

BILL ANALYSIS

C.S.S.B. 610
By: Nelson
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Board of Dental Examiners (board) has identified various administrative needs pertaining to its licensing, enforcement, and legal functions. Also, the board often receives inquiries from retired dentists wanting to provide charity care to their communities, but current law prevents retired dentists from practicing any dentistry. In addition, as a result of the Sunset process, S.B. 263, 78th Legislature, Regular Session, created a set of new requirements for dental assistants who take dental x-rays. The goal was to ensure public safety by standardizing the level of knowledge among dental assistants taking dental x-rays. However, concerns have arisen over the implementation of these requirements.

C.S.S.B. 610 improves the ability of the board to protect the public by providing guidance on the specific criminal convictions which would require the suspension and revocation of a license, increasing the ability of the state to prosecute violations, extending the timetable for hearings on cases that may warrant temporary licensure suspension, and repealing a provision that allows for expunction of dismissed complaints. It also authorizes the board to accept examination results from multiple examining boards, and allows new licensees to practice for 30 days based on written confirmation from the board prior to receiving the registration certificate.

The substitute will also increase access to dental care for needy Texans by allowing retired dentists who are in good standing with the board to provide voluntary charity care as defined by board rule. It will also do so by authorizing certain dental assistants to qualify for a pit and fissure sealant certificate by successfully completing a pit and fissure sealant course taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.

Finally, C.S.S.B. 610 will ensure public safety while reforming the requirements for dental assistants who take radiographs. A dental assistant is required to be examined after taking a course covering the procedures for making dental x-rays, infection control, and jurisprudence, and is not allowed to make x-rays unless the assistant has a certificate of registration. The board, in consultation with a committee of dentists and dental assistant educators, must set the objectives of the course and examination and the procedures to ensure the examination's integrity, and develop a program to ensure the compliance of courses and examinations with board rule. Schools or programs accredited by the Commission on Dental Accreditation or dental industry professional organizations are authorized to offer courses and examinations that comply with board rules and are approved by the board.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTION 3, and SECTION 9 of this bill.

ANALYSIS

The substitute provides that a dentist or a dental hygienist who is not licensed in this state and who is taking a dental clinical examination offered in this state by an examining body designated by the board, rather than the Western Regional Examining Board, is not practicing dentistry under Section 251.003, Health and Safety Code.

The substitute deletes the adoption of rules by the board to establish procedures by which a board employee may expunge from the records of the board a dismissed complaint if it is determined by the employee that the complaint was groundless.

The substitute creates an exception to the provision that a dentist or dental hygienist license holder on retired status may not perform any activity regulated under this subtitle to authorize a dentist on retired status to perform an activity regulated under this subtitle if the dentist's practice consists only of voluntary charity care, as defined by board rule. The substitute requires the board's rules to prescribe the scope of practice permitted for the retired dentist, the retired dentist's authority to prescribe and administer drugs, and any continuing education requirements applicable to the retired dentist.

The substitute authorizes a person to practice without displaying the person's current registration certificate for not more than 30 days after the date the person receives from the board written confirmation that the person's original license was issued.

The substitute prohibits a dentist from authorizing a dental assistant to make a dental x-ray unless the dental assistant holds an x-ray certificate of registration issued by the board.

The substitute prohibits the board from temporarily suspending a license or permit under this section without notice or hearing unless at the time of temporary suspension the board or the executive committee requests the State Office of Administrative Hearings (SOAH) to set a date for a hearing on the temporary suspension. The substitute also requires the SOAH to hold a hearing not later than the 30th, instead of the 14th, day after the date the license or permit holder is suspended unless the license or permit holder requests a continuance.

The substitute requires the board to suspend a license holder's license on proof, rather than if determined at an administrative hearing, that the person has been initially convicted of: a felony; a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only; a misdemeanor on conviction of which a defendant is required to register as a sex offender; a misdemeanor under Section 25.07 or Section 25.071, Penal Code; or is subject to an initial finding by the trier of fact of guilt of a felony under: Chapter 481 or 483, Health and Safety Code; Section 485.033, Health and Safety Code; or the Comprehensive Drug Abuse Prevention and Control Act of 1970. The substitute requires the board, on final conviction for said offenses, to revoke the person's license.

The substitute authorizes certain dental assistants to qualify for a pit and fissure sealant certificate by successfully completing a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.

The substitute requires a dental assistant to qualify for an x-ray certificate, to pass an examination under this section on completion of a course covering the procedure for making dental x-rays, jurisprudence, and infection control, instead of an examination administered by the board covering the same topics, or complete a course and pass an examination covering jurisprudence, rather than just pass an examination administered by the board on jurisprudence and certified as a dental assistant by the Dental Assisting National Board.

The substitute requires the course and the examination, instead of the jurisprudence portion of the examination, to be tailored to a dental assistant's responsibilities and role in a dental office. The substitute deletes a reference to registration fees set by the board.

The substitute authorizes the course and examination to be offered through self-study, interactive computer courses, or lecture courses, and to be offered through the Internet. It requires the course and exam to comply with rules adopted by the board regarding the examination and to be approved by the board.

The substitute requires, rather than authorizes, the board to create an advisory committee consisting of dentists, dental assistants, and dental assistant to advise the board in adopting rules, rather than in developing the examination. It deletes the requirement that the board develop the

examination or contract with another person the board determines has the expertise and resources to develop the examination and specifies the dental industry professionals.

The substitute requires the board by rule to set objectives for developing the examination and course and procedures to ensure the examination's integrity. The substitute requires the course and examination to comply with board rules and be administered by accredited schools or programs or any dental industry professional organization.

The substitute requires the board, in consultation with the advisory committee, to develop a program to ensure that courses and examinations developed or administered under this section comply with board rules and deletes language that requires that the examination be administered by the board or by a testing service under an agreement with the board.

The substitute prohibits the board from requiring a person who has successfully completed the course and examination to complete an additional course or examination to renew the registration, unless the person fails to renew the registration within two years of expiration.

The substitute requires the continuing education curriculum of a mandatory continuing education program, developed by the board by rule, to cover dental assistant duties, rather than standards of care, procedures for infectious disease control, and the requirements of this subtitle. The substitute authorizes a person to fulfill continuing education requirements through board-approved self-study, interactive computer courses, or lecture courses.

The substitute authorizes a dental assistant who is hired for the first time and who has not previously been issued a certificate of registration to make dental x-rays for one year without obtaining a certificate of registration.

The substitute repeals the requirement that the board adopt rules to ensure that a complaint is not dismissed without appropriate consideration.

The substitute provides that Section 256.103, Section 263.006, and Section 263.004 applies to a person who was licensed, initially convicted, or has had a suspended license or permit, on or after the effective date of this Act.

The substitute requires the board to adopt rules required under Section 256.102(f), Occupations Code, not later than March 1, 2006 and to adopt rules required by Section 265.005(f), Occupations Code, not later than July 1, 2006.

The substitute provides that compliance with Section 265.005, Occupations Code, is required only for a certificate of registration issued or renewed after September 1, 2006, except as otherwise provided and authorizes the board to extend the compliance deadline to January 1, 2007 under certain circumstances.

The substitute establishes September 1, 2007 as compliance deadline for dental assistants who qualified for registration under board rule by successfully completing the radiology exam before September 1, 2004. The substitute exempts those dental assistants from the requirement that they obtain a certificate under Section 265.005, Occupations Code, before September 1, 2007. Before September 1, 2007 dental assistants are required to comply with the former law or Section 265.005, Occupations Code.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds language that would clarify the ability of a retired dentist to provide voluntary charity care.

The substitute deletes SECTION 4 of the original, which would have authorized a person who is otherwise eligible to renew a license to renew an unexpired license without monetary penalty by

paying the required renewal fee to the board not later than the 10th day after the expiration date of the license and prohibited a person from engaging in activities that require a license until the license has been renewed. The substitute removes prospective language regarding this section.

The substitute removes language that provides the venue for the prosecution of an offense under Chapter 264 and 266, Occupations Code, is in Travis County or in the county in which the offense occurred.

The substitute includes a provision that authorizes certain dental assistants to qualify for a pit and fissure sealant certificate by successfully completing a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through a dental assisting course accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.

The substitute makes technical and conforming changes to the requirements for dental assistants who make dental x-rays. The substitute requires that a dentist may not authorize a dental assistant to make a dental x-ray unless the dental assistant holds an x-ray certificate. The substitute makes a technical change to the qualifications for a certificate and examination requirements as well as making technical changes to the composition of the advisory committee that will help the board develop required rules for the course and examination. The substitute makes technical and conforming changes to the requirements for the course and technical and conforming changes to the exam and requirements for renewal of a certificate as well as continuing education requirements. The substitute clarifies requirements for newly-hired dental assistants, makes a technical change to the deadline for the board's adoption of required rules and makes technical and conforming changes to provisions establishing compliance deadlines for certain dental assistants.

The substitute removes prospective language for Sections 264.151 and 266.303, Occupations Code.

The substitute adds prospective language for Section 263.004, Occupations Code, and sets the dates by which the board must adopt rules required by Subsection (f), Section 256.102, and Subsection (f), Section 265.005, Occupations Code, as amended by this Act.

The substitute adds that compliance with Section 265.005, Occupations Code, as amended by this Act, is required only for a certificate of registration issued or renewed after September 1, 2006, except as otherwise provided and authorizes the board to extend the compliance deadline to January 1, 2007 under certain circumstances.

The substitute adds the establishment of September 1, 2007 as the compliance deadline for dental assistants who qualified for registration under board rule by successfully completing the radiology exam before September 1, 2004. The substitute exempts those dental assistants from the requirement that they obtain a certificate under Section 265.005, Occupations Code, as amended by this Act, before September 1, 2007. Before September 1, 2007 dental assistants are required to comply with the former law or Section 265.005, Occupations Code, as amended by this Act.