

SUBJECT: Joining interstate compact on audiology and speech-language pathology

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Klick, Allison, Campos, Coleman, Collier, Jetton, Oliverson,
Price, Smith, Zwiener

0 nays

1 absent — Guerra

WITNESSES: For — Shawna Jackson, Texas Academy of Audiology; Lawrence Higdon, Texas Speech Language Hearing Association; (*Registered, but did not testify*: Bradford Shields, Texas Academy of Audiology; Nora Belcher, Texas e-Health Alliance; Denise Rose, Texas Occupational Therapy Association; Mark Hanna, Texas Speech Language Hearing Association)

Against — John Edwards, Texas Association of Otolaryngology

On — (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: The Audiology and Speech-Language Pathology Interstate Compact is an agreement made among participating states to facilitate the interstate practice of audiology and speech-language pathology while maintaining protections for the public.

The Audiology and Speech-Language Pathology Interstate Compact Commission is responsible for establishing and administering the compact's rules and bylaws and implementing the compact's shared interstate licensure data system. The compact currently has been enacted into law in 10 states, the threshold for the activation and establishment of the compact commission.

Interested observers have noted that the Legislature could increase access

to audiology and speech-language pathology services for Texans by enacting the Audiology and Speech-Pathology Interstate Compact.

DIGEST: HB 1633 would enact the Audiology and Speech-Language Pathology Interstate Compact in Texas and provide for its implementation.

Purpose. The bill would establish that the purpose of the compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving access to these services. The compact would preserve the regulatory authority of the state to protect public health and safety through the current system of state licensure and is designed to achieve specific objectives related to audiology and speech-language pathology services and licensure.

Administration, rules. The Texas Department of Licensing and Regulation would administer the Audiology and Speech-Language Pathology Compact for Texas. The Texas Commission of Licensing and Regulation could adopt rules necessary to implement the compact.

Compact commission. The bill would codify the rights, duties, responsibilities, powers, finances, and other obligations of the Audiology and Speech-Language Pathology Interstate Compact Commission.

License recognition. Each member state in the compact would have to require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, in addition to all other applicable state laws. A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state would be recognized by each member state as authorizing such a licensed individual to practice audiology or speech-language pathology, under a privilege to practice, in each member state.

Requirements. The bill would establish certain requirements for audiologists and speech-language pathologists, including requirements related to education, the completion of a supervised clinical practicum experience or supervised postgraduate professional experience, the

passing of a national exam, the holding of an active and unencumbered license, criminal history, and the possession of identifying information.

Active duty military personnel. Active duty military personnel or their spouses would have to designate a home state where an individual had a current license in good standing. An individual could retain the home state designation during the period the service member was on active duty. Subsequent to designating a home state, an individual only could change their home state through an application for licensure in a new state.

Criminal history records. A state would have to implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures would have to include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining the state's criminal records.

Within a time frame established by rule, a member state would have to fully implement a criminal background check requirement by receiving the results of the FBI record search on criminal background checks and use the results in making licensure decisions.

Communication between a member state, the commission, and among member states regarding the verification of licensure eligibility could not include any information received from the FBI relating to a federal criminal records check performed by a member state.

Privilege to practice. The privilege to practice would be derived from the home state license. An audiologist or speech-language pathologist practicing in a member state would have to comply with the state practice laws of the state in which the client was located at the time service was provided. The practice of audiology and speech-language pathology in a member state under a privilege to practice would subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts, and the laws of the member state in which the client was located at

the time service was provided.

Individuals not residing in a member state would continue to be able to apply for a member state's single-state license as provided under the laws of each member state. Single-state licenses granted to such individuals would not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in the compact would affect the requirements established by a member state for the issuance of a single-state license.

Compact privilege. The bill would define "compact privilege" to mean the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. A "remote state" would be a member state other than the home state where a licensee was exercising or seeking to exercise the compact privilege.

To exercise the compact privilege under the terms and provisions of the compact, an audiologist or speech-language pathologist would have to meet certain requirements listed in the bill. For the purposes of compact privilege, an audiologist or speech-language pathologist only could hold one home state license at a time.

Except as otherwise provided, if an audiologist or speech-language pathologist changed primary state of residence by moving between two member states, that individual would have to apply for licensure in the new home state, and the license issued by the prior home state would be deactivated in accordance with the applicable rules adopted by the compact commission.

An audiologist or speech-language pathologist could apply for licensure in advance of a change in primary state of residence. A license could not be issued by the new home state until the audiologist or speech-language pathologist provided satisfactory evidence of a change in primary state of residence to the new home state and satisfied all applicable requirements to obtain a license from the new home state.

A remote state, in accordance with due process and that state's law, could remove a licensee's compact privilege in the remote state for a specified period of time, impose fines, and take any other necessary actions to protect the health and safety of its citizens. Member states could charge a fee for granting a compact privilege.

The bill would set out certain conditions for the loss and restoration of compact privilege in any remote state.

Member states would have to recognize the right of a licensed audiologist or speech-language pathologist to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the compact commission.

Data system. A compact member state would have to submit a uniform data set to the data system developed by the compact commission on all individuals to whom the compact would apply. This data set would have to include identifying information, licensure data, adverse actions against a license or compact privilege, non-confidential information related to alternative program participation, any denial of application for licensure and the reasons for denial, and other information that could facilitate the administration of the compact.

Investigative information pertaining to a licensee in any member state would be available only to other member states. Member states contributing information to the data system could designate information that could not be shared with the public without the express permission of the contributing state. Any information submitted to the data system that subsequently was required to be expunged by laws of the submitting state would have to be removed from the data system.

Upon application for a privilege to practice, the licensing board in the issuing remote state would have to ascertain, through the data system:

- whether the applicant had ever held, or was the holder of, a license issued by any other state;
- whether there were any encumbrances on any license or privilege to practice held by the applicant; and
- whether any adverse action had been taken against any license or privilege to practice held by the applicant.

Adverse actions. In addition to other powers conferred by state law, a remote state would have the authority to, in accordance with existing state due process law:

- take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state; and
- issue subpoenas for both hearings and investigations that required the attendance and testimony of witnesses as well as the production of evidence.

Only the home state would have the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state. For the purposes of taking adverse action, the home state would have to give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state.

The home state would have to complete any pending investigations of an audiologist or speech-language pathologist who changed primary state of residence during the course of the investigations and would have the authority to take appropriate actions. The home state also would have to promptly report the conclusions of investigations to the administrator of the data system, and the administrator would have to promptly notify the new home state of any adverse actions.

The bill would authorize a member state to participate with other member states in joint investigations of licensees.

If a member state took adverse action, it would have to promptly notify

the administrator of the data system, and the administrator would have to promptly notify the home state of any adverse actions by remote states.

If adverse action was taken by the home state against an audiologist's or speech-language pathologist's license, the license holder's privilege to practice in all other member states would be deactivated until all encumbrances had been removed from the state license.

Withdrawal. A member state could withdraw from the compact by enacting a statute repealing the enacting statute. Withdrawal would not take effect until six months after enactment of the repealing statute. Withdrawal would not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of the bill prior to the withdrawal effective date.

Application. The compact provisions could not be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a non-member state that did not conflict with the compact provisions.

Amendment. The compact could be amended by member states. No amendment would become effective and binding upon any member state until enacted into the laws of all member states.

Construction and severability. The compact would be liberally construed so as to effectuate its purposes. The provisions of the compact would be severable and if any phrase, clause, sentence, or provision of the compact was declared to be contrary to the constitution of any member state or the United States or the applicability thereof to any government, agency, person, or circumstance was held invalid, the validity and applicability of the remainder of the compact would not be affected.

Binding effect of compact. All lawful actions of the compact commission, including all rules and bylaws promulgated by the commission, would be binding upon the member states. All agreements

between the commission and member states would be binding in accordance with their terms.

Nothing in the bill would prevent the enforcement of any other law of a member state that was not inconsistent with the compact. All laws in a member state in conflict with the compact would be superseded to the extent of the conflict.

In the event any provision of the compact exceeded the constitutional limits imposed on the legislature of any member state, the provision would be ineffective to the extent of the constitutional conflict.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the fiscal impact of HB 1633 cannot be determined because the fees authorized by the bill and the number of states that could join the compact are unknown.