropriate sources of revenue, donations, and grants of

389 money, equipment, supplies, materials, and services.

390 3. The Commission may levy on and collect an annual assessment from each participating state and

391 impose fees on licensees of participating states when a compact privilege is granted, to cover the cost of

392 the operations and activities of the Commission and its staff, which must be in a total amount sufficient

393 to cover its annual budget as approved each fiscal year for which sufficient revenue is not provided by

394 other sources. The aggregate annual assessment amount for participating states shall be allocated based

395 upon a formula that the Commission shall promulgate by rule.

396 4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to

397 meet the same, nor shall the Commission pledge the credit of any participating state, except by and with

398 the authority of the participating state.

399 5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and

400 disbursements of the Commission shall be subject to the financial review and accounting procedures

401 established under its bylaws. All receipts and disbursements of funds handled by the Commission shall

402 be subject to an annual financial review by a certified or licensed public accountant, and the report of

403 the financial review shall be included in and become part of the annual report of the Commission.

404 F. The executive board.

405 1. The executive board shall have the power to act on behalf of the Commission according to the

406 terms of this Compact. The powers, duties, and responsibilities of the executive board shall include:

407 a. Overseeing the day-to-day activities of the administration of this Compact, including compliance

408 with the provisions of the Compact and the Commission's rules and bylaws;

409 b. Recommending to the Commission changes to the rules or bylaws, changes to this Compact

410 legislation, fees charged to Compact participating states, fees charged to licensees, and other fees;

411 c. Ensuring compact administration services are appropriately provided, including by contract;

412 d. Preparing and recommending the budget;

413 e. Maintaining financial records on behalf of the Commission;

414 f. Monitoring Compact compliance of participating states and providing compliance reports to the

415 Commission;

416 g. Establishing additional committees as necessary;

417 h. Exercising the powers and duties of the Commission during the interim between Commission

418 meetings, except for adopting or amending rules, adopting or amending bylaws, and exercising any

419 other powers and duties expressly reserved to the Commission by rule or bylaw; and

420 i. Other duties as provided in the rules or bylaws of the Commission.

421 2. The executive board shall be composed of up to seven members:

422 a. The chair, vice chair, secretary, and treasurer of the Commission and any other members of the

423 Commission who serve on the executive board shall be voting members of the executive board; and

424 b. Other than the chair, vice chair, secretary, and treasurer, the Commission may elect up to three

425 voting members from the current membership of the Commission.

426 3. The Commission may remove any member of the executive board as provided in the Commission's

427 bylaws.

- 428 4. *The executive board shall meet at least annually.*
- 429 a. *An executive board meeting at which it takes or intends to take formal action on a matter shall be*
- 430 *open to the public, except that the executive board may meet in a closed, nonpublic session of a public*
- 431 *meeting when dealing with any of the matters covered under subdivision D 4 of this section.*
- 432 b. *The executive board shall give five business days' notice of its public meetings, posted on its*
- 433 *website and as it may otherwise determine to provide notice to persons with an interest in the public*
- 434 *matters the executive board intends to address at those meetings.*
- 435 5. *The executive board may hold an emergency meeting when acting for the Commission to:*
- 436 a. *Meet an imminent threat to public health, safety, or welfare;*
- 437 b. *Prevent a loss of Commission or participating state funds; or*
- 438 c. *Protect public health and safety.*
- 439 G. *Qualified immunity, defense, and indemnification.*
- 440 1. *The members, officers, executive director, employees, and representatives of the Commission shall*
- 441 *be immune from suit and liability, both personally and in their official capacity, for any claim for*
- 442 *damage to or loss of property or personal injury or other civil liability caused by or arising out of any*
- 443 *actual or alleged act, error, or omission that occurred, or that the person against whom the claim is*
- 444 *made had a reasonable basis for believing occurred within the scope of Commission employment, duties,*
- 445 *or responsibilities, provided that nothing in this subdivision shall be construed to protect any such*
- 446 *person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful*
- 447 *or wanton misconduct of that person. The procurement of insurance of any type by the Commission*
- 448 *shall not in any way compromise or limit the immunity granted hereunder.*
- 449 2. *The Commission shall defend any member, officer, executive director, employee, and*
- 450 *representative of the Commission in any civil action seeking to impose liability arising out of any actual*
- 451 *or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or*
- 452 *responsibilities, or as determined by the Commission that the person against whom the claim is made*
- 453 *had a reasonable basis for believing occurred within the scope of Commission employment, duties, or*
- 454 *responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining*
- 455 *his own counsel at his own expense, and provided further, that the actual or alleged act, error, or*
- 456 *omission did not result from that person's intentional or willful or wanton misconduct.*
- 457 3. *Notwithstanding subdivision 1 of this subsection, should any member, officer, executive director,*
- 458 *employee, or representative of the Commission be held liable for the amount of any settlement or*
- 459 *judgment arising out of any actual or alleged act, error, or omission that occurred within the scope of*
- 460 *that individual's employment, duties, or responsibilities for the Commission, or that the person to whom*
- 461 *that individual is liable had a reasonable basis for believing occurred within the scope of the*
- 462 *individual's employment, duties, or responsibilities for the Commission, the Commission shall indemnify*
- 463 *and hold harmless such individual, provided that the actual or alleged act, error, or omission did not*
- 464 *result from the intentional or willful or wanton misconduct of the individual.*
- 465 4. *Nothing herein shall be construed as a limitation on the liability of any licensee for professional*
- 466 *malpractice or misconduct, which shall be governed solely by any other applicable state laws.*
- 467 5. *Nothing in this Compact shall be interpreted to waive or otherwise abrogate a participating state's*
- 468 *state action immunity or state action affirmative defense with respect to antitrust claims under the*
- 469 *Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or regulation.*
- 470 6. *Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the*
- 471 *participating states or by the Commission.*

472 Article 8.

473 Data System.

- 474 A. *The Commission shall provide for the development, maintenance, operation, and utilization of a*
- 475 *coordinated database and reporting system containing licensure, adverse action, and the presence of*
- 476 *significant investigative information on all licensees and applicants for a license in participating states.*
- 477 B. *Notwithstanding any other provision of state law to the contrary, a participating state shall submit*
- 478 *a uniform data set to the data system on all individuals to whom this Compact is applicable as required*
- 479 *by the rules of the Commission, including:*
- 480 1. *Identifying information;*
- 481 2. *Licensure data;*
- 482 3. *Adverse actions against a licensee, license applicant, or compact privilege and information related*
- 483 *thereto;*
- 484 4. *Nonconfidential information related to alternative program participation, the beginning and ending*
- 485 *dates of such participation, and other information related to such participation;*
- 486 5. *Any denial of an application for licensure, and the reason(s) for such denial, (excluding the*
- 487 *reporting of any criminal history record information where prohibited by law);*
- 488 6. *The presence of significant investigative information; and*
- 489 7. *Other information that may facilitate the administration of this Compact or the protection of the*

490 public, as determined by the rules of the Commission.

491 C. The records and information provided to a participating state pursuant to this Compact or
 492 through the data system, when certified by the Commission or an agent thereof, shall constitute the
 493 authenticated business records of the Commission and shall be entitled to any associated hearsay
 494 exception in any relevant judicial, quasi-judicial or administrative proceedings in a participating state.

495 D. Significant investigative information pertaining to a licensee in any participating state will only be
 496 available to other participating states.

497 E. It is the responsibility of the participating states to monitor the database to determine whether
 498 adverse action has been taken against a licensee or license applicant. Adverse action information
 499 pertaining to a licensee or license applicant in any participating state will be available to any other
 500 participating state.

501 F. Participating states contributing information to the data system may designate information that
 502 may not be shared with the public without the express permission of the contributing state.

503 G. Any information submitted to the data system that is subsequently expunged pursuant to federal
 504 law or the laws of the participating state contributing the information shall be removed from the data
 505 system.

506 Article 9.

507 Rulemaking.

508 A. The Commission shall promulgate reasonable rules in order to effectively and efficiently
 509 implement and administer the purposes and provisions of this Compact. A Commission rule shall be
 510 invalid and have no force or effect only if a court of competent jurisdiction holds that the rule is invalid
 511 because the Commission exercised its rulemaking authority in a manner that is beyond the scope and
 512 purposes of this Compact, or the powers granted hereunder, or based upon another applicable standard
 513 of review.

514 B. The rules of the Commission shall have the force of law in each participating state, provided,
 515 however, that where the rules of the Commission conflict with the laws of the participating state that
 516 establish the participating state's scope of practice as held by a court of competent jurisdiction, the
 517 rules of the Commission shall be ineffective in that state to the extent of the conflict.

518 C. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this
 519 section and the rules adopted thereunder. Rules shall become binding as of the date specified by the
 520 Commission for each rule.

521 D. If a majority of the legislatures of the participating states rejects a Commission rule or portion of
 522 a Commission rule, by enactment of a statute or resolution in the same manner used to adopt this
 523 Compact within four years of the date of adoption of the rule, then such rule shall have no further force
 524 and effect in any participating state or to any state applying to participate in this Compact.

525 E. Rules shall be adopted at a regular or special meeting of the Commission.

526 F. Prior to adoption of a proposed rule, the Commission shall hold a public hearing and allow
 527 persons to provide oral and written comments, data, facts, opinions, and arguments.

528 G. Prior to adoption of a proposed rule by the Commission, and at least 30 days in advance of the
 529 meeting at which the Commission will hold a public hearing on the proposed rule, the Commission shall
 530 provide a notice of proposed rulemaking:

531 1. On the website of the Commission or other publicly accessible platform;

532 2. To persons who have requested notice of the Commission's notices of proposed rulemaking; and

533 3. In such other way(s) as the Commission may by rule specify.

534 H. The notice of proposed rulemaking shall include:

535 1. The time, date, and location of the public hearing at which the Commission will hear public
 536 comments on the proposed rule and, if different, the time, date, and location of the meeting where the
 537 Commission will consider and vote on the proposed rule;

538 2. If the hearing is held via telecommunication, video conference, or other electronic means, the
 539 Commission shall include the mechanism for access to the hearing in the notice of proposed rulemaking;

540 3. The text of the proposed rule and the reason therefor;

541 4. A request for comments on the proposed rule from any interested person; and

542 5. The manner in which interested persons may submit written comments.

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

545 J. Nothing in this section shall be construed as requiring a separate hearing on each Commission
 546 rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

547 K. The Commission shall, by majority vote of all commissioners, take final action on the proposed
 548 rule based on the rulemaking record.

549 1. The Commission may adopt changes to the proposed rule provided the changes do not enlarge the
 550 original purpose of the proposed rule.

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

554 3. The Commission shall determine a reasonable effective date for the rule. Except for an emergency
555 as provided in subsection L of this section, the effective date of the rule shall be no sooner than 30 days
556 after the Commission issuing the notice that it adopted or amended the rule.

557 L. Upon determination that an emergency exists, the Commission may consider and adopt an
558 emergency rule with 24 hours' notice, with opportunity to comment, provided that the usual rulemaking
559 procedures provided in this Compact and in this section shall be retroactively applied to the rule as
560 soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the
561 purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

562 1. Meet an imminent threat to public health, safety, or welfare;

563 2. Prevent a loss of Commission or participating state funds;

564 3. Meet a deadline for the promulgation of a rule that is established by federal law or rule; or

565 4. Protect public health and safety.

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

574 N. No participating state's rulemaking requirements shall apply under this Compact.

575 Article 10.

576 Oversight, Dispute Resolution, and Enforcement.

577 A. Oversight.

578 1. The executive and judicial branches of state government in each participating state shall enforce
579 this Compact and take all actions necessary and appropriate to implement the Compact.

580 2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely
581 and exclusively in a court of competent jurisdiction where the principal office of the Commission is
582 located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents
583 to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the
584 selection or propriety of venue in any action against a licensee for professional malpractice, misconduct,
585 or any such similar matter.

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

590 B. Default, technical assistance, and termination.

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

596 2. The Commission shall provide a copy of the notice of default to the other participating states.

597 C. If a state in default fails to cure the default, the defaulting state may be terminated from this
598 Compact upon an affirmative vote of a majority of the commissioners, and all rights, privileges, and
599 benefits conferred on that state by this Compact may be terminated on the effective date of termination.
600 A cure of the default does not relieve the offending state of obligations or liabilities incurred during the
601 period of default.

602 D. Termination of participation in this Compact shall be imposed only after all other means of
603 securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the
604 Commission to the governor, the majority and minority leaders of the defaulting state's legislature, the
605 defaulting state's state licensing authority or authorities, as applicable, and each of the participating
606 states' state licensing authority or authorities, as applicable.

607 E. A state that has been terminated is responsible for all assessments, obligations, and liabilities
608 incurred through the effective date of termination, including obligations that extend beyond the effective
609 date of termination.

610 F. Upon the termination of a state's participation in this Compact, that state shall immediately
611 provide notice to all licensees of the state, including licensees of other participating states issued a
612 compact privilege to practice within that state, of such termination. The terminated state shall continue

613 to recognize all compact privileges then in effect in that state for a minimum of 180 days after the date
614 of said notice of termination.

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

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

621 I. Dispute resolution.

622 1. Upon request by a participating state, the Commission shall attempt to resolve disputes related to
623 this Compact that arise among participating states and between participating states and
624 nonparticipating states.

625 2. The Commission shall promulgate a rule providing for both mediation and binding dispute
626 resolution for disputes as appropriate.

627 J. Enforcement.

628 1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this
629 Compact and the Commission's rules.

630 2. By majority vote, the Commission may initiate legal action against a participating state in default
631 in the United States District Court for the District of Columbia or the federal district where the
632 Commission has its principal offices to enforce compliance with the provisions of this Compact and its
633 promulgated rules. The relief sought may include both injunctive relief and damages. In the event
634 judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation,
635 including reasonable attorney fees. The remedies herein shall not be the exclusive remedies of the
636 Commission. The Commission may pursue any other remedies available under federal or the defaulting
637 participating state's law.

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

643 4. No individual or entity other than a participating state may enforce this Compact against the
644 Commission.

645 Article 11.

646 Effective Date, Withdrawal, and Amendment.

647 A. This Compact shall come into effect on the date on which the compact statute is enacted into law
648 in the seventh participating state.

649 1. On or after the effective date of this Compact, the Commission shall convene and review the
650 enactment of each of the states that enacted the Compact prior to the Commission convening (charter
651 participating states) to determine if the statute enacted by each such charter participating state is
652 materially different than the model compact.

653 a. A charter participating state whose enactment is found to be materially different from the model
654 compact shall be entitled to the default process set forth in Article 10.

655 b. If any participating state is later found to be in default, or is terminated or withdraws from the
656 Compact, the Commission shall remain in existence and the Compact shall remain in effect even if the
657 number of participating states should be less than seven.

658 2. Participating states enacting the Compact subsequent to the charter participating states shall be
659 subject to the process set forth in subdivision C 23 of Article 7 to determine if their enactments are
660 materially different from the model compact and whether they qualify for participation in the Compact.

661 3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the
662 administration of the Compact prior to the effective date of the Compact or the Commission coming into
663 existence shall be considered to be actions of the Commission unless specifically repudiated by the
664 Commission.

665 4. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules and
666 bylaws shall be subject to the Commission's rules and bylaws as they exist on the date on which the
667 Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall
668 have the full force and effect of law on the day the Compact becomes law in that state.

669 B. Any participating state may withdraw from this Compact by enacting a statute repealing that
670 state's enactment of the Compact.

671 1. A participating state's withdrawal shall not take effect until 180 days after enactment of the
672 repealing statute.

673 2. Withdrawal shall not affect the continuing requirement of the withdrawing state's licensing

674 authority or authorities to comply with the investigative and adverse action reporting requirements of
675 this Compact prior to the effective date of withdrawal.

676 3. Upon the enactment of a statute withdrawing from this Compact, the state shall immediately
677 provide notice of such withdrawal to all licensees within that state. Notwithstanding any subsequent
678 statutory enactment to the contrary, such withdrawing state shall continue to recognize all compact
679 privileges to practice within that state granted pursuant to this Compact for a minimum of 180 days
680 after the date of such notice of withdrawal.

681 C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure
682 agreement or other cooperative arrangement between a participating state and a nonparticipating state
683 that does not conflict with the provisions of this Compact.

684 D. This Compact may be amended by the participating states. No amendment to this Compact shall
685 become effective and binding upon any participating state until it is enacted into the laws of all
686 participating states.

687 Article 12.

688 Construction and Severability.

689 A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to
690 effectuate the purposes and the implementation and administration of the Compact. Provisions of the
691 Compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the
692 Commission's rulemaking authority solely for those purposes.

693 B. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or
694 provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution
695 of any participating state, a state seeking participation in the Compact, or of the United States, or the
696 applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional
697 by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability
698 thereof to any other government, agency, person, or circumstance shall not be affected thereby.

699 C. Notwithstanding subsection B of this section, the Commission may deny a state's participation in
700 this Compact or, in accordance with the requirements of subsection B of Article 10, terminate a
701 participating state's participation in the Compact, if it determines that a constitutional requirement of a
702 participating state is a material departure from the Compact. Otherwise, if this Compact shall be held
703 to be contrary to the constitution of any participating state, the Compact shall remain in full force and
704 effect as to the remaining participating states and in full force and effect as to the participating state
705 affected as to all severable matters.

706 Article 13.

707 Consistent Effect and Conflict with Other State Laws.

708 A. Nothing herein shall prevent or inhibit the enforcement of any other law of a participating state
709 that is not inconsistent with this Compact.

710 B. Any laws, statutes, regulations, or other legal requirements in a participating state in conflict with
711 this Compact are superseded to the extent of the conflict.

712 C. All permissible agreements between the Commission and the participating states are binding in
713 accordance with their terms.

714 2. Pursuant to Article 11 of § 54.1-2729.02 of the Code Virginia, as created by this act, the Dentist
715 and Dental Hygienist Compact (the Compact) will become effective on the date the Compact is
716 enacted by a seventh participating state or upon the effective date of this act, whichever is later.