

BILL ANALYSIS

S.B. 887
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Dental Practice Act contains provisions regarding license renewals and criminal penalties that are unclear and inconsistent. Current law requires a paper roster of approved dental labs and limits the terms of members of the State Board of Dental Examiners to only one term, which is inconsistent with how other licensing and regulatory boards function.

S.B. 887 authorizes the board by rule to establish procedures for the alternative informal assessment of administrative penalties for violation for dentistry provisions of the Occupations Code. The bill updates the renewal process for professionals licensed and certified by the board, and includes criminal penalties for failure to comply with the Dental Practice Act. The bill updates provisions relating to board membership qualifications and member term limits.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTION 6 of this bill.

ANALYSIS

S.B. 887 amends the Occupations Code to remove the condition making a person who is a member of the faculty of a dental or dental hygiene school or of the dental or dental hygiene department of a medical school ineligible for appointment as a dentist or dental hygienist member of the State Board of Dental Examiners.

S.B. 887 prohibits a member of the board from serving more than two consecutive full terms, rather than authorizing a member to serve only one six-year term, and clarifies that the completion of the unexpired portion of a term does not constitute service for a full term.

S.B. 887 adds to the information about which each dentist, dental hygienist, and owner or manager of a dental laboratory licensed or registered with the board is required to timely notify the board to include any change in the person's mailing address. The bill establishes that an initial license issued under the provisions governing dentistry expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date. The bill prohibits a member of the dental hygiene advisory committee from serving more than two consecutive full terms, rather than only one six-year term, and clarifies that the completion of the unexpired portion of the term does not constitute service for a full term.

S.B. 887 authorizes the board by rule to establish procedures for the alternative informal assessment of administrative penalties for violations of dentistry licensing provisions that do not involve the provision of direct patient care by a person licensed or regulated under those provisions. The bill limits an administrative penalty to a monetary penalty that does not exceed \$1,000 for each violation. The bill prohibits the total amount of administrative penalties assessed against a person from exceeding \$3,000 in a calendar year. The bill requires the board

by rule, if the board establishes administrative penalties, to adopt a standardized schedule of the penalties. The bill specifies that an assessment of an administrative penalty is not valid unless the person against whom the penalty is assessed receives a notice of violation that contains at a minimum a clear statement of the violation, the amount of the penalty assessed for each violation, and a statement that the person may either pay the penalty or appeal the penalty in writing. The bill requires the board, if the board establishes administrative penalties, to establish procedures for categorizing the penalties. The bill entitles a person who is assessed an administrative penalty to a hearing under the Administrative Procedure Act.

S.B. 887 makes it an offense if the person violates the provisions requiring a license to practice dentistry, rather than if the person violates the provisions governing dentistry. The bill makes the offense of practicing dentistry without a license a third degree felony and makes each day of a violation a separate offense. The bill makes it an offense to violate the requirement to be licensed to practice dental hygiene and enhances the penalty for a subsequent conviction for violating the requirement to be licensed to practice dental hygiene from a Class A misdemeanor to a third degree felony. The bill makes it an offense to violate the regulations governing the practice of dental hygienists; the penalty for such an offense is a Class A misdemeanor, and the bill makes each day of a violation a separate offense. The bill removes the provision that a violation of the practice of dentistry does not include a violation to which the provisions for imposing a criminal penalty for prohibited acts by dental hygienists applies. The bill makes it an offense for a dentist or dental hygienist to violate an injunction or cease and desist order issued by the dental hygienist advisory committee; the penalty for such an offense is a Class A misdemeanor and the penalty for a subsequent conviction of this offense is a third degree felony. The bill makes each day of a violation a separate offense. The bill removes the provision that makes a subsequent conviction, under the provisions relating to a criminal offense for violations in the practice of dentistry or if the offense involves practicing without an appropriate board license, a third degree felony.

S.B. 887 requires a dental assistant who holds a certificate of registration issued for performing dental x-rays to display the person's current certificate in each office in which the person makes dental x-rays. The bill authorizes a person who makes dental x-rays at more than one location to display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board. The bill requires a dental assistant who holds a certificate of registration for making dental x-rays to timely notify the board of any change of address of the person's place of business, any change of employers, and any change of the person's mailing address. The bill specifies that an initial certificate of registration issued under these provisions expires on the 30th day after the date the certificate is issued if the holder of the certificate fails to pay the required fee on or before that date.

S.B. 887 removes the provision that requires the Dental Laboratory Certification Council to provide to the board a list of applicants eligible for registration. The bill requires an initial registration certificate issued for a dental laboratory to expire on the 30th day after the date the registration certificate is issued if the holder of the certificate fails to pay the required registration certificate fee on or before that date.

S.B. 887 clarifies that a subsequent conviction for a violation of the offense of failure by a dental laboratory that prepares or repairs a dental prosthetic device to provide to the dentist in writing at the time of the delivery the dental laboratory's assigned registration number and the expiration date of the laboratory's registration certificate is a Class A misdemeanor. The bill enhances the penalty from a Class C misdemeanor to a Class B misdemeanor for the offense of violating the prohibition against a dentist knowingly prescribing, ordering, or receiving a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory; the penalty for a subsequent conviction of such a violation is a Class A misdemeanor and makes each day of a violation a separate offense. The bill makes conforming changes.

S.B. 887 repeals Section 262.203, Occupations Code, relating to the provision of a criminal penalty for violations of dental hygienist regulations or licensing requirements for dental hygienists.

EFFECTIVE DATE

September 1, 2009.