

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 988

(Delegate Nathan-Pulliam, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

State Board of Dental Examiners - Program Evaluation and Licensee Protection

This emergency bill expands the Health Care Worker Whistleblower Protection Act's protections by allowing an individual subject to an action (instead of any employee subject to a personnel action) to institute a civil action for an alleged violation of the Act. Also, a health occupations board is prohibited from taking or refusing to take any action as reprisal against a licensee or certificate holder who takes certain actions.

The bill advances the State Board of Dental Examiners' termination date by two years to July 1, 2009 from July 1, 2011. A full evaluation of the board under the Maryland Program Evaluation Act is required by July 1, 2008. A preliminary evaluation is not required before the full evaluation.

Board members' terms are reduced from four years to two years and the board must meet at least once a month, instead of the currently required at least twice a year. The bill changes how board members are nominated and adds factors that must be considered before a nominee is appointed to the board. The Governor must appoint the board's president, instead of the board electing its president. The board's executive director must report to the Secretary of Health and Mental Hygiene.

Fiscal Summary

State Effect: Potential increase in special fund expenditures due to a potential increase in civil actions against the health occupations boards. Potential recovery of special fund expenditures if, as a result of a civil action, a court assesses attorney's fees and other litigation expenses against an individual bringing the civil action. No effect on general fund expenditures for the Department of Health and Mental Hygiene (DHMH) or the Department of Legislative Services (DLS). No effect on general fund revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Health Care Worker Whistleblower Protection Act

A board may not take or refuse to take any action under the Health Care Worker Whistleblower Protection Act as reprisal against a licensee or certificate holder because the licensee or certificate holder (1) discloses or threatens to disclose to the Governor or the General Assembly a board activity, policy, or practice that is in violation of a law, rule, or regulation; or (2) provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any board violation of law, rule, or regulation.

This protection only applies if the licensee or certificate holder has a reasonable, good faith belief that the board has, or still is, engaged in an activity, policy, or practice that violates a law, rule, or regulation.

A court may remove any adverse disciplinary record entries based on or related to the violation an individual alleges. A court may assess reasonable attorney's fees and other litigation expenses against a board if the licensee or certificate holder prevails. Alternatively, the licensee or certificate holder may be assessed such fees and expenses if the court determines that the action was brought in bad faith and without basis in fact.

It is a defense that the action was based on grounds other than the individual's exercise of any rights protected under the Act.

State Board of Dental Examiners

Complaints Regarding Alleged Violations: Before the board begins proceedings into alleged violations, a written complaint must be filed with the board. The bill requires a board member to file a written complaint meeting the existing statutory requirements for a person who is not a board member to do so – it must be verified by a person familiar with the alleged facts, request board action, and be filed with the secretary of the board.

The bill repeals the authority of the board to initiate disciplinary actions or undertake investigations on its own initiative.

Board Member Nominees: The Governor must appoint the board's dentist members, with the advice of the Secretary of Health and Mental Hygiene, from a list of nominees submitted by the Maryland State Dental Association and the Maryland Dental Society in consultation with each established academy, association, organization, or society committed to excellence in dentistry. Dentist board member nominees must reasonably reflect Maryland's geographic, racial, ethnic, cultural, and gender diversity. To the extent practicable, members appointed to the board must reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity in the State. This includes the dental hygienist and consumer board members.

The Maryland State Dental Association and the Maryland Dental Society must invite representatives from each established academy, association, organization, or society committed to excellence in dentistry to their meeting to choose nominees for dentist board member vacancies.

Meeting notices must be mailed at least four weeks, instead of two weeks, by the following organizations, respectively, before the Maryland State Dental Association and the Maryland Dental Society meet to choose nominees for a dentist vacancy on the board and before the Maryland Dental Hygienists' Association meets to choose dental hygienist board nominees.

Board Member Terms: Board members who have served four or more years must continue to serve until a successor is appointed and qualifies. The Governor must appoint successors as soon as practicable after the bill's effective date. Board members who have not served four years as of the bill's effective date may continue to serve until they have completed their term. At the end of the term, the member is not eligible to serve another term and must continue to serve until a successor is appointed and qualifies.

Board Evaluation: The DLS full evaluation of the board must incorporate a comprehensive review of complaint outcomes between January 1, 2002 and December 31, 2006. This review must include assessing and identifying patterns related to • the source of each complaint; • the length of time from complaint receipt to the complaint being dismissed or formal action being taken; • the focus of any investigations conducted and the process for closing a case; • the types of violations for which sanctions are imposed, the range of sanctions imposed, and the consistency of their application; • the board's use of its authority to impose a fine instead of suspending a license or in addition to suspending or revoking a license or reprimanding a licensee; • the reinstatement

process associated with suspended or revoked licenses; ● the use of consent decrees and how they are monitored; ● the use of board committees in the complaint and disciplinary process and the extent to which committee recommendations are followed; and ● the board's use of probation and remedial measures.

The review also must recommend a mechanism for tracking future complaints in a manner similar to the above review to ensure that sanctions are consistently applied against licensees and that sanctions are within the bounds of the board's legislative and regulatory authority.

DLS must collaborate with DHMH's Office of the Inspector General in the review of complaint outcomes as appropriate.

Current Law:

Health Care Worker Whistleblower Protection Act

An employer may not take or refuse to take any personnel action as a reprisal against an employee because the employee (1) discloses or threatens to disclose to a supervisor or board an employer's activity, policy, or practice that violates a law, rule, or regulation; (2) provides information or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by the employer; or (3) objects to or refuses to participate in any activity, policy, or practice that violates a law, rule, or regulation.

This protection only applies if (1) the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an activity, policy, or practice that violates a law, rule, or regulation; (2) the employer's activity, policy, or practice poses a substantial and specific danger to public health or safety; and (3) before reporting to the board the employee has notified and afforded the employer a reasonable opportunity to correct the problem.

Any employee subject to a personnel action that violates the employer's prohibition from taking such an action may institute a civil action in the county where the alleged violation occurred, the employee lives, or the employer maintains its principal offices in Maryland. The action must be brought within one year after the alleged violation occurred or within one year after the employee first became aware of the alleged violation.

In any civil action brought under the Act, a court may take certain actions including issuing an injunction to restrain the continued violation; reinstating the employee to the same, or an equivalent, position held before action was taken against the employee by the

employer; or removing any adverse personnel record entries base on or related to the action taken against the employee by the employer.

The court may assess reasonable attorney's fees and other litigation expenses against the employer if the employee prevails or the employee if the court determines that the action was brought by the employee in bad faith and without basis in law or fact.

State Board of Dental Examiners

Complaints Regarding Alleged Violations: On its own initiative or on a written complaint filed with the board by any person, the board may begin proceedings into alleged violations. If a person who is not a board member files a complaint, the complaint must be in writing; be verified by another person who is familiar with the alleged facts; request board action; and be filed with the secretary of the board. The board must investigate each filed complaint if the complaint alleges facts that are grounds for disciplinary action and meets statutory requirements.

The board must prepare a written complaint if the board begins an action on its own initiative or if after investigating it elects to substitute its own complaint for one filed by a person who is not a board member.

If, after performing a preliminary investigation, the board determines an allegation involving fees for professional or ancillary services does not constitute grounds for discipline or other action, the board may refer the allegation concerning a member of a professional society or association composed of providers of dental care to a committee of the Society for Mediation.

Board Disciplinary Action: The board may take disciplinary action against a licensed dentist, licensed dental hygienist, or applicant for dental or dental hygiene licensure for specified offenses including fraudulently obtaining, attempting to obtain a license; fraudulently or deceptively using a license; or practicing the profession in a professionally incompetent manner or in a grossly incompetent manner.

Dentist Board Nominees: The Governor must appoint the dentist board members, with the advice of the Secretary of Health and Mental Hygiene, from a list of names submitted to the Governor jointly by the Maryland State Dental Association and the Maryland Dental Society. At a joint meeting held by these two professional organizations called to choose dentist nominees to the board, a majority of dentists present at the meeting must choose the nominees for submission to the Governor.

Board Officers and Board Member Terms: The board must elect a president and secretary from its members. A board member serves a four-year term. Members' terms are staggered. At the end of a member's term, a member continues serving until a successor is appointed and qualifies. A member may not serve more than two consecutive full terms.

Board Staff: The board may employ staff in accordance with its budget.

Background: The board's staff includes an individual serving in the position of secretary-treasurer and an individual serving as executive director.

Chapter 449 of 1994 terminated the tenure of the sitting members on the State Board of Dental Examiners, appointed new board members (with some limited carryover), and advanced the termination date for the board from July 1, 2003 to July 1, 1999. This move was, in part, in response to a report prepared by the then Department of Budget and Fiscal Planning that alleged certain improprieties in the manner in which the board operated.

Since then, the board has undergone two full evaluations under the Maryland Program Evaluation Act. The board is scheduled to undergo preliminary evaluation in 2008.

State Fiscal Effect:

Health Occupations Boards: Potential increase in special fund expenditures for the health occupations boards if the bill results in increased civil actions against the boards and courts assess attorney's fees and other litigation expenses against the boards. Depending on the increase in the number of additional civil actions against the boards, the boards may need to hire additional staff. If the increase in civil actions is significant, the boards may request additional staff through the annual budget process.

The boards could recover some of their expenditures if, as a result of any civil actions, a court assesses attorney's fees and other litigation expenses against an individual bringing the civil action because the court finds that the action was brought in bad faith and without basis in law or fact.

State Board of Dental Examiners: Any changes in the State Board of Dental Examiners board members would not have a fiscal effect on the board.

Department of Legislative Services: Existing DLS staff could conduct the required full board evaluation and write the required report.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2007
mll/rhh Revised - House Third Reader - April 2, 2007
Revised - Enrolled Bill - May 7, 2007

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510