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L.D. 2137

Date: 4/10/24

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HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1361, L.D. 2137, "An Act to Join the Dentist and Dental Hygienist Compact"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 32 MRSA c. 143, sub-c. 6 is enacted to read:

SUBCHAPTER 6

DENTIST AND DENTAL HYGIENIST COMPACT

§18431. Short title

This subchapter may be known and cited as "the Dentist and Dental Hygienist Compact."

§18432. Purpose and objectives

1. Purpose. The purpose of the compact is 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 who are licensed in a participating state the ability to practice in participating states in which they are not licensed by establishing a pathway for dentists and dental hygienists who are 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.

2. Objectives. The compact is designed to achieve the following objectives:

A. Enable dentists and dental hygienists who qualify for a compact privilege to practice in participating states without satisfying burdensome and duplicative requirements associated with securing a license to practice in those states;

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- 1 B. Promote mobility and address workforce shortages through each participating
- 2 state's acceptance of a compact privilege to practice in that state;
- 3 C. Increase public access to qualified, licensed dentists and dental hygienists by
- 4 creating a responsible, streamlined pathway for licensees to practice in participating
- 5 states;
- 6 D. Enhance the ability of participating states to protect the public's health and safety;
- 7 E. Operate without interfering with licensure requirements established by participating
- 8 states;
- 9 F. Facilitate the sharing of licensure and disciplinary information among participating
- 10 states;
- 11 G. Require dentists and dental hygienists who practice in a participating state pursuant
- 12 to a compact privilege to practice within the scope of practice authorized in that state;
- 13 H. Extend the authority of a participating state to regulate the practice of dentistry and
- 14 dental hygiene within its borders to dentists and dental hygienists who practice in the
- 15 state through a compact privilege;
- 16 I. Promote the cooperation of participating states in regulating the practice of dentistry
- 17 and dental hygiene within those states; and
- 18 J. Facilitate the relocation of military members and their spouses who are licensed to
- 19 practice dentistry or dental hygiene.

§18433. Definitions

21 As used in this subchapter, unless the context otherwise indicates, the following terms

22 have the following meanings.

23 **1. Active military member.** "Active military member" means an individual with full-

24 time duty status in the active uniformed service of the United States, including members of

25 the National Guard and Reserves of the United States Armed Forces on active duty orders.

26 **2. Adverse action.** "Adverse action" means any administrative, civil, equitable or

27 criminal action permitted by a state's laws that is imposed by a licensing board or other

28 authority against a dental or dental hygienist license, license application or privilege to

29 practice, such as a license denial, censure, revocation, suspension, probation, monitoring

30 of the licensee or restriction on the licensee's practice.

31 **3. Alternative program.** "Alternative program" means a nondisciplinary monitoring

32 or practice remediation process applicable to a dentist or dental hygienist approved by a

33 state licensing authority of a participating state in which the dentist or dental hygienist is

34 licensed, including, but not limited to, programs to which licensees with substance use

35 disorder or addiction issues are referred in lieu of adverse action.

36 **4. Clinical assessment.** "Clinical assessment" means an examination or process,

37 required for licensure as a dentist or dental hygienist as applicable, that provides evidence

38 of clinical competence in dentistry or dental hygiene.

39 **5. Commissioner.** "Commissioner" means the individual appointed by a participating

40 state to serve as the member of the commission for that participating state.

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6. Compact. "Compact" means the Dentist and Dental Hygienist Compact enacted in this subchapter.

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

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

9. Criminal background check. "Criminal background check" means the submission of fingerprints or other biometric-based information for a license applicant for the purpose of obtaining that applicant's criminal history record information, as defined in 28 Code of Federal Regulations, Section 20.3(d), from the state's criminal history record repository, as defined in 28 Code of Federal Regulations, Section 20.3(f).

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

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

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

13. Dentist and Dental Hygienist Compact Commission. "Dentist and Dental Hygienist Compact Commission" or "commission" means a joint government agency established by this 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.

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

15. Executive board. "Executive board" means the chair, vice-chair, secretary and treasurer and any other commissioners as may be determined by commission rules or bylaws.

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

17. License. "License" means the current authorization by a state other than authorization pursuant to a compact privilege, or other privilege, for an individual to practice dentistry or dental hygiene, as applicable, in a state.

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

19. Licensing board. "Licensing board" means any state entity authorized to license and otherwise regulate dentists or dental hygienists, as applicable, in a state.

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20. Model compact. "Model compact" means the model for the Dentist and Dental Hygienist Compact on file with the Council of State Governments, or its successor organization, or other entity designated by the commission.

21. Participating state. "Participating state" means a state that has enacted the compact and been admitted to the commission in accordance with this subchapter and commission rules.

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

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

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

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

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

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

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

§18434. State participation in the compact

1. Participation requirements. To participate in the compact, a state shall:

A. Enact a compact that is not materially different from the model compact as determined in accordance with commission rules;

B. Participate fully in the commission's data system;

C. Have a mechanism in place for receiving and investigating complaints about its licensees and license applicants;

D. 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;



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E. 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;

F. Comply with the commission rules applicable to a participating state;

G. Accept the national board examinations of the Joint Commission on National Dental Examinations or another examination accepted by commission rule as a licensure examination;

H. Accept for licensure that applicants for a dentist license graduate from a predoctoral dental education program accredited by the Commission on Dental Accreditation, or another accrediting agency recognized by the United States Department of Education for the accreditation of dentistry and dental hygiene education programs, leading to the doctor of dental surgery or doctor of dental medicine degree;

I. 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 United States Department of Education for the accreditation of dentistry and dental hygiene education programs;

J. Require for licensure that applicants successfully complete a clinical assessment;

K. Have continuing professional development requirements as a condition for license renewal; and

L. Pay a participation fee to the commission as established by commission rule.

2. Alternative pathway for licensure. Providing an alternative pathway for an individual to obtain an unrestricted license does not disqualify a state from participating in the compact.

3. Criminal background check. When conducting a criminal background check, a state licensing authority shall:

A. Consider that information in making a licensure decision;

B. Maintain documentation of completion of the criminal background check and background check information to the extent allowed by state and federal law; and

C. Report to the commission whether the licensing authority has completed the criminal background check and whether the individual was granted or denied a license.

4. Remote state issuance of compact privilege. 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 must 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 may not be issued to the licensee unless the licensee has satisfied the jurisprudence requirement.

§18435. Compact privilege

1. Requirements. To obtain and exercise a compact privilege, a licensee must:

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

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B. Be eligible for a compact privilege in any remote state in accordance with this subchapter;

C. Submit to an application process whenever the licensee is seeking a compact privilege;

D. Pay any applicable commission and remote state fees for a compact privilege in the remote state;

E. Meet any jurisprudence requirement established by a remote state in which the licensee is seeking a compact privilege;

F. Have passed a national board examination of the Joint Commission on National Dental Examinations or its successor organization or another examination accepted by commission rule;

G. 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 United States Department of Education for the accreditation of dentistry and dental hygiene education programs, leading to the doctor of dental surgery or doctor of dental medicine degree;

H. 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 United States Department of Education for the accreditation of dentistry and dental hygiene education programs;

I. Have successfully completed a clinical assessment for licensure;

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

K. 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 the address of the licensee's primary residence; and

L. 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 or investigation conducted by the commission or a participating state.

2. Compliance. The licensee must comply with all of the requirements of subsection 1 to maintain the compact privilege in a remote state. If those requirements are met, the compact privilege continues as long as 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.

3. Scope of practice. A licensee providing dentistry or dental hygiene in a remote state under the compact privilege shall 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 is subject to that state's regulatory authority.

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4. Revocation or limitation of compact privilege by remote state. A remote state may, 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 applies to all compact privileges in all remote states. A licensee whose compact privilege in a remote state is revoked or removed for a specified period of time is not eligible for a compact privilege in any other remote state until the specific time for revocation or removal of the compact privilege has passed and all encumbrance requirements are satisfied.

5. Encumbered license. If a license in a participating state is an encumbered license, the licensee loses the compact privilege in a remote state and is not eligible for a compact privilege in any remote state until the license is no longer encumbered.

A. Once an encumbered license in a participating state is restored to good standing, the licensee must meet the requirements of subsection 1 to obtain a compact privilege in a remote state.

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

(1) The specific period of time for which the compact privilege was revoked or removed has ended; and

(2) All conditions for revocation or removal of the compact privilege have been satisfied.

C. Once the requirements of paragraph B have been met, the licensee must meet the requirements in subsection 1 to obtain a compact privilege in a remote state.

§18436. Active military member and that member's spouse

An active military member and that member's spouse may not be required to pay to the commission for a compact privilege the fee otherwise charged by the commission. If a remote state chooses to charge a fee for a compact privilege, the remote state may choose to charge a reduced fee or no fee to an active military member and that member's spouse for a compact privilege.

§18437. Adverse actions

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

2. Adverse action based on remote state findings. A participating state may take adverse action based on the significant investigative information of a remote state as long as the participating state follows its own procedures for taking the adverse action.

3. Alternative program in lieu of adverse action. Nothing in this compact overrides a participating state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the participating state's laws. Participating states must require licensees who enter any alternative program in lieu of discipline to agree not to practice pursuant to a compact

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1 privilege in any other participating state during the term of the alternative program without
2 prior authorization from such other participating state.

3 **4. Investigation by participating state.** Any participating state in which a licensee is
4 applying to practice or is practicing pursuant to a compact privilege may investigate actual
5 or alleged violations of the statutes and regulations authorizing the practice of dentistry or
6 dental hygiene in any other participating state in which the dentist or dental hygienist holds
7 a license or compact privilege.

8 **5. Remote state authority.** A remote state has the authority, in accordance with
9 existing state due process law, to:

10 A. Take adverse action against a licensee's compact privilege within that state;

11 B. Issue subpoenas for both hearings and investigations that require the attendance and
12 testimony of witnesses as well as the production of evidence. Subpoenas issued by a
13 licensing board in a participating state for the attendance and testimony of witnesses or
14 the production of evidence from another participating state must be enforced in the
15 latter state by any court of competent jurisdiction, according to the practice and
16 procedure of that court applicable to subpoenas issued in proceedings pending before
17 it. The issuing authority shall pay any witness fees, travel expenses, mileage and other
18 fees required by the service statutes of the state in which the witnesses or evidence are
19 located; and

20 C. Recover from the licensee the costs of investigations and dispositions of cases
21 resulting from any adverse action taken against that licensee.

22 **6. Joint investigations.** In addition to the authority granted to a participating state by
23 its respective state dentist or dental hygienist licensure act or other applicable state law,
24 any participating state may jointly investigate with other participating states. Participating
25 states shall share any significant investigative information or litigation or compliance
26 materials in furtherance of any joint or individual investigation initiated under the compact.

27 **7. Continuation of investigation.** After a licensee's compact privilege in a remote
28 state is terminated, the remote state may continue an investigation of the licensee that began
29 when the licensee had a compact privilege in that remote state. If the investigation yields
30 what would be significant investigative information had the licensee continued to have a
31 compact privilege in that remote state, the remote state shall report the presence of such
32 information to the data system as if it was significant investigative information.

33 **§18438. Establishment of commission**

34 **1. Commission established.** The participating states hereby create and establish a
35 joint government agency whose membership consists of all participating states that have
36 enacted the compact. The commission is an instrumentality of the compact states acting
37 jointly and is not an instrumentality of any one state. The commission comes into existence
38 on or after the effective date of the compact as set forth in section 18442.

39 **2. Membership, voting and meetings.** Membership, voting and meetings are
40 governed by this subsection.

41 A. Each participating state has and is limited to one commissioner selected by that
42 participating state's licensing board or, if the state has more than one licensing board,
43 selected collectively by the participating state's licensing boards.



- 1 B. The commissioner must be a member or designee of a participating state's licensing
2 boards.
- 3 C. The commission may by rule establish a term of office for commissioners and may
4 by rule or bylaw establish term limits.
- 5 D. The commission may recommend to a state licensing board or boards, as applicable,
6 that a commissioner be removed or suspended as a participating state's commissioner.
- 7 E. The participating state licensing board or boards, as applicable, shall fill any
8 vacancy of its commissioner on the commission within 60 days of the vacancy.
- 9 F. Each commissioner is entitled to one vote on all matters that are voted on by the
10 commission.
- 11 G. A delegate shall vote in person or by such other means as provided in the bylaws.
12 The bylaws may provide for delegates' participation in meetings by
13 telecommunication, videoconference or other means of communication.
- 14 H. The commission shall meet at least once during each calendar year. Additional
15 meetings must be held as set forth in this compact and the bylaws. The commission
16 may meet by telecommunication, videoconferencing or other similar electronic means.
- 17 **3. Powers and duties. The commission has the following powers and duties:**
- 18 A. Establish a code of ethics for the commission;
- 19 B. Establish the fiscal year of the commission;
- 20 C. Adopt rules and bylaws;
- 21 D. Maintain its financial records in accordance with the bylaws;
- 22 E. Meet and take actions that are consistent with the provisions of this compact,
23 commission rules and the bylaws;
- 24 F. Initiate and conclude legal proceedings or actions in the name of the commission,
25 as long as the standing of any state licensing board to sue or be sued under applicable
26 law is not affected;
- 27 G. Maintain and certify records and information provided to a participating state as the
28 authenticated business records of the commission and designate a person to do so on
29 the commission's behalf;
- 30 H. Purchase and maintain insurance and bonds;
- 31 I. Borrow, accept or contract for services of personnel, including, but not limited to,
32 employees of a participating state;
- 33 J. Conduct an annual financial review;
- 34 K. Hire employees, elect or appoint officers, fix compensation, define duties and grant
35 such individuals appropriate authority to carry out the purposes of the compact and
36 establish the commission's personnel policies and programs relating to conflicts of
37 interest, qualifications of personnel and other related personnel matters;
- 38 L. Charge a fee, as provided in commission rules, to a licensee for the grant of a
39 compact privilege in a remote state and thereafter, as may be established by
40 commission rule, charge the licensee a compact privilege renewal fee for each renewal

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- 1 period in which that licensee exercises or intends to exercise the compact privilege in
- 2 that remote state. This paragraph may not be construed to prevent a remote state from
- 3 charging a licensee a fee for a compact privilege or renewals of a compact privilege,
- 4 or a fee for the jurisprudence requirement if the remote state imposes such a
- 5 requirement for the grant of a compact privilege;
- 6 M. Accept appropriate gifts, donations, grants of money or other sources of revenue
- 7 or supplies, materials and services and receive, utilize and dispose of the same, as long
- 8 as at all times the commission avoids any appearance of impropriety or conflict of
- 9 interest;
- 10 N. Lease, purchase, retain, own, hold, improve or use any property, real, personal or
- 11 mixed, or any undivided interest therein;
- 12 O. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
- 13 any property, real, personal or mixed;
- 14 P. Establish a budget and make expenditures;
- 15 Q. Borrow money;
- 16 R. Appoint committees, including standing committees composed of members, state
- 17 regulators, state legislators or their representatives and consumer representatives and
- 18 such other interested persons as may be designated in this compact and the bylaws;
- 19 S. Provide and receive information from, and cooperate with, law enforcement
- 20 agencies;
- 21 T. Elect a chair, vice-chair, secretary and treasurer and such other officers of the
- 22 commission as provided in the bylaws;
- 23 U. Establish and elect an executive board;
- 24 V. Determine whether a state's enacted compact legislation is materially different from
- 25 the model compact language such that a state would not qualify for participation in the
- 26 compact;
- 27 W. Adopt and provide to the participating states an annual report; and
- 28 X. Perform any other functions as may be necessary or appropriate to achieve the
- 29 purposes of this compact.
- 30 **4. Meetings of the commission.** Meetings of the commission are governed by this
- 31 **subsection.**
- 32 A. Except as provided in paragraphs B and C, all meetings must be open to the public,
- 33 and public notice of meetings must be posted on the commission's publicly accessible
- 34 website at least 30 days prior to a public meeting.
- 35 B. The commission may convene a public meeting for any of the reasons it may
- 36 dispense with notice of proposed rulemaking under section 18440 by providing at least
- 37 24 hours' notice on the commission's publicly accessible website and by any other
- 38 means described in the rules.
- 39 C. The commission may convene in a closed, nonpublic meeting or convene in a closed
- 40 meeting for part of an otherwise public meeting to receive legal advice or to discuss:
- 41 (1) Noncompliance of a participating state with its obligations under the compact;

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- (2) 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;
- (3) Current or threatened discipline of a licensee or compact privilege holder by the commission or by a participating state's licensing authority;
- (4) Current, threatened or reasonably anticipated litigation;
- (5) Negotiation of contracts for the purchase, lease or sale of goods, services or real estate;
- (6) Accusing any person of a crime or formally censuring any person;
- (7) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- (8) Disclosure of information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (9) Disclosure of investigative records compiled for law enforcement purposes;
- (10) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact;
- (11) Legal advice;
- (12) Matters specifically exempted from disclosure by federal or participating state statute; or
- (13) Other matters as promulgated by commission rule.

D. If a meeting, or portion of a meeting, is closed pursuant to paragraph B, the presiding officer of the meeting shall state that the meeting is closed and shall reference each relevant exempting provision and that reference must be recorded in the minutes.

E. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall 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 must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

5. Financing of the commission. Financing of the commission is governed by this subsection.

A. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

B. The commission may receive revenue from any appropriate sources and accept donations and grants of money, equipment, supplies, materials and services.

C. The commission may levy on and collect an annual assessment from each participating state or impose compact privilege fees on licensees of participating states to whom a compact privilege is granted to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its

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- 1 annual budget as approved each fiscal year for which revenue is not provided by other
2 sources. The aggregate annual assessment amount levied on participating states must
3 be allocated based upon a formula to be determined by commission rule.
- 4 D. The commission may not incur obligations of any kind prior to securing the funds
5 adequate to meet those obligations, and the commission may not pledge the credit of
6 any of the participating states, except by and with the authority of the participating
7 state.
- 8 E. The commission shall keep accurate accounts of all receipts and disbursements.
9 The receipts and disbursements of the commission are subject to the financial review
10 and accounting procedures established under its bylaws. All receipts and disbursements
11 of funds handled by the commission are subject to an annual financial review by a
12 certified or licensed public accountant, and the report of the financial review must be
13 included in and become part of the annual report of the commission.
- 14 **6. Executive board.** The establishment of an executive board is governed by this
15 subsection.
- 16 A. The executive board has the power to act on behalf of the commission according to
17 the terms of this compact and commission rules.
- 18 B. The executive board is composed of up to 7 members:
- 19 (1) The chair, vice-chair, secretary and treasurer of the commission and any other
20 members of the commission who serve on the executive board are voting members
21 of the executive board; and
- 22 (2) Other than the chair, vice-chair, secretary and treasurer, the commission may
23 elect up to 3 voting members from the current membership of the commission.
- 24 C. The commission may remove any member of the executive board as provided in
25 the bylaws.
- 26 D. The executive board shall meet at least once annually.
- 27 E. The executive board shall:
- 28 (1) Oversee the day-to-day activities of the administration of the compact
29 including compliance with the provisions of the compact, the commission's rules
30 and bylaws;
- 31 (2) Recommend to the commission changes to the rules or bylaws, changes to this
32 compact legislation, fees charged to participating states, fees charged to licensees
33 and other fees;
- 34 (3) Ensure compact administration services are appropriately provided, including
35 by contract;
- 36 (4) Prepare and recommend the budget;
- 37 (5) Maintain financial records on behalf of the commission;
- 38 (6) Monitor compact compliance of participating states and provide compliance
39 reports to the commission;
- 40 (7) Establish additional committees as necessary;



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(8) Exercise the powers and duties of the commission during the interim between commission meetings, except for adopting or amending commission rules or bylaws, or exercising any other powers and duties exclusively reserved to the commission by the commission's rules or bylaws; and

(9) Perform other duties as provided in rules or bylaws.

7. Qualified immunity, defense and indemnification. Qualified immunity, defense and indemnification are governed by this subsection.

A. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or 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, except that nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission may not in any way compromise or limit the immunity granted under this subsection.

B. The commission shall defend any member, officer, executive director, employee or 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 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, except that nothing in this paragraph may be construed to prohibit that person from retaining that person's own counsel, and as long as the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct.

C. Notwithstanding paragraph A, if any member, officer, executive director, employee or representative of the commission is held liable for the amount of any settlement or judgment arising out of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, the commission shall indemnify and hold harmless that individual as long as the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

D. This subsection may not be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws.

E. This compact may not 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 anticompetitive law or regulation.

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1 F. This compact may not be construed to be a waiver of sovereign immunity by the
2 participating states or by the commission.

3 **§18439. Data system**

4 1. Data and reporting system. The commission shall provide for the development,
5 maintenance, operation and utilization of a coordinated data and reporting system
6 containing licensure, adverse action and the reporting of any significant investigative
7 information on all licensees and applicants for a license in participating states.

8 2. Uniform dataset submission. Notwithstanding any provision of state law to the
9 contrary, a participating state shall submit a uniform dataset to the data system on all
10 individuals to whom this compact is applicable as required by the rules of the commission,
11 including:

- 12 A. Identifying information;
- 13 B. Licensure data;
- 14 C. Adverse actions against a licensee, license applicant or compact privilege and any
15 related information;
- 16 D. Nonconfidential information related to alternative program participation, the
17 beginning and ending dates of such participation, and other information related to such
18 participation;
- 19 E. Any denial of application for licensure and the reasons for that denial, excluding
20 the reporting of any criminal history record information when prohibited by law;
- 21 F. The existence of significant investigative information; and
- 22 G. Other information that may facilitate the administration of this compact, as
23 determined by the rules of the commission.

24 4. Significant investigative information availability. Significant investigative
25 information pertaining to a licensee in any participating state may be made available only
26 to other participating states.

27 5. Adverse action information. It is the responsibility of the participating states to
28 monitor the data system to determine whether adverse action has been taken against a
29 licensee or license applicant. Adverse action information pertaining to a licensee or license
30 applicant in any participating state must be available to any other participating state.

31 6. Confidential information. Participating states contributing information to the data
32 system may, in accordance with state or federal law, designate information that may not be
33 shared with the public without the express permission of the contributing state.

34 7. Information expungement. Any information submitted to the data system that is
35 subsequently required to be expunged pursuant to federal law or by the laws of the
36 participating state contributing the information must be removed from the data system.

37 **§18440. Rulemaking**

38 1. Promulgation. The commission shall promulgate reasonable rules in order to
39 effectively and efficiently implement and administer this compact and achieve its purpose.
40 A commission is invalid and has no force or effect only if a court of competent jurisdiction
41 holds that the rule is invalid because the commission exercised its rule-making authority in

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COMMITTEE AMENDMENT "A" to H.P. 1361, L.D. 2137

1 a manner that is beyond the scope of the purposes of the compact, or the powers granted
2 hereunder, or based upon another applicable standard of review.

3 **2. Rule conflict with law.** The rules of the commission have the force of law in each
4 participating state, except that when the rules of the commission conflict with the laws of
5 the participating state that establish the scope of practice as held by a court of competent
6 jurisdiction, the rules of the commission are ineffective in that state to the extent of the
7 conflict.

8 **3. Powers.** The commission shall exercise its rule-making powers pursuant to the
9 criteria set forth in this section and the rules adopted thereunder. Rules and amendments
10 become binding as of the date specified in each rule or amendment.

11 **4. Rule rejection.** If a majority of the legislatures of the participating states rejects a
12 rule or a portion of a commission rule, by enactment of a statute or resolution in the same
13 manner used to adopt the compact within 4 years of the date of adoption of the rule, then
14 that rule has no further force and effect in any participating state or to any state applying to
15 participate in the compact.

16 **5. Rule adoption procedure.** Rules or amendments to the rules must be adopted at a
17 regular or special meeting of the commission.

18 **6. Public comment.** Prior to adoption of a proposed rule, the commission shall hold
19 a public hearing and allow persons to provide oral and written comments, data, facts,
20 opinions and arguments.

21 **7. Notice of proposed rule.** Prior to adoption of a proposed rule, and at least 30 days
22 in advance of the meeting at which the commission will hold a public hearing on the
23 proposed rule, the commission shall provide a notice of proposed rulemaking:

24 A. On the publicly accessible website of the commission or other publicly accessible
25 platform;

26 B. To persons who have requested notice of the commission's notices of proposed
27 rulemaking; and

28 C. In any other ways the commission may specify by rule.

29 **8. Notice requirements.** The notice of proposed rulemaking must include:

30 A. The time, date and location of the public hearing in which the commission will hear
31 public comments on the proposed rule and, if different, the time, date and location of
32 the meeting in which the commission will consider and vote upon the proposed rule;

33 B. If the hearing is held via telecommunication, videoconference or other electronic
34 means, the commission shall include the mechanism for access to the hearing;

35 C. The text of the proposed rule and the reason for the proposed rule;

36 D. A request for comments on the proposed rule from any interested person and the
37 date by which written comments must be received; and

38 E. The manner in which interested persons may submit written comments.

39 **9. Hearings.** All hearings must be recorded. A copy of the recording and all written
40 comments and documents received in response to the proposed rulemaking must be made
41 available to the public. Nothing in this section may be construed as requiring a separate

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1 hearing on each rule. Rules may be grouped for the convenience of the commission at
2 hearings required by this section.

3 **10. Final action.** The commission shall, by majority vote of all members, take final
4 action on the proposed rule based on the rule-making record.

5 A. The commission may adopt changes to the proposed rule as long as the changes do
6 not enlarge the original purpose of the proposed rule.

7 B. The commission shall provide on its publicly accessible website an explanation of
8 the reasons for substantive changes made to the proposed rule as well as reasons for
9 substantive changes not made that were recommended by commenters.

10 C. The commission shall determine a reasonable effective date for the rule. Except for
11 an emergency as provided in subsection 13, the effective date of the rule may not be
12 sooner than 30 days after the commission issued the notice that it adopted the rule.

13 **11. Emergency rulemaking.** Upon determination that an emergency exists, the
14 commission may consider and adopt an emergency rule with 24 hours' notice, without the
15 opportunity for comment or hearing, as long as the usual rule-making procedures provided
16 in the compact and in this section are retroactively applied to the rule as soon as reasonably
17 possible, in no event later than 90 days after the effective date of the rule. For the purposes
18 of this subsection, "emergency rule" means a rule that must be adopted immediately in
19 order to:

20 A. Meet an imminent threat to public health, safety or welfare;

21 B. Prevent a loss of commission funds or participating state funds;

22 C. Meet a deadline for the promulgation of an administrative rule that is established
23 by federal law or rule; or

24 D. Protect public health and safety.

25 **12. Rule revisions.** The commission or an authorized committee of the commission
26 may direct revisions to a previously adopted rule for purposes of correcting typographical
27 errors, errors in format, errors in consistency or grammatical errors. Public notice of any
28 revisions must be posted on the publicly accessible website of the commission. The
29 revision is subject to challenge by any person for a period of 30 days after posting. The
30 revision may be challenged only on grounds that the revision results in a material change
31 to a rule. A challenge must be made in writing and delivered to the commission prior to
32 the end of the notice period. If no challenge is made, the revision takes effect without
33 further action. If the revision is challenged, the revision may not take effect without the
34 approval of the commission.

35 **13. Application of participating state requirements.** Notwithstanding any provision
36 of law to the contrary, a participating state's rulemaking requirements do not apply under
37 this compact.

38 **§18441. Oversight, dispute resolution and enforcement**

39 **1. Oversight.** Oversight of the compact is governed by this subsection.

40 A. The executive, legislative and judicial branches of state government in each
41 participating state shall enforce this compact and take all actions necessary and
42 appropriate to implement the compact.



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B. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing in this paragraph affects or limits the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct or any similar matter.

C. The commission is entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact or the commission's rules and has standing to intervene in such a proceeding for all purposes. Failure to provide the commission with service of process renders a judgment or order in such proceeding void as to the commission, this compact, or commission rules.

2. Default and technical assistance. Default and technical assistance are governed by this subsection.

A. If the commission determines that a participating state has defaulted in the performance of its obligations or responsibilities under this compact or the commission rules, the commission shall:

(1) Provide written notice to the defaulting state and other participating states. The notice must describe the default, the proposed means of curing the default and any other action that the commission may take; and

(2) Offer remedial training and specific technical assistance regarding the default.

3. Termination from compact. If a state in default fails to cure the default, the defaulting state may 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 this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

4. Termination regulation. Termination of participation in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, the defaulting state's licensing boards and to the licensing boards of each of the participating states.

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

6. Costs. The commission may 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.

7. Appeal. The defaulting state may appeal its termination from the compact by the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of that litigation, including reasonable attorney's fees.

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1 8. Notice of termination to licensees. Upon the termination of a state's participation
2 in the compact, the state shall immediately provide notice to all licensees within that state
3 and licensees of other participating states who have been issued a compact privilege within
4 that state, of such termination that licensees who have been granted a compact privilege in
5 that state retain the compact privilege for 180 days following the effective date of such
6 termination.

7 9. Dispute resolution. Dispute resolution is governed by this subsection.

8 A. Upon request by a participating state, the commission shall attempt to resolve
9 disputes related to the compact that arise among participating states and between
10 participating and nonparticipating states.

11 B. The commission shall promulgate a rule providing for both mediation and binding
12 dispute resolution for disputes as appropriate.

13 10. Enforcement. Enforcement of the compact is governed by this subsection.

14 A. The commission, in the reasonable exercise of its discretion, shall enforce the
15 provisions of the compact and rules of the commission.

16 B. By majority vote, the commission may initiate legal action in the United States
17 District Court for the District of Columbia or the federal district where the commission
18 has its principal offices, against a participating state in default to enforce compliance
19 with the provisions of this compact and the commission's promulgated rules and
20 bylaws. The relief sought may include both injunctive relief and damages. In the event
21 judicial enforcement is necessary, the prevailing party must be awarded all costs of
22 such litigation, including reasonable attorney's fees.

23 C. The remedies herein must not be the exclusive remedies of the commission. The
24 commission may pursue any other remedies available under federal or state law.

25 11. Legal action against the commission. Legal action against the commission is
26 governed by this subsection.

27 A. A participating state may initiate legal action against the commission in the United
28 States District Court for the District of Columbia or the federal district where the
29 commission has its principal offices to enforce compliance with the provisions of the
30 compact and its rules. The relief sought may include both injunctive relief and
31 damages. In the event judicial enforcement is necessary, the prevailing party must be
32 awarded all costs of such litigation, including reasonable attorney's fees.

33 B. No individual or entity other than a participating state may enforce this compact
34 against the commission.

35 §18442. Effective date; withdrawal; amendment

36 1. Effective date. The compact takes effect on the date the compact statute is enacted
37 into law in the 7th participating state.

38 A. On or after the effective date of the compact, the commission shall convene and
39 review the enactment of each of the states that enacted the compact prior to the
40 commission convening, referred to in this section as "the charter participating states,"
41 to determine if the statute enacted by each charter participating state is materially
42 different than the model compact.



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(1) A charter participating state whose enactment is found to be materially different from the model compact is entitled to the default process set forth in section 18441, subsection 2.

(2) If any participating state is later found to be in default, or is terminated or withdraws from the compact, the commission shall remain in existence and the compact must remain in effect even if the number of participating states is less than 7.

B. Participating states enacting the compact subsequent to the charter participating states are subject to the process set forth in section 18438, subsection 3, paragraph V to determine if their enactments are materially different from the model compact and whether they qualify for participation in the compact.

C. 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 must be considered to be actions of the commission unless specifically repudiated by the commission.

2. Subsequent member states. Any state that joins the compact subsequent to the commission's initial adoption of the rules and bylaws is subject to the rules and bylaws as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

3. Withdrawal. Any participating state may withdraw from this compact by enacting a statute repealing that state's enactment of the compact.

A. A participating state's withdrawal does not take effect until 180 days after enactment of the repealing statute.

B. Withdrawal does not affect the continuing requirement of the state licensing board or boards of the withdrawing state to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

C. Upon the enactment of a statute withdrawing a state from this compact, the state shall immediately provide notice of such withdrawal to all licensees within that state. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing state shall 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 such notice of withdrawal.

4. Other agreements or arrangements. Nothing contained in this compact may be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a participating state and a nonparticipating state that does not conflict with the provisions of this compact.

5. Amendment. This compact may be amended by the participating states. An amendment to this compact does not become effective and binding upon any participating state until it is enacted into the laws of all participating states.

§18443. Construction and severability

1. Construction. This compact and the commission's rule-making authority must be liberally construed so as to effectuate the purposes and the implementation and

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1 administration of the compact. Provisions of the compact expressly authorizing or requiring
2 the promulgation of rules may not be construed to limit the commission's rule-making
3 authority solely for those purposes.

4 **2. Severability.** The provisions of this compact are severable and, if any phrase, clause,
5 sentence or provision of this compact is held by a court of competent jurisdiction to be
6 contrary to the constitution of any participating state, a state seeking participation in the
7 compact, or of the United States, or the applicability thereof to any government, agency,
8 person or circumstance is held to be unconstitutional by a court of competent jurisdiction,
9 the validity of the remainder of this compact and the applicability thereof to any other
10 government, agency, person or circumstance may not be affected.

11 **3. Denial of participation.** Notwithstanding this section, the commission may deny a
12 state's participation in the compact or, in accordance with the requirements of section
13 18441, terminate a participating state's participation in the compact if it determines that a
14 constitutional requirement of a participating state is a material departure from the compact.
15 Otherwise, if this compact is held to be contrary to the constitution of any participating
16 state, the compact remains in full force and effect as to the remaining participating states
17 and in full force and effect as to the participating state affected as to all severable matters.

18 **§18444. Consistent effect and conflict with other state laws**

19 **1. Enforcement.** Nothing in this subchapter prevents or inhibits the enforcement of
20 any law of a participating state that is not inconsistent with the compact.

21 **2. Conflict.** Any laws, rules or other legal requirements in a participating state in
22 conflict with the compact are superseded to the extent of the conflict.

23 **3. Binding agreements.** All permissible agreements between the commission and the
24 participating states are binding in accordance with the terms of the agreement.

25 **§18445. Legislative intent**

26 This compact is the Maine enactment of the Dentist and Dental Hygienist Compact.
27 The form, format and text of the compact have been changed minimally so as to conform
28 to Maine statutory conventions. The changes are technical in nature, and it is the intent of
29 the Legislature that this compact be interpreted as substantively the same as the Dentist and
30 Dental Hygienist Compact that is enacted by other participating states.

31 **Sec. 2. Appropriations and allocations.** The following appropriations and
32 allocations are made.

33 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**
34 **Administrative Services - Professional and Financial Regulation 0094**

35 Initiative: Allocates ongoing funds for the STA-CAP, service center support and
36 technology costs associated with implementing the compact for licensing dentists and
37 dental hygienists.

38	OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
39	All Other	\$0	\$9,236
40			
41	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$9,236
42	Office of Professional and Occupational Regulation 0352		



1 Initiative: Allocates funds for one Comprehensive Health Planner II position and one
 2 Health Services Consultant position and related All Other costs to manage increased
 3 responsibilities, including application review for compact privilege, compact compliance,
 4 compact reporting and joint investigations.

5	OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
6	POSITIONS - LEGISLATIVE COUNT	0.000	2.000
7	Personal Services	\$0	\$191,292
8	All Other	\$0	\$13,060
9			
10	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$204,352

11 **Office of Professional and Occupational Regulation 0352**

12 Initiative: Allocates funds for the STA-CAP and rulemaking costs associated with
 13 implementing the compact for licensing dentists and dental hygienists.

14	OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
15	All Other	\$0	\$5,753
16			
17	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$5,753

19 **PROFESSIONAL AND FINANCIAL
 20 REGULATION, DEPARTMENT OF
 21 DEPARTMENT TOTALS**

22		2023-24	2024-25
23	OTHER SPECIAL REVENUE FUNDS	\$0	\$219,341
24			
25	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$219,341

26
 27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 28 number to read consecutively.

29 **SUMMARY**

30 This amendment replaces the bill, which is a concept draft. The amendment enacts the
 31 Dentist and Dental Hygienist Compact to facilitate the interstate practice of dentistry and
 32 dental hygiene by improving public access to dentistry and dental hygiene services
 33 provided by dentists and dental hygienists practicing in participating states in which they
 34 are not licensed. The compact preserves the regulatory authority of a state to protect public
 35 health and safety through that state's current system of state licensure and promote mobility
 36 and address workforce shortages by eliminating the necessity for licenses in multiple states
 37 by providing for the mutual recognition of other member state licenses.

38 The form, format and text of the Dentist and Dental Hygienist Compact have been
 39 changed minimally so as to conform to Maine statutory conventions. The changes are
 40 technical in nature, and it is the intent of the Legislature that this compact be interpreted as

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1 substantively the same as the Dentist and Dental Hygienist Compact that is enacted by
2 other member states.

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FISCAL NOTE REQUIRED

4

(See attached)



131st MAINE LEGISLATURE

LD 2137

LR 2881(02)

An Act to Join the Dentist and Dental Hygienist Compact

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-949)
 Committee: Health Coverage, Insurance and Financial Services
 Fiscal Note Required: Yes

Fiscal Note

Current biennium revenue increase - Other Special Revenue Funds

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$219,341	\$241,496	\$251,358

Fiscal Detail and Notes

This legislation adds the State of Maine to the Compact for Licensing Dentists and Dental Hygienists contingent upon 7 states enacting it into law. This fiscal note assumes that at least 7 states will enact the compact and it will become effective during the 2024-25 fiscal year.

Given this assumption, this bill includes ongoing Other Special Revenue Funds allocations totaling \$219,341 in fiscal year 2024-25 to the Department of Professional and Financial Regulation (DPFR) to join and participate in the dentist and dental hygienists compact. Of that amount, \$204,352 is allocated to the Office of Professional and Occupational Regulation (OPOR) for one Comprehensive Health Planner II position and one Health Services Consultant position and related All Other costs to manage the increase in responsibilities of the Board of Dental Practice, including the review of applications for compact privilege, compact compliance, joint investigations and reporting requirements. Additionally, \$5,753 is allocated to OPOR for STA-CAP and rulemaking costs. Finally, \$9,236 is allocated on an ongoing basis to the Administrative Services - Professional and Financial Regulation program within DPFR for STA-CAP, service center support and technology costs that are reimbursed by transfers from the board.

According to DPFR, the Board of Dental Practice does not have sufficient resources to support the costs associated with this bill within the amount of revenue currently received and will need to increase fees to support the additional costs.