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By: **Delegate Boutin**

Introduced and read first time: January 21, 2004

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners - Powers and Duties**

3 FOR the purpose of authorizing the Board to require an examination, under certain  
4 circumstances, of a certified dental radiation technologist or a licensed dentist  
5 or dental hygienist during an investigation against the certificate holder or  
6 licensee; clarifying certain privileges waived by a certified dental radiation  
7 technologist or a licensed dentist or dental hygienist; establishing that a refusal  
8 to submit to an examination by a certificate holder or a licensee is prima facie  
9 evidence of certain findings under certain circumstances; requiring the Board to  
10 pay the cost of certain examinations; altering the qualifications for a teacher's  
11 license to practice dentistry or dental hygiene to include part-time faculty  
12 members; altering the qualification requirements for a limited license to  
13 practice dentistry; repealing a provision requiring the Board to give  
14 examinations for licensure at certain times and places; repealing a provision  
15 requiring the Board to give a certain examination in writing; repealing certain  
16 requirements an applicant must complete if the applicant fails a certain  
17 examination a certain number of times; prohibiting an applicant who fails an  
18 examination a certain number of times from being licensed except under certain  
19 circumstances; repealing provisions limiting the roles a consumer member of the  
20 Board and a dental hygienist member of the Board may have in administering  
21 certain examinations; authorizing the Board to set the fee to replace lost or  
22 destroyed licenses; authorizing the Board to set the late fee for a licensee's  
23 failure to notify the Board of a change of address; altering the license renewal  
24 and license expiration requirements for a teacher's license to practice dentistry  
25 or dental hygiene; authorizing the Board to deny, reprimand, suspend, or revoke  
26 the license of a licensed dentist or dental hygienist if an applicant or licensee  
27 fails to cooperate with a lawful Board investigation; altering the dates for the  
28 beginning and end of staggered terms of the members of the State Board of  
29 Dental Examiners; and generally relating to the powers and duties of the State  
30 Board of Dental Examiners.

31 BY repealing and reenacting, without amendments,  
32 Article - Health Occupations  
33 Section 4-202(a), 4-302(a), (b), (c), and (d), and 4-307(a)  
34 Annotated Code of Maryland

1 (2000 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Health Occupations

4 Section 4-202(h), 4-302(g) and (h), 4-303, 4-305, 4-307(c), 4-309, 4-313, and

5 4-315

6 Annotated Code of Maryland

7 (2000 Replacement Volume and 2003 Supplement)

8 BY adding to

9 Article - Health Occupations

10 Section 4-205.1

11 Annotated Code of Maryland

12 (2000 Replacement Volume and 2003 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Health Occupations**

16 4-202.

17 (a) (1) The Board consists of 15 members.

18 (2) Of the 15 Board members:

19 (i) 9 shall be licensed dentists;

20 (ii) 3 shall be licensed dental hygienists; and

21 (iii) 3 shall be consumer members.

22 (3) The Governor shall appoint the dentist Board members, with the  
23 advice of the Secretary, from a list of names submitted to the Governor jointly by the  
24 Maryland State Dental Association and the Maryland Dental Society. The number of  
25 names on the list for one vacancy shall be at least four names, for two vacancies at  
26 least three names for each vacancy, and for three or more vacancies at least two  
27 names for each vacancy.

28 (4) The Governor shall appoint the dental hygienist Board members,  
29 with the advice of the Secretary, from a list of names submitted to the Governor by  
30 the Maryland Dental Hygienists' Association. The number of names on the list shall  
31 be four times the number of vacancies.

32 (5) The Governor shall appoint the consumer members with the advice of  
33 the Secretary and the advice and consent of the Senate.

34 (h) (1) The term of a member is 4 years.

1 (2) The terms of the members are staggered as required by the terms  
2 provided for members of the Board on October 1, [1994] 2004.

3 (3) At the end of a term, a member continues to serve until a successor is  
4 appointed and qualifies.

5 (4) A member who is appointed after a term has begun serves only for  
6 the rest of the term and until a successor is appointed and qualifies.

7 (5) A member may not be appointed for more than 2 consecutive full  
8 terms.

9 (6) To the extent practicable, the Governor shall fill any vacancy on the  
10 Board within 60 days of the date of the vacancy.

11 4-205.1.

12 (A) WHILE INVESTIGATING AN ALLEGATION AGAINST A CERTIFICATE  
13 HOLDER OR LICENSEE UNDER THIS TITLE, THE BOARD MAY REQUIRE THE  
14 CERTIFICATE HOLDER OR LICENSEE TO SUBMIT TO AN APPROPRIATE EXAMINATION  
15 BY A HEALTH CARE PROVIDER DESIGNATED BY THE BOARD IF THE BOARD HAS  
16 REASON TO BELIEVE THAT THE CERTIFICATE HOLDER OR LICENSEE MAY CAUSE  
17 HARM TO A PERSON AFFECTED BY THE CERTIFICATE HOLDER'S PRACTICE OF  
18 DENTAL RADIATION TECHNOLOGY OR THE LICENSEE'S PRACTICE OF DENTISTRY OR  
19 DENTAL HYGIENE.

20 (B) IN RETURN FOR THE PRIVILEGE GIVEN TO A CERTIFICATE HOLDER TO  
21 PRACTICE DENTAL RADIATION TECHNOLOGY OR TO A LICENSEE TO PRACTICE  
22 DENTISTRY OR DENTAL HYGIENE IN THE STATE, THE CERTIFICATE HOLDER OR  
23 LICENSEE IS DEEMED TO HAVE:

24 (1) CONSENTED TO SUBMIT TO AN EXAMINATION UNDER THIS SECTION,  
25 IF REQUESTED BY THE BOARD IN WRITING; AND

26 (2) WAIVED ANY CLAIM OF PRIVILEGE AS TO THE TESTIMONY OR  
27 REPORTS OF A HEALTH CARE PROVIDER WHO EXAMINES THE CERTIFICATE HOLDER  
28 OR LICENSEE.

29 (C) THE FAILURE OR REFUSAL OF THE CERTIFICATE HOLDER OR LICENSEE  
30 TO SUBMIT TO AN EXAMINATION REQUIRED UNDER SUBSECTION (B) OF THIS  
31 SECTION IS PRIMA FACIE EVIDENCE OF THE CERTIFICATE HOLDER'S INABILITY TO  
32 PRACTICE DENTAL RADIATION TECHNOLOGY OR THE LICENSEE'S INABILITY TO  
33 PRACTICE DENTISTRY OR DENTAL HYGIENE COMPETENTLY, UNLESS THE BOARD  
34 FINDS THAT THE FAILURE OR REFUSAL WAS BEYOND THE CONTROL OF THE  
35 CERTIFICATE HOLDER OR LICENSEE.

36 (D) THE BOARD SHALL PAY THE COST OF ANY EXAMINATION MADE UNDER  
37 THIS SECTION.

1 4-302.

2 (a) Except as otherwise provided in this title, to qualify for a license, an  
3 applicant shall be an individual who meets the requirements of this section.

4 (b) The applicant shall be of good moral character.

5 (c) To qualify for a license to practice dentistry, the applicant shall be at least  
6 18 years old.

7 (d) Unless waived by the Board under §§ 4-303 and 4-303.1 of this subtitle, to  
8 qualify for a license to practice dentistry, the applicant shall hold a degree of Doctor of  
9 Dental Surgery, Doctor of Dental Medicine, or the equivalent, from a college or  
10 university that is:

11 (1) Authorized by any state or any province of Canada to grant the  
12 degree; and

13 (2) Recognized by the Board as requiring adequate preprofessional  
14 collegiate training and as maintaining an acceptable course of dental instruction.

15 (g) In addition to the requirements of subsections (a), (b), (c), and (d) of this  
16 section, to qualify for a teacher's license to practice dentistry, the applicant shall:

17 (1) Be licensed to practice dentistry in any other state;

18 (2) Have been active in the dental profession for at least 5 years;

19 (3) Be a PART-TIME OR full-time faculty member at a college or  
20 university where the applicant teaches a subject required by the dental school of that  
21 college or university; and

22 (4) If the applicant is engaged in a teaching area that is designated as a  
23 specialty by the American Dental Association, meet the requirements established by  
24 the American Dental Association for that specialty.

25 (h) In addition to the requirements of subsections (a), (b), and (e) of this  
26 section, to qualify for a teacher's license to practice dental hygiene, the applicant  
27 shall:

28 (1) Be licensed to practice dental hygiene in any other state;

29 (2) Have been active as a dental hygienist for at least 5 years before  
30 applying for the teacher's license to practice dental hygiene; and

31 (3) Be a PART-TIME OR full-time faculty member at a dental school  
32 where the applicant teaches a subject required by that school.

1 4-303.

2 (a) Subject to the provisions of this section, the Board may waive the  
3 education requirements of § 4-302 of this subtitle for an applicant for a limited  
4 license who does not hold a Degree of Doctor of Dental Surgery, Doctor of Dental  
5 Medicine, or the equivalent from a college or university that is authorized by any  
6 state or any province of Canada to grant the degree and is recognized by the Board  
7 under § 4-302(d)(2) of this subtitle.

8 (b) The Board may grant a waiver under this section only if the applicant:

9 (1) [Passes a series of preliminary tests given by the Board under its  
10 regulations to determine that the applicant is qualified to take the examination for a  
11 general license to practice dentistry;

12 (2)] Completes at least 2 years of formal general clinical training in a  
13 college or university that is authorized by any state or any province of Canada to  
14 grant the Degree of Doctor of Dental Surgery, Doctor of Dental Medicine, or the  
15 equivalent and is recognized by the Board under § 4-302(d)(2) of this subtitle; and

16 [(3)] (2) Meets any other requirements that the Board establishes for a  
17 waiver of the education requirements of § 4-302 of this subtitle.

18 (c) AN APPLICANT WHO MEETS THE REQUIREMENTS OF § 4-302(A), (B), (C),  
19 AND (D) OF THIS SUBTITLE SHALL QUALIFY FOR A LIMITED LICENSE.

20 (D) (1) Notwithstanding the provisions of subsection (b) of this section and §  
21 4-302(g) of this subtitle, the Board may grant a waiver for a teacher's license if it  
22 finds that:

23 (i) The applicant holds a Degree of Doctor of Dental Surgery,  
24 Doctor of Dental Medicine, or an equivalent degree from a school, college, or faculty of  
25 dentistry;

26 (ii) The applicant demonstrates that the applicant has had at least  
27 5 years of clinical dental experience;

28 (iii) The applicant is found to be of good moral character and  
29 professionally competent;

30 (iv) The Dean of the University of Maryland Dental School requests  
31 the waiver and circumstances exist that justify the granting of a waiver; and

32 (v) The applicant is appointed to a PART-TIME OR full-time faculty  
33 position at the University of Maryland Dental School.

34 (2) A teacher's license granted pursuant to a waiver under paragraph (1)  
35 of this subsection:

1 (i) Authorizes the licensee to practice dentistry to the same extent  
2 as other faculty members who hold general licenses to practice dentistry, provided  
3 that the licensee only practices dentistry at established teaching sites and faculty  
4 programs of the University of Maryland Dental School; and

5 (ii) Shall be surrendered immediately to the Board when the  
6 licensee ceases to hold an appointment as a PART-TIME OR full-time faculty member  
7 of the University of Maryland Dental School.

8 4-305.

9 (a) An applicant who otherwise qualifies for a general license to practice  
10 dentistry or a general license to practice dental hygiene is entitled to be examined as  
11 provided in this section.

12 (b) [The Board shall give examinations to applicants twice a year, at the times  
13 and places that the Board determines.

14 (c) The Board shall notify each qualified applicant of the time and place of  
15 examination.

16 [(d)] (C) [(1) Except as otherwise provided in this subsection, the] THE  
17 Board shall determine the subjects, scope, form, and passing score for examinations  
18 given under this title.

19 [(2) To the extent the Board finds practicable, the examination given to  
20 applicants for a general license to practice dentistry shall be in writing.

21 (e)] (D) An applicant shall pay:

22 (1) To the Board an examination fee set by the Board in an amount that  
23 does not exceed the costs of administering the examination; or

24 (2) To an examining body designated by the Board an examination fee  
25 set by the examining body as approved by the Board.

26 [(f) (1) An applicant who fails an examination twice shall complete 40 hours  
27 of additional education in an accredited school of dentistry or a dental hygiene  
28 program accredited by the American Dental Association Commission on Dental  
29 Accreditation, as appropriate, before the applicant may retake the examination.

30 (2) An applicant who fails an examination 3 times shall retake and  
31 successfully complete the senior year of education at an accredited school of dentistry  
32 or a dental hygiene program accredited by the American Dental Association  
33 Commission on Dental Accreditation, as appropriate, before the applicant may retake  
34 the examination.

35 (3)] (E) [An] EXCEPT AS PROVIDED IN § 4-306 OF THIS SUBTITLE, AN  
36 applicant who fails an examination 4 times may not be [reexamined] LICENSED.

1 [(g) Consumer members of the Board may only participate in the proctoring or  
2 monitoring of examinations under this title.

3 (h) Unless authorized by the Board, a dental hygienist member of the Board  
4 may not participate in any activity relating to the examination of dentists under this  
5 title.]

6 4-307.

7 (a) The Board shall issue the appropriate license to any applicant who meets  
8 the requirements of this title for that license.

9 (c) The Board shall issue a license to replace a lost or destroyed license if the  
10 licensee pays a fee [of \$5] SET BY THE BOARD.

11 4-309.

12 (a) (1) Except as otherwise provided in this subsection, a license expires on  
13 the date set by the Board, unless the license is renewed for an additional term as  
14 provided in this section. A license may not be renewed for a term longer than 2 years.

15 (2) Except as provided in § 4-303.1 of this subtitle, a limited license to  
16 practice dentistry expires on the first anniversary of its effective date.

17 (3) A teacher's license to practice dentistry or a teacher's license to  
18 practice dental hygiene expires on the earlier of:

19 (i) The date set by the Board, unless the license is renewed for an  
20 additional term as provided in this section; or

21 (ii) The date when the licensee ceases to be a PART-TIME OR  
22 full-time faculty member at the institution named on the license.

23 (b) If a teacher's license to practice dentistry expires because the licensee no  
24 longer is a PART-TIME OR full-time faculty member at the institution named on the  
25 license, the licensee shall surrender the license to the Board secretary within 30 days.  
26 4-313.

27 (a) Each holder of a general license to practice dental hygiene, a teacher's  
28 license to practice dental hygiene, or a temporary license to practice dental hygiene  
29 shall display the license and any current renewal certificate conspicuously in the  
30 office where the holder is engaged in practice.

31 (b) Each holder of a general license to practice dentistry, a limited license to  
32 practice dentistry, or a teacher's license to practice dentistry shall keep the license  
33 and any current renewal certificate in the office where the holder is engaged in  
34 practice.

1 (c) (1) Each holder of a general license to practice dentistry, a limited license  
2 to practice dentistry, or a teacher's license to practice dentistry shall notify the  
3 secretary of the Board in writing within 60 days of any change of office address.

4 (2) A licensee who fails to notify the secretary of the Board of any change  
5 of office address as provided in this subsection shall pay to the Board a late fee [of  
6 \$10] SET BY THE BOARD.

7 (d) If a dentist is engaged in the private practice of dentistry in this State, the  
8 dentist shall display the notice developed under § 1-207 of this article conspicuously  
9 in the office where the dentist is engaged in practice.

10 4-315.

11 (a) Subject to the hearing provisions of § 4-318 of this subtitle, the Board may  
12 deny a general license to practice dentistry, a limited license to practice dentistry, or  
13 a teacher's license to practice dentistry to any applicant, reprimand any licensed  
14 dentist, place any licensed dentist on probation, or suspend or revoke the license of  
15 any licensed dentist, if the applicant or licensee:

16 (1) Fraudulently or deceptively obtains or attempts to obtain a license  
17 for the applicant or licensee or for another;

18 (2) Fraudulently or deceptively uses a license;

19 (3) Obtains a fee by fraud or attempts to obtain a fee by fraud;

20 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a  
21 crime involving moral turpitude, whether or not any appeal or other proceeding is  
22 pending to have the conviction or plea set aside;

23 (5) Provides professional services while:

24 (i) Under the influence of alcohol; or

25 (ii) Using any narcotic or controlled dangerous substance, as  
26 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of  
27 therapeutic amounts or without valid medical indication;

28 (6) Practices dentistry in a professionally incompetent manner or in a  
29 grossly incompetent manner;

30 (7) Has had a license to practice dentistry revoked or suspended in any  
31 other state;

32 (8) Uses another person as an in-person solicitor of business;

33 (9) Practices or offers to practice dentistry under a name other than that  
34 on the license;

- 1           (10)    Uses in connection with the practice of dentistry a business entity  
2 name or a trade name that is not authorized by law;
- 3           (11)    Permits an unauthorized individual to practice dentistry under the  
4 supervision of the applicant or licensee;
- 5           (12)    Permits a dental hygienist to practice dental hygiene:
- 6                   (i)       In an unauthorized place; or
- 7                   (ii)      Without being supervised by a licensed dentist as required by §  
8 4-308 of this title;
- 9           (13)    Violates any restriction on advertising in § 4-503 of this title;
- 10          (14)    Suggests, requests, or in any way directs that a patient appear at a  
11 dental laboratory;
- 12          (15)    Violates any provision in Subtitle 4 of this title, which relates to work  
13 authorizations for dental laboratory work;
- 14          (16)    Behaves dishonorably or unprofessionally, or violates a professional  
15 code of ethics pertaining to the dentistry profession;
- 16          (17)    Is mentally or physically incompetent to practice dentistry;
- 17          (18)    Violates any rule or regulation adopted by the Board;
- 18          (19)    Is disciplined by a licensing or disciplinary authority of any other  
19 state or country or convicted or disciplined by a court of any state or country for an act  
20 that would be grounds for disciplinary action under the Board's disciplinary statutes;
- 21          (20)    Willfully makes or files a false report or record in the practice of  
22 dentistry;
- 23          (21)    Willfully fails to file or record any report as required by law, willfully  
24 impedes or obstructs the filing or recording of the report, or induces another to fail to  
25 file or record the report;
- 26          (22)    Knowingly submits to a third party any claim form, bill, or statement  
27 which contains any misleading, deceptive, false, incomplete, or fraudulent  
28 representation asserting a fee which is greater than the fee that the dentist usually  
29 accepts as payment in full for any given dental appliance, procedure, or service;
- 30          (23)    Abrogates or forgives the copayment provisions of any insurance  
31 policy, insurance contract, health prepayment contract, health care plan, or nonprofit  
32 health service plan contract by accepting the payment received from a third party as  
33 full payment, unless the dentist discloses to the third party that the patient's  
34 payment portion will not be collected;

- 1           (24)    Uses or promotes or causes the use of any misleading, deceiving, or  
2 untruthful advertising matter, promotional literature or testimonial;
- 3           (25)    (i)        Except as provided in subparagraph (ii) of this paragraph,  
4 divides a fee with another dentist if the division is not in proportion to the services  
5 performed and the responsibility assumed by each dentist;
- 6                   (ii)       A dentist may divide a fee with another dentist who is a partner  
7 or an associate in the same dental practice if dividing the fee does not increase the fee  
8 for the service charged to the patient;
- 9           (26)    Fails to comply with the provisions of § 12-102 of this article;
- 10          (27)    Refuses, withholds from, denies, or discriminates against an  
11 individual with regard to the provision of professional services for which the licensee  
12 is licensed and qualified to render because the individual is HIV positive;
- 13          (28)    Except in an emergency life-threatening situation where it is not  
14 feasible or practicable, fails to comply with the Centers for Disease Control's  
15 guidelines on universal precautions;
- 16          (29)    Fails to display the notice required under § 4-313(d) of this title;
- 17          (30)    Fails to begin to fulfill a public service requirement within 1 year of  
18 when the assignment is to begin that was a condition of the applicant or licensee  
19 receiving State or federal loans or scholarships for the applicant's or licensee's dental  
20 education; [or]
- 21          (31)    Fails to comply with any Board order; OR
- 22          (32)    **FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED**  
23 **BY THE BOARD.**
- 24    (b)        Subject to the hearing provisions of § 4-318 of this subtitle, the Board may  
25 deny a general license to practice dental hygiene, a teacher's license to practice dental  
26 hygiene, or a temporary license to practice dental hygiene to any applicant,  
27 reprimand any licensed dental hygienist, place any licensed dental hygienist on  
28 probation, or suspend or revoke the license of any licensed dental hygienist, if the  
29 applicant or licensee:
- 30           (1)        Fraudulently or deceptively obtains or attempts to obtain a license  
31 for the applicant or licensee or for another;
- 32           (2)        Fraudulently or deceptively uses a license;
- 33           (3)        Behaves unprofessionally or in a grossly immoral way, or violates a  
34 professional code of ethics pertaining to the dental hygiene profession;
- 35           (4)        Practices dental hygiene in an unauthorized place;

- 1 (5) Practices dental hygiene in a professionally incompetent manner or  
2 in a grossly incompetent manner;
- 3 (6) Is disciplined by a licensing or disciplinary authority of any other  
4 state or country or convicted or disciplined by a court of any state or country for an act  
5 that would be grounds for disciplinary action under the Board's disciplinary statutes;
- 6 (7) Performs intraoral functions not authorized by statute or the rules  
7 and regulations of the Board;
- 8 (8) Violates the requirements of § 4-313 of this subtitle that relate to  
9 display of licenses and renewal certificates;
- 10 (9) Violates any rule or regulation adopted by the Board;
- 11 (10) Is mentally or physically incompetent to practice dental hygiene;
- 12 (11) Is convicted of or pleads guilty or nolo contendere to a felony or to a  
13 crime involving moral turpitude, whether or not any appeal or other proceeding is  
14 pending to have the conviction or plea set aside;
- 15 (12) Provides professional services while:
- 16 (i) Under the influence of alcohol; or
- 17 (ii) Using any narcotic or controlled dangerous substance, as  
18 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of  
19 therapeutic amounts or without valid medical indication;
- 20 (13) Willfully makes or files a false report or record in the practice of  
21 dental hygiene;
- 22 (14) Willfully fails to file or record any report as required by law, willfully  
23 impedes or obstructs the filing or recording of the report, or induces another to fail to  
24 file or record the report;
- 25 (15) Refuses, withholds from, denies, or discriminates against an  
26 individual with regard to the provision of professional services for which the licensee  
27 is licensed and qualified to render because the individual is HIV positive;
- 28 (16) Except in an emergency life-threatening situation where it is not  
29 feasible or practicable, fails to comply with the Centers for Disease Control's  
30 guidelines on universal precautions; [or]
- 31 (17) Fails to comply with any Board order; OR
- 32 (18) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED  
33 BY THE BOARD.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the members  
2 serving on the State Board of Dental Examiners as of October 1, 2004, shall expire as  
3 follows:

4 (1) the members appointed for the term beginning October 1, 2001, on  
5 September 30, 2005;

6 (2) the members appointed for the term beginning October 1, 2002, on  
7 May 31, 2006;

8 (3) the members appointed for the term beginning October 1, 2003, on  
9 May 31, 2007;

10 (4) the members appointed for the term beginning October 1, 2004, on  
11 May 31, 2008; and

12 (5) the members appointed for the term beginning October 1, 2005, on  
13 May 31, 2009.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2004.