

BILL ANALYSIS

S.B. 263
By: Nelson
Public Health
Committee Report (Amended)

BACKGROUND AND PURPOSE

The State Board of Dental Examiners (SBDE) licenses dental professionals to practice in Texas and takes enforcement action against practitioners who violate the law and SBDE's rules. The Sunset Commission found that SBDE had a large backlog of unresolved cases, some of which were as much as six years old, and its average time to resolve a complaint was 532 days. S.B. 263 would continue SBDE for the standard 12-year period while providing tools to strengthen SBDE's enforcement activities and improve accountability and more timely disposition of complaints. Similarly, S.B. 263 ensures that SBDE has appropriate regulatory authority over dental practitioners to better protect the public. Finally, S.B. 263 reduces the size of SBDE from 18 to 15 members, consisting of eight dentists, two dental hygienists, and five public members.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTION 13 (Section 256.101, Occupations Code), SECTION 18 (Section 262.1025, Occupations Code), SECTION 19 (Section 263.0075, Occupations Code), and SECTION 24 (Section 265.005, Occupations Code) of this bill.

ANALYSIS

Amends Section 251.005, Occupations Code to continue the State Board of Dental Examiners (SBDE) for the standard 12-year period until September 1, 2015.

Amends Section 252.001, Occupations Code to provide that the SBDE consists of 15 rather than 18 members. The number of dentist members is reduced by two and the number of public members is reduced by one.

Amends Section 252.002(d), Occupations Code to update standard language developed by the Sunset Commission regarding eligibility to serve as a public member of the SBDE.

Amends Section 252.006, Occupations Code to require SBDE to elect a secretary from its members to serve for a one-year term and requires the governor to designate a member of the SBDE as the presiding officer of SBDE to serve in that capacity at the will of the governor. The presiding officer is to be a dentist.

Amends Sections 252.007, Occupations Code to provide the grounds for a removal of a board member due to ineligibility and without an excuse if approved by a majority vote of the board. The executive director, if he or she has knowledge that a potential ground for removal exists, is required to notify the presiding officer. The presiding officer is required to then notify the governor and the attorney general that a potential ground for removal exists. The executive director, if the potential ground for removal involves the presiding officer, is required to notify the next highest ranking officer of SBDE, who is required to then notify the governor and the attorney general.

Amends Section 252.010, Occupations Code to provide that a person who is appointed to and qualifies for office as a member of the SBDE may not vote, deliberate, or be counted as a member in attendance until the person completes a training program. The training program must provide the person with certain enumerated information. A person appointed to the SBDE is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. The SBDE

no longer has to consult with the governor's office or the Texas Ethics Commission in developing the training program nor does it have to let another state agency or entity provide the training.

Amends Chapter 253, Occupations Code by adding Section 253.008 which requires the executive director or the executive director's designee to provide to SBDE members information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

Amends Chapter 254, Occupations Code by adding Section 254.011 to require SBDE to enter into an agreement with the Health and Human Services Commission (HHSC) to improve coordination on issues relating to the State Medicaid program. The agreement must require each agency to perform certain function.

Amends Section 254.012, Occupations Code to require SBDE to include certain information in the annual financial report required by Section 2101.011, Government Code, information on all cases handled by SBDE during the presiding fiscal year involving fraud, abuse, or insufficient quality of care under the State Medicaid program. Existing language regarding reporting requirements is deleted.

Amends Chapter 254, Occupations Code by adding Sections 254.013, 254.014, and 254.015 to require the SBDE to establish a program to provide student loan reimbursement for dentists and dental hygienists who practice in rural health professional shortage areas and medically underserved areas identified by the Texas Department of Health (TDH) and to fund the program by designating annually a portion of the revenue generated under this subtitle from dentist and dental hygienist licensing fees. Additionally, SBDE is to develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the SBDE's ability to perform its functions. Requirements for the technological solutions are enumerated. Finally SBDE is required to develop and implement a policy to encourage the use of certain negotiated rulemaking procedures and alternative dispute resolution procedures. The procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. The SBDE must designate a trained person to perform certain functions.

Amends Sections 255.004 and 255.005, Occupations Code to require SBDE to maintain a file on each written complaint filed with SBDE. The file is to include certain information. SBDE is to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of SBDE's policies and procedures relating to complaint investigation and resolution.

Amends Section 255.006, Occupations Code by amending Subsection (d) and adding Subsections (d-1) and (d-2) to require the SBDE to adopt rules establishing procedures by which board staff may dismiss complaints and expunge dismissed cases from SBDE records under certain circumstances. Specifies that staff must consult with a dentist SBDE member before dismissing or expunging a complaint related to patient morbidity, professional conduct, or quality of care and that the decision must be made with the appropriate level of review. Dismissals or expungements under this section must be reported to the SBDE at a public meeting.

Amends Section 256.101, Occupations Code by amending Subsection (a) and adding Subsection (a-1) to reduce the years of practice required for dental or dental hygienist licensure by credentials from five to three years and to specify the circumstances under which an applicant for dental or dental hygiene licensure by credentials could receive a waiver from the continuous practice requirements.

Amends Subchapter C, Chapter 256, Occupations Code by adding Section 256.1013 which governs the issuance of provisional licenses to qualified applicants from other jurisdictions.

Amends Section 257.002, Occupations Code to establish additional guidelines and fee structures for license renewal.

Amends Section 262.053, Occupations Code to prohibit certain persons from being a member of the advisory committee.

Subchapter B, Chapter 262, Occupations Code, is amended by adding Section 262.0555 which provides grounds for removal from the Dental Hygiene Advisory Committee, procedures for notification and that the validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of an advisory committee member exists.

Subchapter C, Chapter 262, Occupations Code is amended by adding Section 262.1025 to authorize the Dental Hygiene Advisory Committee to make recommendations regarding the regulation of dental hygiene that the SBDE must either adopt or reject. If the SBDE fails to take action on a recommendation from the Dental Hygiene Advisory Committee before the 91st day, the SBDE must adopt a rule in accordance with the recommendation.

Chapter 263, Occupations Code, is amended by adding Section 263.0075 to require SBDE to establish procedures by which a panel of SBDE employees is authorized to conduct an informal settlement conference to resolve a complaint against a person licensed under this subtitle. Certain enumerated criteria must be included in the procedures established. The SBDE may order a person licensed under this subtitle to pay restitution to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty. The amount of restitution ordered may not exceed the amount the patient paid for a service. The SBDE may not require payment of other damages or estimate harm in a restitution order.

Subchapter B, Chapter 264, Occupations Code is amended by adding Sections 264.0525-264.0527 which authorize SBDE to serve a proposed cease and desist order on a person SBDE believes is engaging or is likely to engage in an activity without a license or registration certificate. The order must meet certain criteria and it takes effect and is final and nonappealable as to that person, unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the order. A requested hearing on a proposed order is required to be held not later than the 30th day after the date SBDE receives the written request for a hearing unless the parties agree to a later hearing date. SBDE is required, after the hearing, to issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the finding at the hearing. An order issued under this subsection is immediately final for purposes of enforcement and appeal and shall require the person to immediately cease and desist from the unauthorized activity. SBDE is authorized to release to the public a final cease and desist order or information relating to the existence of the order if SBDE determines that the release would enhance the effective enforcement of the order or will serve the public interest.

SBDE is authorized to issue an emergency cease and desist order to a person if SBDE reasonably believes that certain enumerated conditions apply. The order must meet certain enumerated requirements. The emergency order is final and nonappealable as to that person, unless the person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served. SBDE is required, on receiving a request for a hearing, to serve notice of the time and place of the hearing by certain methods. The hearing must be held not later than the 10th day after the date SBDE receives the request for a hearing unless the parties agree to a later hearing date. SBDE is required, after the hearing, to take certain actions regarding the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal. An order continues in effect unless the order is stayed by SBDE and SBDE may impose any condition before granting a stay of the order. The SBDE may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if SBDE determines that the release would enhance the effective enforcement of the order or will serve the public interest. A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review. A petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

Chapter 265, Occupations Code is amended by adding Section 265.005 which prohibits a dental assistant

from making dental x-rays unless the dental assistant holds a certificate of registration issued by SBDE under this section. In order to qualify for a certificate of registration a dental assistant must pay a fee in an amount determined by SBDE and meet certain requirements. SBDE must set the registration fee for a dental assistant who qualifies under Subsection (b)(1) in an amount greater than the amount of the registration fee for a dental assistant who qualifies under Subsection (b)(2). The portion of the examination described by Subsection (b)(1)(B) must be tailored to a dental assistant's responsibilities and role in a dental office. The SBDE is required to develop the examination or contract with another person. The SBDE may create an advisory committee consisting of certain professionals and educators to advise SBDE in developing the examination. The examination must be administered by SBDE or by a testing service under an agreement with SBDE. A certificate of registration issued under this section must be renewed annually. SBDE shall develop a mandatory continuing education program for holders of certificates of registration. SBDE is prohibited from requiring a person to complete more than 12 hours of continuing education annually. The curriculum must cover standards of care, procedures for infectious disease control, and the requirements of this subtitle. A person is prohibited from renewing a certificate of registration unless the person complies with the continuing education requirements.

Subtitle D, Title 3, Occupations Code is amended by adding Chapter 267 which prohibits a person from serving as a faculty member of a dental school unless the person holds a dental school faculty member license issued under this chapter. A person is prohibited from serving as a faculty member of a dental hygiene school unless the person holds a dental hygiene school faculty member license issued under this chapter. This section does not apply to a person who does not have direct patient contact. A person is exempt from the requirements of Section 267.001(a) if the person is licensed to practice dentistry in this state. A person is exempt from the requirements of Section 267.001(b) if the person is licensed to practice dentistry or dental hygiene in this state.

A person, in order to qualify for a dental school faculty member license, must take certain enumerated actions and meet certain requirements. A person, to qualify for a dental hygiene school faculty member license, must take certain actions and meet certain requirements. SBDE must set the application fee in an amount sufficient to cover the cost of administering this chapter. An applicant can have direct patient contact before the applicant passes the examination, notwithstanding Section 267.001.

A person issued a license under Chapter 267, Occupations Code must renew their license annually and expires on the termination of the license holder's employment with the dental or dental hygiene school. A license holder whose employment with a dental or dental hygiene school terminates and who is subsequently employed by the same or a different dental or dental hygiene school must comply with the requirements for obtaining an original license, except that the person is not required to retake the examination. A license issued under Chapter 267, Occupations Code does not authorize the license holder to engage in the practice of dentistry or dental hygiene.

Subdivision 5, Section 467.001, Health and Safety Code is amended to include a dental or dental hygiene school faculty member in the definition of professional.

The following sections are repealed: Sections 257.003 (Renewal of Expired License by Out-of-State Practitioner) and 262.057 (Application of Sunset Act to Advisory Committee), Occupations Code.

One of the four dentist positions on SBDE that have terms scheduled to expire February 1, 2005, is abolished on September 1, 2003. On or before September 1, 2003, the members who hold those four positions must determine by unanimous agreement or by lot which position is abolished and inform the president of SBDE of that determination. One of the three dentist positions on SBDE that have terms scheduled to expire February 1, 2007, is abolished on September 1, 2003. On or before September 1, 2003, the members who hold those four position must determine by unanimous agreement or by lot which position is abolished on September 1, 2003, and inform the president of SBDE of that determination. One of the two public member positions on SBDE that have terms scheduled to expire February 1, 2009, is abolished on September 1, 2003. On or before September 1, 2003, the members who hold those two positions must determine by unanimous agreement or by lot which position is abolished on September 1,

2003, and inform the president of SBDE of that determination.

The changes in law made by Section 252.006, Occupations Code as amended by this Act, do not affect the entitlement of a person who was serving as president of the SBDE immediately before September 1, 2003, to continue serve and function in that capacity for the remainder of the person's term as president.

The changes in law made by Section 252.010, Occupations Code as amended by this Act, do not affect the entitlement of a member serving on the SBDE immediately before September 1, 2003, to continue serve and function as a member for the remainder of the person's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

If before implementing Section 254.011, Occupations Code, as added by this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected is required to request the waiver or authorization and is authorized to delay implementing that provision until the waiver or authorization is granted.

The changes in law made by Section 262.053, Occupations Code as amended by this Act, do not affect the entitlement of a member serving on the Dental Hygiene Advisory Committee immediately before September 1, 2003, to continue serve and function as a member for the remainder of the person's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

SBDE and HHS must enter into an agreement under Section 254.011, Occupations Code, as added by this Act, not later than January 1, 2004. A person is not required to obtain a certificate of registration under Section 265.005, Occupations Code, as added by this Act, before September 1, 2004. A person who qualified for registration with SBDE under 22 T.A.C. Section 115.10 before September 1, 2004, by successfully completing the examination described by Subdivision (3), Subsection (e) of that section is not required to obtain a certificate of registration under Section 265.005, Occupations Code, as added by this Act, before September 1, 2006, notwithstanding Subsection (c) of this section. Section 267.001, Occupations Code, as added by this Act, takes effect March 1, 2004. A person who was employed as a faculty member by a dental or dental hygiene school before September 1, 2003, is not required to obtain a license under Chapter 267, Occupations Code, as added by this Act, before September 1, 2004, notwithstanding Subsection (e) of this section. This Section and Section 28 of this Act take effect upon passage or on September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

EXPLANATION OF AMENDMENTS

Amendment 1. In Section 10 of the bill, strike proposed Section 254.013, Occupations Code which deals with the Rural Dentist and Dental Hygienist Loan Reimbursement Program.

Amendment 2.

Section 257.004(a), Occupations Code is amended to require that a person holding a dental or dental hygienist license submit at the time the person applies for renewal of the license a written statement executed by the person stating that the person has successfully completed a current program or course in cardiopulmonary resuscitation that includes a demonstration of skills and a written evaluation.

Add Section 257.004(b), Occupations Code to the list of sections to be repealed.

Amendment 3.

In proposed Section 267.001(b), Occupations Code of the bill, between "a" and dental hygiene school faculty member license" insert the words "dental school faculty member license or".