

HOUSE BILL 988

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By: **Delegate Nathan-Pulliam**

Introduced and read first time: February 9, 2007

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Restructuring and Licensee Protection**

3 FOR the purpose of prohibiting certain boards from taking or refusing to take certain
4 action as reprisal against certain licensees or certificate holders under certain
5 circumstances; establishing that certain protection only applies if a licensee or
6 certificate holder has a certain reasonable, good faith belief; authorizing certain
7 individuals to institute certain civil actions in certain counties within certain
8 periods of time; authorizing certain courts to provide certain relief under certain
9 circumstances; providing for a certain defense; requiring the Department of
10 Health and Mental Hygiene to submit a certain list of names of individuals for
11 nomination for membership on the State Board of Dental Examiners to the
12 Governor; requiring that a certain list of names be compiled by the Department
13 in consultation with certain academies, associations, organizations, or societies;
14 requiring that individuals on a certain list reflect certain diversity of the State;
15 requiring that certain members appointed to the Board reflect certain diversity
16 of this State; requiring that the Maryland State Dental Association and the
17 Maryland Dental Society invite certain representatives to a certain meeting;
18 requiring that certain terms of membership on the Board be staggered as
19 provided for on a certain date; requiring the Governor to appoint a president of
20 the Board from among certain Board members; requiring the Secretary to
21 appoint a certain executive director of the Board; repealing provisions
22 authorizing the Board to initiate or file certain complaints; establishing the
23 terms of office of members of the Board appointed on a certain date; requiring a
24 certain board to adopt certain regulations by a certain date; requiring the Office
25 of the Attorney General to provide a rotation process for certain assistant
26 attorney generals; requiring the Inspector General to conduct certain audits of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain complaint files; requiring the Board to submit a certain report; defining
2 certain terms; and generally relating to the restructuring of the State Board of
3 Dental Examiners.

4 BY repealing and reenacting, with amendments,
5 Article – Health Occupations
6 Section 1–501 through 1–506, 4–202 through 4–204, and 4–316
7 Annotated Code of Maryland
8 (2005 Replacement Volume and 2006 Supplement)

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

11 **Article – Health Occupations**

12 1–501.

13 (a) In this subtitle the following words have the meanings indicated.

14 (b) “Board” means any board established under this article.

15 (c) (1) “Employee” means any individual licensed or certified by a board
16 under this article who performs services for and under the control and direction of an
17 employer for wages or other remuneration.

18 (2) “Employee” does not include a State employee.

19 **(D) “CERTIFICATE HOLDER” MEANS AN INDIVIDUAL ISSUED A**
20 **CERTIFICATE BY A BOARD UNDER THIS ARTICLE.**

21 **(E) “LICENSEE” MEANS AN INDIVIDUAL LICENSED BY A BOARD UNDER**
22 **THIS ARTICLE.**

23 [(d)] (F) “Supervisor” means any individual within an employer’s
24 organization who has the authority to direct and control the work performance of an
25 employee, or who has managerial authority to take corrective action regarding the
26 violation of a law, rule, or regulation of which the employee complains.

27 1–502.

28 **(A)** Subject to § 1–503 of this subtitle, an employer may not take or refuse to
29 take any personnel action as reprisal against an employee because the employee:

1 (1) Discloses or threatens to disclose to a supervisor or board an
2 activity, policy, or practice of the employer that is in violation of a law, rule, or
3 regulation;

4 (2) Provides information to or testifies before any public body
5 conducting an investigation, hearing, or inquiry into any violation of a law, rule, or
6 regulation by the employer; or

7 (3) Objects to or refuses to participate in any activity, policy, or
8 practice in violation of a law, rule, or regulation.

9 **(B) SUBJECT TO § 1-503 OF THIS SUBTITLE, A BOARD MAY NOT TAKE OR**
10 **REFUSE TO TAKE ANY ACTION UNDER THIS ARTICLE AS REPRISAL AGAINST A**
11 **LICENSEE OR CERTIFICATE HOLDER BECAUSE THE LICENSEE OR CERTIFICATE**
12 **HOLDER:**

13 **(1) DISCLOSES OR THREATENS TO DISCLOSE TO THE GOVERNOR**
14 **OR THE GENERAL ASSEMBLY AN ACTIVITY, POLICY, OR PRACTICE OF THE**
15 **BOARD THAT IS IN VIOLATION OF A LAW, RULE, OR REGULATION; OR**

16 **(2) PROVIDES INFORMATION TO OR TESTIFIES BEFORE ANY**
17 **PUBLIC BODY CONDUCTING AN INVESTIGATION, HEARING, OR INQUIRY INTO**
18 **ANY VIOLATION OF A LAW, RULE, OR REGULATION BY THE BOARD.**

19 1-503.

20 **(A)** The protection provided against a violation of [§ 1-502]§ **1-502(A)** of this
21 subtitle shall only apply if:

22 (1) The employee has a reasonable, good faith belief that the employer
23 has, or still is, engaged in an activity, policy, or practice that is in violation of a law,
24 rule, or regulation;

25 (2) The employer's activity, policy, or practice that is the subject of the
26 employee's disclosure poses a substantial and specific danger to the public health or
27 safety; and

28 (3) Before reporting to the board:

1 (i) The employee has reported the activity, policy, or practice to
2 a supervisor or administrator of the employer in writing and afforded the employer a
3 reasonable opportunity to correct the activity, policy, or practice; or

4 (ii) If the employer has a corporate compliance plan specifying
5 who to notify of an alleged violation of a rule, law, or regulation, the employee has
6 followed the plan.

7 (B) **THE PROTECTION PROVIDED AGAINST A VIOLATION OF §**
8 **1-502(B) OF THIS SUBTITLE SHALL ONLY APPLY IF THE LICENSEE OR**
9 **CERTIFICATE HOLDER HAS A REASONABLE, GOOD FAITH BELIEF THAT THE**
10 **BOARD HAS, OR STILL IS, ENGAGED IN AN ACTIVITY, POLICY, OR PRACTICE THAT**
11 **IS IN VIOLATION OF A LAW, RULE, OR REGULATION.**

12 1-504.

13 (a) Any [employee] **INDIVIDUAL** who is subject to [a personnel] **AN** action in
14 violation of § 1-502 of this subtitle may institute a civil action in the county where:

15 (1) The alleged violation occurred;

16 (2) The [employee] **INDIVIDUAL** resides; or

17 (3) The employer **OR BOARD** maintains its principal offices in the
18 State.

19 (b) The action shall be brought within 1 year after the alleged violation of §
20 1-502 of this subtitle occurred, or within 1 year after the [employee] **INDIVIDUAL** first
21 became aware of the alleged violation of § 1-502 of this subtitle.

22 1-505.

23 In any action brought under this subtitle, a court may:

24 (1) Issue an injunction to restrain continued violation of this subtitle;

25 (2) Reinstate the [employee] **INDIVIDUAL** to the same, or an
26 equivalent position held before the violation of § 1-502 of this subtitle;

27 (3) Remove any adverse personnel **OR DISCIPLINARY** record entries
28 based on or related to the violation of § 1-502 of this subtitle;

- 1 (4) Reinstate full fringe benefits and seniority rights;
- 2 (5) Require compensation for lost wages, benefits, and other
3 remuneration; and
- 4 (6) Assess reasonable attorney's fees and other litigation expenses
5 against:

6 (i) The employer **OR BOARD**, if the employee, **LICENSEE, OR**
7 **CERTIFICATE HOLDER** prevails; or

8 (ii) The employee, **LICENSEE, OR CERTIFICATE HOLDER**, if
9 the court determines that the action was brought by the employee, **LICENSEE, OR**
10 **CERTIFICATE HOLDER** in bad faith and without basis in law or fact.

11 1-506.

12 In any action brought under this subtitle, it is a defense that the [personnel]
13 action was based on grounds other than the [employee's] **INDIVIDUAL'S** exercise of
14 any rights protected under this subtitle.

15 4-202.

16 (a) (1) The Board consists of 16 members.

17 (2) Of the 16 Board members:

18 (i) 9 shall be licensed dentists;

19 (ii) 4 shall be licensed dental hygienists; and

20 (iii) 3 shall be consumer members.

21 (3) **(I)** The Governor shall appoint the dentist Board members,
22 with the advice of the Secretary, from a list of names submitted to the Governor jointly
23 by the [Maryland State Dental Association and the Maryland Dental Society]
24 **DEPARTMENT.**

25 **(II) THE LIST OF NAMES SHALL BE COMPILED BY THE**
26 **DEPARTMENT IN CONSULTATION WITH EACH ESTABLISHED ACADEMY,**

1 **ASSOCIATION, ORGANIZATION, OR SOCIETY COMMITTED TO EXCELLENCE IN**
2 **DENTISTRY.**

3 (III) The number of names on the list for one vacancy shall be at
4 least four names, for two vacancies at least three names for each vacancy, and for
5 three or more vacancies at least two names for each vacancy.

6 (IV) **THE INDIVIDUALS ON THE LIST SHALL REASONABLY**
7 **REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER**
8 **DIVERSITY OF THE STATE.**

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

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

15 (6) **TO THE EXTENT PRACTICABLE, THE MEMBERS APPOINTED TO**
16 **THE BOARD SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC,**
17 **CULTURAL, AND GENDER DIVERSITY OF THE STATE.**

18 (b) (1) (I) At a [joint] meeting held by the Maryland State Dental
19 Association and the Maryland Dental Society called to choose nominees for a dentist
20 vacancy on the Board, a majority of the dentists present at the meeting shall choose
21 the list of names of dentist nominees to the Board for submission to the [Governor]
22 **DEPARTMENT.**

23 (II) **THE MARYLAND STATE DENTAL ASSOCIATION AND THE**
24 **MARYLAND DENTAL SOCIETY SHALL INVITE REPRESENTATIVES FROM EACH**
25 **ESTABLISHED ACADEMY, ASSOCIATION, ORGANIZATION, OR SOCIETY**
26 **COMMITTED TO EXCELLENCE IN DENTISTRY TO A MEETING HELD IN**
27 **ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

28 (2) At a meeting held by the Maryland Dental Hygienists' Association
29 called to choose nominees for a dental hygienist vacancy on the Board, a majority of
30 the dental hygienists present at the meeting shall choose the list of names of dental
31 hygienist nominees to the Board for submission to the Governor.

1 (3) At least 2 weeks before a meeting is held under paragraph (1) of
2 this subsection, the secretaries of the appropriate organizations shall mail to each
3 licensed practitioner actively practicing in Maryland, at the address appearing in their
4 records or the records of the Board, a notice that states the time, place, and purpose of
5 the meeting.

6 (4) At least 2 weeks before a meeting is held under paragraph (2) of
7 this subsection, the secretary of the Maryland Dental Hygienists' Association shall
8 mail to each licensed dental hygienist, at the address appearing in their records or the
9 records of the Board, a notice that states the time, place, and purpose of the meeting.

10 (c) Each dentist Board member:

11 (1) Shall be an individual of recognized ability and honor;

12 (2) Shall be a practicing holder of a general license to practice
13 dentistry who has practiced dentistry actively in this State for at least 5 years
14 immediately before appointment;

15 (3) Shall be a resident of this State; and

16 (4) In the case of a Board member belonging to an association whose
17 members are regulated by the Board, may not be:

18 (i) An officer of the association;

19 (ii) A member of the association's governing board or committee;

20 (iii) A member of the association's house of delegates; or

21 (iv) A voting member of a committee of the association that
22 contributes to the establishment of governmental, regulatory, or legislative policy
23 objectives of the association.

24 (d) Each dental hygienist Board member:

25 (1) Shall be a practicing holder of a general license to practice dental
26 hygiene who has practiced dental hygiene actively in this State for at least 3 years
27 immediately before appointment;

28 (2) Shall be a resident of this State;

1 (3) In the case of a Board member belonging to an association whose
2 members are regulated by the Board, may not be:

3 (i) An officer of the association;

4 (ii) A member of the association's governing board or committee;

5 (iii) A member of the association's house of delegates; or

6 (iv) A voting member of a committee of the association that
7 contributes to the establishment of governmental, regulatory, or legislative policy
8 objectives of the association.

9 (e) Each consumer member of the Board:

10 (1) Shall be a member of the general public;

11 (2) May not be or ever have been a dentist or dental hygienist or in
12 training to become a dentist or dental hygienist;

13 (3) May not have a household member who is a dentist or dental
14 hygienist or in training to become a dentist or dental hygienist;

15 (4) May not participate or ever have participated in a commercial or
16 professional field related to dentistry;

17 (5) May not have a household member who participates in a
18 commercial or professional field related to dentistry; and

19 (6) May not have had within 2 years before appointment a substantial
20 financial interest in a person regulated by the Board.

21 (f) While a member of the Board, a consumer member may not have a
22 substantial financial interest in a person regulated by the Board.

23 (g) Before taking office, each appointee to the Board shall take the oath
24 required by Article I, § 9 of the State Constitution.

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

26 (2) The terms of the members are staggered as required by the terms
27 provided for members of the Board on [October 1, 2006] **JANUARY 1, 2008**.

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

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

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

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

9 (i) (1) The Governor may remove a member for incompetence,
10 misconduct, continued neglect of duties imposed by this subtitle, unprofessional
11 conduct, or dishonorable conduct.

12 (2) The Governor shall remove a member whom the Governor finds to
13 have been absent from 2 successive Board meetings without adequate reason.

14 4-203.

15 **(A) FROM AMONG THE BOARD MEMBERS, THE GOVERNOR SHALL**
16 **APPOINT A PRESIDENT.**

17 [(a)] **(B)** From among its members, the Board shall elect [a president and] a
18 secretary.

19 [(b)] **(C)** The Board shall determine:

20 (1) The manner of election of [officers] **THE SECRETARY;**

21 (2) The term of office of each officer; and

22 (3) The duties of each officer.

23 4-204.

24 (a) (1) The Board shall meet at least twice a year, at the times and places
25 that it determines.

26 (2) The Board shall hold special meetings, at the places it determines,
27 when:

- 1 (i) The Secretary requests a meeting; or
- 2 (ii) The Board considers a meeting necessary.
- 3 (3) After giving due notice, the president or Board secretary shall call
4 meetings. However, the Board may meet at any time and place without notice if each
5 member of the Board either consents in writing or attends the meeting.
- 6 (b) Each member of the Board is entitled to:
- 7 (1) Compensation in accordance with the budget of the Board; and
- 8 (2) Reimbursement for expenses at a rate determined by the Board.
- 9 (c) **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
10 **SUBSECTION, THE** Board may employ a staff in accordance with the budget of the
11 Board.
- 12 **(2) THE SECRETARY SHALL APPOINT AN EXECUTIVE DIRECTOR**
13 **FOR THE BOARD.**
- 14 4–316.
- 15 (a) On [its own initiative or on] a written complaint filed with the Board by
16 any person, the Board may commence proceedings under § 4–315 of this subtitle.
- 17 (b) [If a person who is not a member of the Board files a complaint, the] **A**
18 complaint shall:
- 19 (1) Be in writing;
- 20 (2) Be verified by a person who is familiar with the alleged facts;
- 21 (3) Request Board action; and
- 22 (4) Be filed with the secretary of the Board.
- 23 (c) **[(1)]** The Board shall investigate each complaint filed with the Board if
24 the complaint:

- 1 (1) guidelines for complaints;
- 2 (2) guidelines for investigations such as when an investigation is
3 warranted and the thoroughness and length of an investigation that is warranted
4 under different circumstances;
- 5 (3) guidelines for sanctions such as remedial education and
6 corresponding degrees of sanctions with severity of violation;
- 7 (4) guidelines for probationary periods such as length;
- 8 (5) an appeals process;
- 9 (6) guidelines for confidentiality.

10 SECTION 4. AND BE IT FURTHER ENACTED, That the terms of the
11 members of the State Board of Dental Examiners beginning on January 1, 2008, shall
12 expire as follows:

- 13 (1) in 2010, three dentist members, one dental hygienist member, and
14 one consumer member; and
- 15 (2) in 2011, three dentist members, two dental hygienist members,
16 and one consumer member; and
- 17 (3) in 2012, three dentist members, one dental hygienist member, and
18 one consumer member.

19 SECTION 5. AND BE IT FURTHER ENACTED, That the Office of the
20 Inspector General in the Department of Health and Mental Hygiene shall audit the
21 State Board of Dental Examiners complaint files once each year between the effective
22 date of this Act and December 31, 2010, to ensure that the Board has only sanctioned
23 licensees within the bounds of its legislative and regulatory authority.

24 SECTION 6. AND BE IT FURTHER ENACTED, That the Office of the Attorney
25 General shall provide a rotation process for assistant attorney generals working for
26 the State Board of Dental Examiners.

27 SECTION 7. AND BE IT FURTHER ENACTED, That, on or before December
28 31, 2008, the State Board of Dental Examiners shall report to the General Assembly,

1 in accordance with § 2-1246 of the State Government Article, on the implementation
2 of this Act.

3 SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2007.