

BILL ANALYSIS

Senate Research Center

S.B. 877
By: Sibley
Health & Human Services
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As Filed

DIGEST

Currently, the State Board of Dental Examiners (board) was reestablished by the passage of S.B. 18 during the 74th Legislature in order to govern Chapter 9, Title 71, V.T.C.S., the Dental Practices Act. The law added by S.B. 18 is unclear in some sections. This bill would clarify such provisions and revise various regulations of the practice of dentistry governed by the board under Chapter 9, Title 71, V.T.C.S.

PURPOSE

As proposed, S.B. 877 revises various regulations of the practice of dentistry enforced by the State Board of Dental Examiners.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the State Board of Dental Examiners in SECTIONS 3 and 10 (Articles 4545a-(a)(3) and (8), V.T.C.S., and Article 4548k-1(a), V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1(a), Article 4544, V.T.C.S., to delete text requiring the examination of all applicants for a license to practice dentistry in this state to be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the State Board of Dental Examiners (board) may in its discretion require.

SECTION 2. Amends Section 4545, V.T.C.S., to require each applicant for a license to practice dentistry in this state to be no less than 21 years of age and to present present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (commission), rather than from a reputable dental college and evidence of good moral character. Deletes text setting forth the concept of a reputable dental college.

SECTION 3. Amends Article 4545a, V.T.C.S., as follows:

Art. 4545a. New heading: LICENSING BY CREDENTIALS. Requires the board to grant a license to practice dentistry or dental hygiene to any reputable dentist or dental hygienist who, among other items, has graduated from a dental or dental hygiene school accredited by the commission and approved by the board according to rules established by the board; has practiced dentistry or dental hygiene, among other options, as a dental educator at a dental school accredited by the commission for a minimum of five years preceding the date of applying for the license; and has met any additional criteria established by board rule. Deletes text requiring the board to grant a license to one who has practiced dentistry or dental hygiene for two years of obliged service in the state under the National Health Service Corps or other federal scholarship or loan repayment program. Deletes Section 2, relating to licensing of foreign trained dentists. Makes conforming changes.

SECTION 4. Amends Article 4548c, V.T.C.S., to authorize, rather than require, that no person whose license to practice dentistry in this state has been revoked by any district court of this state or by the board can practice or attempt to practice dentistry or dental surgery in this state after such license has been revoked. Makes a conforming change.

SECTION 5. Amends Article 4548e, V.T.C.S., to authorize any person, corporation, company, or association to use a corporation, company, association, or trade name. Requires any advertisement by the corporation, company, association, or trade name to include prominently the name of at least one dentist practicing under such name. Requires the person, corporation, company, or association to file with the board a list of each dentist who practices under the name and a list of each trade name used if the trade name is different from the corporation, company, or association name. Requires a list under this section to be updated by the board no later than the 30th day after the date of the change. Deletes text making it unlawful to use certain trade names.

SECTION 6. Amends Article 4548g, V.T.C.S., to provide that any unprofessional conduct means and includes, among other acts, waiving payment by an insured patient of the patient's insurance deductible or copayment when benefits are assigned to the dentist.

SECTION 7. Amends Section 1, Article 4548h, V.T.C.S., by amending Subsections (f)-(j) and by adding Subsections (k)-(m), as follows:

(f) Authorizes the board to employ and commission investigators as peace officers to enforce this chapter. Requires a peace officer commissioned under this subsection to obtain a license as a peace officer from the Commission on Law Enforcement Officer Standards and Education under Chapter 415, Government Code. Provides that an employee commissioned as a peace officer under this subsection has the powers, privileges, and immunities of a peace officer while carrying out the employee's duties under this Act.

(g) Requires a complaint received under this article to be filed with the board and reviewed to determine jurisdiction. Requires the board to require an investigation of the complaint to determine the facts concerning the complaint. Requires the disposition of the complaint to comply with this article. Authorizes an investigation to include an unannounced or announced on-site personal contact or official written correspondence.

(h)-(l) Makes conforming changes.

(m) Authorizes the board to only consider a complaint that is filed with the board no later than the fourth anniversary of the date the complained-of act occurred or the date the complaint discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the complained-of act.

SECTION 8. Amends Sections 2 and 3, Article 4548h, V.T.C.S., as follows:

Sec. 2. Requires the board to revoke or suspend, rather than revoke, cancel, or suspend, any license or licenses that may have been issued by such board, impose a fine on a license holder, place on probation with conditions a person whose license has been suspended, or reprimand a licensee under certain circumstances. Requires notice of hearing issued by the board under this article to be made in writing and to set out the alleged violations of such statutes or rules. Deletes text referring to complaints to be considered under this article. Provides that all proceedings under this section are subject to Chapter 2001, Government Code. Deletes text referring to complaints considered by the board. Makes conforming changes.

Sec. 3. Provides that a person aggrieved by a ruling, order, or decision of the board under this article has the right to appeal as provided by Chapter 2001, Government Code. Deletes text relating to the right to appeal in certain courts, the processing of the appeal by certain courts, and the staying of enforcement of penalty or punishment during the appeals process. Makes conforming changes.

SECTION 9. Amends Article 4548i(b), V.T.C.S., to provide that any person who violates a provision of Chapter 9, Title 71, V.T.C.S., (Dental Practice Act), is liable to the state for a civil penalty in an amount not to exceed \$5,000, rather than \$2,500.

SECTION 10. Amends Chapter 9, Title 71, V.T.C.S., by adding Article 4548k, as follows:

Art. 4548k. CONTRACTUAL AND ORGANIZATIONAL AGREEMENTS

Sec. 1. Requires a certain person or organization to report to the board, under rules adopted by the board, certain information. Provides that a person or organization practicing dentistry that has one or more dentists practicing with or under the person or organization is responsible for all professional acts done under the name of the person or organization. Provides that this article does not affect an individual license holder's responsibilities and rights under this chapter.

Sec. 2. Prohibits a statute relating to the practice of dentistry in this state from being construed to prohibit a licensed dentist from maintaining any number of offices in this state under certain conditions.

SECTION 11. Amends Section 1(d), Article 4549, V.T.C.S., to delete reference to a felony involving moral turpitude.

SECTION 12. Amends Section 2, Article 4549, V.T.C.S., to authorize the board to have jurisdiction and authority, among other actions, to impose a fine on a person licensed under this chapter or to place on probation with conditions a person whose license or certificate is suspended, for, among other causes, that the license holder having been or is guilty of, among other actions, failure to treat a patient according to a reasonable standard of care.

SECTION 13. Amends Section 3(a), Article 4549, V.T.C.S., to provide that if the board proposes to refuse to examine a person, to suspend or revoke a license, to impose a fine, to place on probation a person whose license has been suspended, or to reprimand a license holder, the person is entitled to a hearing under Chapter 2001, Government Code, rather than before the board.

SECTION 14. Amends Article 4549-1, V.T.C.S., to require the board, under certain circumstances and in accordance with Chapter 2001, Government Code, in which the fact of conviction is determined, to suspend the person's license. Makes a standard recodification change.

SECTION 15. Amends Article 4550, V.T.C.S., to require the board to keep records in which shall be registered the name and residence and, rather than or, place of business of all persons authorized to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. Provides that it is not a violation of this section for the board to share investigation files and records with another state regulatory agency or federal law enforcement agency during the course of a joint investigation or in determining the feasibility of conducting an investigation.

SECTION 16. Amends Article 4551(b), to delete text prohibiting the board from setting a fee at an amount less than the amount of that fee on September 1, 1993.

SECTION 17. Amends Article 4551a, V.T.C.S., to require any person to be regarded as practicing dentistry within the meaning of this chapter to include, among others, a person who uses or permits to be used for himself or for any person any letters, titles, terms or descriptive matter, including use of the terms "denturist" or "denturism," which represents him as being able to do certain dental oriented work; and a person who holds himself out as a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

SECTION 18. Amends Article 4551b, V.T.C.S., to prohibit the definition of dentistry as contained in Chapter 9, Title 71, V.T.C.S., from applying to, among others, members of the faculty of a reputable dental or dental hygiene college or school where such faculty members perform their services for the sole benefit of such school or college.

SECTION 19. Amends Section 2, Article 4551e, V.T.C.S., to make conforming changes.

SECTION 20. Amends Section 4A(d), Article 4551e, V.T.C.S., to authorize a member of the

Dental Hygiene Advisory Committee to receive reimbursement for travel expenses, including expenses for meals and lodging. Makes conforming changes.

SECTION 21. Amends Section 5(a), Article 4551e, V.T.C.S., to make a conforming change.

SECTION 22. Amends Articles 4551e-1(a) and (b), V.T.C.S., to provide that a dental assistant is not required to be professionally licensed if the dental assistant is employed by and works in the office of a licensed and practicing dentist and performs one or more delegated dental acts under the direct supervision, direction, and responsibility of such dentist. Defines "direct supervision, direction, and responsibility." Prohibits a dentist from delegating the authority to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent to an individual not licensed as a dentist with a permit issued by the board for the procedure being performed, if a permit is required; as a certified registered nurse anesthetist licensed by the Texas State Board of Nurse Examiners; or as a physician anesthesiologist licensed by the Texas State Board of Medical Examiners. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 8, Article 4551f, V.T.C.S., by amending Subsection (a) and by adding Subsection (g), as follows:

(a) Authorizes the board to refuse to issue a certificate of registration, to suspend or revoke a certification, to impose a fine, or to probate all or part of the suspension if, after a hearing, the board finds that the person applying for or holding a certificate of registration has violated or aided another person in violating any law regulating the practice of dentistry.

(g) Provides that for the purposes of Subsection (a), a person applying for or holding a certificate of registration includes a person having an ownership interest in a dental laboratory that is registered or for which an application for registration has been filed; and a person acting under the direction or control of a person having an ownership interest in a dental laboratory.

SECTION 24. Amends Article 4551n, V.T.C.S., to authorize a dentist licensed by the board to be employed by or contract with a governmental entity providing dental services under federal or state law. Authorizes a dentist licensed by the board to be employed by or contract with an organization that meets the requirements of Section (1)(a)(1) of this article if the organization is approved by the board as an organization that provides services to underserved populations for no fee or a reduced fee. Makes conforming changes.

SECTION 25. Amends Section 467.004(a), V.T.C.S., to authorize a licensing or disciplinary authority to add a surcharge of not more than \$10, rather than \$5, to its license or license renewal fee to fund an approved peer assistance program.

SECTION 26. Amends Section 467.0041(b), Health and Safety Code, to make a conforming change.

SECTION 27. Amends Article 2.12, Code of Criminal Procedure, to provide that, among others, the officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, rather than Section 13, Article 1118x, V.T.C.S., or by a regional transportation authority under Section 452.110, Transportation Code; and investigators commissioned by the board under Section 1(f), Article 4548h, V.T.C.S., are peace officers. Deletes text providing that officers commissioned under the Texas High Speed Rail Act (Article 6674v.2, V.T.C.S.) are peace officers. Makes conforming and standard recodification changes.

SECTION 28. Repealers: Section 2, Article 4544, V.T.C.S. (Foreign and Nonaccredited Dental School Graduates); Section 4, Article 4548h, V.T.C.S., and Section 2A(f), Article 4550a, V.T.C.S.

SECTION 29. (a) Effective date: September 1, 1997.

(b) Requires the board to adopt rules required under this Act by December 1, 1997.

(c) Makes application of this Act prospective.

SECTION 30. Emergency clause.