

BILL ANALYSIS

Senate Research Center

C.S.S.B. 263
By: Nelson
Government Organization
2/27/2003
Committee Report (Substituted)

DIGEST 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. C.S.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, C.S.S.B. 263 ensures that SBDE has appropriate regulatory authority over dental practitioners to better protect the public. Finally, C.S.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.

SECTION BY SECTION ANALYSIS

SECTION 1. 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.

SECTION 2. Amends Section 252.001, Occupations Code, by amending Subsection (a) to provide that SBDE consists of 15 rather than 18 members appointed by the governor with the advice and consent of the senate. Reduces by two the number of dentist members and by one the number of public members.

SECTION 3. Amends Section 252.002(d), Occupations Code, to make nonsubstantive changes.

SECTION 4. Amends Section 252.006, Occupations Code, to require SBDE to elect a secretary from its members to serve for a one-year term.

(b) Requires the governor to designate a member of SBDE as the presiding officer of SBDE to serve in that capacity at the will of the governor. Requires the presiding officer to be a dentist.

SECTION 5. Amends Sections 252.007(a) and (c), Occupations code, to provide the grounds for a removal of a board member.

(c) Requires the executive director, if he or she has knowledge that a potential ground for removal exists, to notify the presiding officer of SBDE of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of SBDE,

who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Amends Section 252.010, Occupations Code, as follows:

Sec. 252.010. BOARD MEMBER TRAINING. (a) Provides that a person who is appointed to and qualifies for office as a member of SBDE may not vote, deliberate, or be counted as a member in attendance at a meeting of SBDE until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to 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.

SECTION 7. Amends Chapter 253, Occupations code, by adding Section 253.008, as follows:

Sec. 253.008. TRAINING FOR EMPLOYEES ON STATE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to lottery employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B, Government Code.

SECTION 8. Amends Chapter 254, Occupations code, by adding Section 254.011, as follows:

Sec. 254.011. AGREEMENT WITH HEALTH AND HUMAN SERVICES COMMISSION. Requires 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. Requires the agreement to require each agency to perform certain functions.

SECTION 9. Amends Section 254.012, Occupations Code, as follows:

Sec. 254.012. New heading: INCLUSION OF MEDICAID--RELATED INFORMATION IN ANNUAL FINANCIAL REPORT. Requires SBDE to include 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, including certain information. Deletes existing language from current text.

SECTION 10. Amends Chapter 254, Occupations Code, by adding Sections 254.013, 254.014, and 254.015, as follows:

Sec. 254.013. RURAL DENTIST AND DENTAL HYGIENIST LOAN REIMBURSEMENT PROGRAM. Requires 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). Requires SBDE to fund the program by designating annually a portion of the revenue generated under this subtitle from dentist and dental hygienist licensing fees.

Sec. 254.014. USE OF TECHNOLOGY. Requires SBDE to develop and implement a policy requiring the executive director and lottery employees to research and propose appropriate technological solutions to improve the SBDE's ability to perform its functions. Requires the technological solutions to ensure that certain services are provided.

Sec. 254.015. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION

PROCEDURES. (a) Requires SBDE to develop and implement a policy to encourage the use of certain rulemaking and alternative dispute resolution procedures.

(b) Requires SBDE's procedures relating to alternative dispute resolution to 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.

(c) Requires SBDE to designate a trained person to perform certain functions.

SECTION 11. Amends Sections 255.004 and 255.005, Occupations Code, as follows:

Sec. 255.004. RECORDS OF COMPLAINTS. (a) Requires SBDE to maintain a file on each written complaint filed with SBDE.

(b) Requires the file to include certain information. Adds to and deletes from the list of information required to be included.

(c) Requires SBDE 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.

Sec. 255.005. New heading: NOTIFICATION OF INVESTIGATION STATUS. Makes conforming changes.

SECTION 12. Amends Section 255.006, Occupations Code, by amending Subsection (d) and adding Subsections (d-1) and (d-2), as follows:

(d) Adds new requirements for rules related to the investigation of a complaint.

(d-1) Requires procedures established under Subsection (d)(6) to meet certain criteria.

(d-2) Requires procedures established under Subsection (d)(7) to meet certain criteria.

SECTION 13. Amends Section 256.101, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows

(a) Requires SBDE to issue a license to practice dentistry to a reputable dentist who has practiced dentistry or dental hygiene for at least the three, rather than five, years preceding the date of application for a license under this section.

(a-1) Requires SBDE by rule to specify the circumstances under which SBDE may waive the requirement under Subsection (a)(8) that an applicant for a license under this section have been continuously engaged in the practice of dentistry or dental hygiene during the period required by that subsection if the applicant has engaged in the practice of dentistry or dental hygiene for a cumulative total of at least three years before the date of application for a license under this section.

SECTION 14. Amends Chapter 256C, Occupations Code, by adding Section 256.1013, as follows:

Sec. 256.1013. PROVISIONAL LICENSE. (a) Authorizes SBDE to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain qualifications.

(b) Authorizes SBDE to waive the requirement of Subsection (a)(3) for an applicant if SBDE determines that compliance with that subdivision would be a hardship to the applicant.

(c) Provides that a provisional license is valid until the date SBDE approves or denies the provisional license holder's application for a license. Requires SBDE to issue a license under this subtitle to the provisional license holder if certain qualifications are met.

(d) and (e)

SECTION 15. Amends Section 257.002, Occupations Code, by amending Subsections (b)-(e) and adding Subsections (c-1) and (d-1), as follows:

(b) Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to SBDE before the expiration date of the license. Provides that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying SBDE a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c-1) Subsection created from existing text. Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying to SBDE a renewal fee that is equal to two times the normally required renewal fee.

(d) Provides that a person whose license has been expired for one year or more may not renew the license. Authorizes a person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(d-1) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new license without reexamination. Requires the person to pay SBDE a fee that is equal to two times the normally required renewal fee for the license.

(e) Requires SBDE, not later than the 30th day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to SBDE's records.

SECTION 16. Amends Section 262.053, Occupations Code, as follows:

Sec. 262.053. New heading: MEMBERSHIP RESTRICTIONS. Deletes existing text "RESTRICTION" from the heading.

(a) Defines "Texas trade association."

(b) Prohibits certain persons from being a member of the advisory committee.

(c) Created from existing text.

SECTION 17. Amends Chapter 262B, Occupations Code, by adding Section 262.0555, as follows:

Sec. 262.0555. GROUNDS FOR REMOVAL. (a) Provides that it is a ground for removal from the advisory committee that a member does not meet certain requirements.

(b) Provides 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.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the advisory committee of the

potential ground. Requires the presiding officer to then notify certain persons that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the advisory committee, who is required to then notify certain persons that a potential ground for removal exists.

SECTION 18. Amends Chapter 262C, Occupations Code, by adding Section 262.1025, as follows:

Sec. 262.1025. **AUTHORITY OF ADVISORY COMMITTEE TO RECOMMEND RULES; ADOPTION BY BOARD.** (a) Authorizes the advisory committee to make a recommendation to SBDE relating to the regulation of the practice of dental hygiene. Authorizes a recommendation under this subsection to include a proposed rule in a form suitable for publication in the Texas Register.

(b) Authorizes SBDE to adopt a rule in accordance with the recommendation or reject the recommendation.

(c) Requires SBDE, if SBDE fails to take action on the recommendation before the 91st day after the date the recommendation is submitted to SBDE, to adopt a rule in accordance with the recommendation.

(d) Provides that Section 262.102(c) applies to the adoption of a rule under this section, except as provided by Subsection (e).

(e) Provides that SBDE is not required to comply with Section 262.102(c) before adopting the proposed rule, if the recommendation includes a proposed rule.

SECTION 19. Amends Chapter 263, Occupations Code, by adding Section 263.0075, as follows:

Sec. 263.0075. **INFORMAL SETTLEMENT CONFERENCE; RESTITUTION.** (a) Requires SBDE, by rule, 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.

(b) Requires procedures established under this section to include certain requirements.

(c) Authorizes SBDE, subject to Subsection (d), to 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 under Chapter 264A.

(d) Prohibits the amount of restitution ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the patient paid to the license holder for a service regulated by this subtitle. Prohibits SBDE from requiring payment of other damages or estimating harm in a restitution order.

SECTION 20. Amends the heading to Chapter 264B, Occupations Code, to read as follows:

SUBCHAPTER B. INJUNCTION; CEASE AND DESIST ORDER

SECTION 21. Amends Section 264.052, Occupations Code, to delete existing text “this subchapter” and replace it with “Section 264.051.”

SECTION 22. Amends Chapter 264B, Occupations Code, by adding Sections 264.0525-264.0527, as follows:

Sec. 264.0525. CEASE AND DESIST ORDER. (a) Authorizes 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 required by this subtitle. Requires the order to meet certain requirements.

(b) Provides that the order 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.

(c) Requires a requested hearing on a proposed order 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. Provides that a hearing under this subsection is subject to Chapter 2001, Government Code.

(d) Requires SBDE, after the hearing, to issue or decline to issue a cease and desist order. Authorizes the proposed order to be modified as necessary to conform to the finding at the hearing. Provides that an order issued under this subsection is immediately final for purposes of enforcement and appeal and is required to require the person to immediately cease and desist from the unauthorized activity.

(e) Authorizes SBDE to release to the public a final cease and desist order issued under this section 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.

Sec. 264.0526. EMERGENCY CEASE AND DESIST ORDER. (a) Authorizes SBDE to issue an emergency cease and desist order to a person if SBDE reasonably believes that certain conditions apply.

(b) Requires the order to meet certain requirements.

(c) Provides that 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 on the person.

(d) Requires SBDE, on receiving a request for a hearing, to serve notice of the time and place of the hearing by certain methods, return receipt requested. Requires the hearing to 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. Provides that a hearing under this subsection is subject to Chapter 2001, Government Code.

(e) Requires SBDE, after the hearing, to take certain actions regarding the emergency cease and desist order. Provides that an order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) Provides that an order continues in effect unless the order is stayed by SBDE. Authorizes SBDE to impose any condition before granting a stay of the order.

(g) Authorizes SBDE to 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.

Sec. 264.0527. APPEAL OF CEASE AND DESIST ORDER. (a) Authorizes a person affected by a cease and desist order issued, affirmed, or modified after a hearing to file a petition for judicial

review.

(b) Provides that a filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

SECTION 23. Amends Section 264.053, Occupations Code, to make conforming changes.

SECTION 24. Amends Chapter 265, Occupations Code, by adding Section 265.005, as follows:

Sec. 265.005. X-RAY CERTIFICATE. (a) Prohibits a dental assistant from making dental x-rays unless the dental assistant holds a certificate of registration issued by SBDE under this section.

(b) Requires a dental assistant, to qualify for a certificate of registration, to pay a fee in an amount determined by SBDE and meet certain requirements.

(c) Requires SBDE to 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).

(d) Requires the portion of the examination described by Subsection (b)(1)(B) to be tailored to a dental assistant's responsibilities and role in a dental office.

(e) Requires SBDE to develop the examination or contract with another person SBDE determines has the expertise and resources to develop the examination. Authorizes SBDE to create an advisory committee consisting of certain professionals and educators to advise SBDE in developing the examination.

(f) Requires the examination to be administered by SBDE or by a testing service under an agreement with SBDE.

(g) Requires a certificate of registration issued under this section to be renewed annually.

(h) Requires SBDE, by rule, to develop a mandatory continuing education program for holders of certificates of registration. Prohibits SBDE from requiring a person to complete more than 12 hours of continuing education annually. Requires the curriculum to cover standards of care, procedures for infectious disease control, and the requirements of this subtitle. Prohibits a person from renewing a certificate of registration unless the person complies with the continuing education requirements.

SECTION 25. Amends Title 3D, Occupations Code, by adding Chapter 267, as follows:

CHAPTER 267. LICENSING OF FACULTY MEMBERS OF DENTAL OR DENTAL HYGIENE SCHOOLS

Sec. 267.001. LICENSE REQUIRED. (a) 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.

(b) Prohibits a person 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.

(c) Provides that this section does not apply to a person who does not have direct patient contact.

Sec. 267.002. EXEMPTIONS. (a) Provides that a person is exempt from the requirements of Section 267.001(a) if the person is licensed to practice dentistry in this state.

(b) Provides that 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.

Sec. 267.003. QUALIFICATIONS FOR LICENSE. (a) Requires a person, in order to qualify for a dental school faculty member license, to take certain actions.

(b) Requires a person, to qualify for a dental hygiene school faculty member license, to take certain actions.

(c) Requires an applicant for a license under this chapter to take certain actions.

(d) Requires SBDE to set the application fee in an amount sufficient to cover the cost of administering this chapter.

(e) Authorizes an applicant to have direct patient contact before the applicant passes the examination, notwithstanding Section 267.001.

Sec. 267.004. LICENSE RENEWAL. Requires a license issued under this chapter to be renewed annually.

Sec. 267.005. LICENSE EXPIRATION. (a) Provides that a license issued under this chapter expires on the termination of the license holder's employment with the dental or dental hygiene school.

(b) Requires 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 to comply with the requirements for obtaining an original license, except that the person is not required to retake the examination.

Sec. 267.006. PRACTICE OF DENTISTRY OR DENTAL HYGIENE PROHIBITED. Provides that a license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene.

SECTION 26. Amends Section 467.001(5), Health and Safety Code, to include a dental or dental hygiene school faculty member in the definition of professional. Makes conforming changes.

SECTION 27. Repealer: Sections 257.003 (Renewal of Expired License by Out-of-State Practitioner) and 262.057 (Application of Sunset Act to Advisory Committee), Occupations Code.

SECTION 28. (a) Provides that one of the four dentist positions on SBDE that have terms scheduled to expire February 1, 2005, is abolished on September 1, 2003. Requires the members who hold those four positions, on or before September 1, 2003, to determine by unanimous agreement or by lot which position is abolished on September 1, 2003, and inform the president of SBDE of that determination.

(b) Provides that one of the three dentist positions on SBDE that have terms scheduled to expire February 1, 2007, is abolished on September 1, 2003. Requires the member who hold those four position, on or before September 1, 2003, to determine by unanimous agreement or by lot which position is abolished on September 1, 2003, and inform the president of SBDE of that determination.

(c) Provides that one of the two public member positions on SBDE that have terms scheduled to expire February 1, 2009, is abolished on September 1, 2003. Requires the members who hold those two positions, on or before September 1, 2003, to determine by unanimous agreement or by lot which position is abolished on September 1, 2003, and inform the president of SBDE of that determination.

SECTION 29. Makes application of Section 252.006, Occupations Code, as amended by this Act, prospective to September 1, 2003.

SECTION 30. Makes application of Section 252.010, Occupations Code, as amended by this Act, prospective to September 1, 2003.

SECTION 31. Provides that, 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 affected is required to request the waiver or authorization and is authorized to delay implementing that provision until the waiver or authorization is granted.

SECTION 32. Makes application of Section 262.053, Occupations Code, as amended by this Act, prospective to September 1, 2003.

SECTION 33. (a) Effective date: September 1, 2003, except as otherwise provided by this section.

(b) Requires SBDE and HHS to enter into an agreement under Section 254.011, Occupations Code, as added by this Act, not later than January 1, 2004.

(c) Provides that 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.

(d) Provides that 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 Subsection (e)(3) 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.

(e) Provides that Section 267.001, Occupations Code, as added by this Act, takes effect March 1, 2004.

(f) Provides that 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.

(g) Provides that this Section and Section 28 of this Act take effect upon passage or on September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

SECTION 2. Deletes proposed Subsection (a-1) of Section 251.001, Occupations Code, from the As Filed version of bill. Subsection (a-1), as proposed, would have required that one of the eight dentists appointed as a member of the SBDE be an oral surgeon.