

1 ENGROSSED SENATE
2 BILL NO. 1690

By: Sykes of the Senate

3 and

4 Derby of the House

5
6 An Act related to the Board of Dentistry; amending 56
7 O.S. 2011, Sections 328.7, 328.15, 328.23 and
8 328.43a, which relate to the State Dental Act;
9 clarifying membership to the Board of Dentistry;
10 modifying powers of the Board of Dentistry; directing
11 the Board to employ an Executive Director; providing
12 for powers of Executive Director; providing for
13 certain temporary licenses; providing for certain
14 criminal background checks; modifying requirements
15 for certain information; providing for codification;
16 and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 59 O.S. 2011, Section 328.7, is
19 amended to read as follows:

20 Section 328.7. A. Pursuant to Section 39 of Article V of the
21 Oklahoma Constitution, there is hereby created the Board of
22 Dentistry which shall be an agency of state government. The Board
23 shall adopt a seal, sue and be sued in its own name, and implement
24 and enforce the provisions of the State Dental Act.

B. 1. The Board shall consist of eight dentist members, one
dental hygienist member and two members who shall represent the
public. One dentist member shall be elected by the dentists

1 residing in each of the eight geographical districts established by
2 subsection D of this section. The residence of the dentist members
3 shall be determined by the primary location listed on the dentists'
4 licenses. The dental hygienist member shall be elected at-large by
5 the dental hygienists residing in this state who are legally
6 licensed to practice dental hygiene therein. The two public
7 representative members shall be appointed by the Governor, subject
8 to confirmation by the Senate. No public representative member may
9 be a dentist, dental hygienist, dental assistant, dental laboratory
10 technician, or holder of a permit to operate a dental laboratory, or
11 be related within the third degree of consanguinity or affinity to
12 any such person.

13 2. Before assuming duties on the Board, each member shall take
14 and subscribe to the oath of office or affirmation provided in
15 Article XV of the Oklahoma Constitution, which oath or affirmation
16 shall be administered and filed as provided in the Article.

17 3. Each member of the Board shall hold office for a term of
18 three (3) years and until a successor in office is elected and
19 qualified. Board members shall not serve for more than three (3)
20 consecutive terms. To be eligible to be elected to and serve on the
21 Board, a dentist or dental hygienist must have been licensed to
22 practice in this state for at least five (5) years, and for the five
23 (5) years prior to the date of counting the ballots, not have been
24 subject to a penalty imposed by the Board or its predecessor board.

1 C. 1. a. Nominations for dentist members of the Board shall be
2 by petition signed by at least ten dentists residing
3 in the district to be represented by the nominee.

4 b. Nominations for the dental hygienist member of the
5 Board shall be by petition signed by at least ten
6 dental hygienists residing in this state.

7 2. The elections shall be by secret ballot. The ballots shall
8 be mailed by the Board to those entitled to vote at least thirty
9 (30) days prior to the date of counting of the ballots and shall be
10 returned by mail to the office of the Board, then opened and counted
11 at a meeting of the Board. In other respects, elections shall be
12 conducted as provided by the rules of the Board.

13 3. a. Only dentists residing in a district shall be entitled
14 to vote to elect the Board member from that district.

15 b. Only dental hygienists residing and licensed in this
16 state shall be entitled to vote to elect the dental
17 hygienist Board member.

18 D. For the purpose of nominating and electing dentist members
19 of the Board, this state shall be divided into eight geographical
20 districts, which shall consist of the following counties within the
21 following districts:

22 District No. 1: Cimarron, Texas, Beaver, Harper, Woods, Alfalfa,
23 Grant, Kay, Ellis, Woodward, Major, Garfield, Noble, Dewey, Blaine,
24 Kingfisher and Logan.

1 District No. 2: Tulsa and Creek.

2 District No. 3: Roger Mills, Custer, Beckham, Washita, Harmon,
3 Greer, Kiowa, Caddo, Jackson and Tillman.

4 District No. 4: Canadian, Grady, McClain, Comanche, Cotton,
5 Stephens, Jefferson, Garvin, Murray, Carter and Love.

6 District No. 5: Oklahoma.

7 District No. 6: Lincoln, Cleveland, Pottawatomie, Seminole,
8 Okfuskee, Hughes, Pontotoc, Coal, Johnston, Marshall and Bryan.

9 District No. 7: Mayes, Wagoner, Cherokee, Adair, Okmulgee,
10 Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore,
11 Atoka, Pushmataha, Choctaw and McCurtain.

12 District No. 8: Osage, Payne, Washington, Nowata, Craig, Ottawa,
13 Rogers, Delaware and Pawnee.

14 E. 1. Dentist members of the Board may be recalled and removed
15 from the Board in a special recall election to be conducted by the
16 Board upon receipt of a written recall petition signed by at least
17 twenty percent (20%) of the dentists residing in the district
18 represented by the member who is the subject of the recall petition.
19 Only dentists residing in the affected district may vote in the
20 special recall election.

21 2. The dental hygienist member of the Board may be recalled and
22 removed from the Board in a special recall election to be conducted
23 by the Board upon receipt of a written recall petition signed by at
24 least twenty percent (20%) of the licensed dental hygienists

1 residing in this state. Only dental hygienists residing and
2 licensed in this state shall be entitled to vote in the special
3 recall election.

4 3. Special recall elections shall be by secret ballot. The
5 ballots shall be mailed by the Board to those entitled to vote at
6 least thirty (30) days prior to the date of counting the ballots and
7 shall be returned by mail to the office of the Board, then opened
8 and counted at a meeting of the Board. In other respects, special
9 recall elections shall be conducted as provided by the rules of the
10 Board. If a majority of the votes cast in the special recall
11 election are in favor of recalling the Board member, the member
12 shall be removed from the Board effective on the date the results of
13 the special recall election are certified by the Board.

14 F. 1. A vacancy among the dentist members of the Board shall
15 be filled by a special election in the district of the vacancy for
16 the unexpired term within sixty (60) days after the vacancy occurs.

17 2. A vacancy of the dental hygienist member on the Board shall
18 be filled by a special election in this state for the unexpired term
19 within sixty (60) days after the vacancy occurs.

20 3. Nominations shall be made and special elections shall be
21 conducted in the same manner as provided in subsection C of this
22 section. If no one is nominated within forty-five (45) days from
23 date of vacancy, the vacancy shall be filled by appointment by the
24 Board. A vacancy among the public representative members of the

1 Board shall be filled by appointment by the Governor, subject to
2 confirmation by the Senate.

3 SECTION 2. AMENDATORY 59 O.S. 2011, Section 328.15, is
4 amended to read as follows:

5 Section 328.15. A. Pursuant to and in compliance with Article
6 I of the Administrative Procedures Act, the Board of Dentistry shall
7 have the power to formulate, adopt, and promulgate rules as may be
8 necessary to regulate the practice of dentistry in this state and to
9 implement and enforce the provisions of the State Dental Act.

10 B. The Board is authorized and empowered to:

11 1. Examine and test the qualifications of applicants for a
12 license or permit to be issued by the Board;

13 2. Affiliate by contract or cooperative agreement with another
14 state or combination of states for the purpose of conducting
15 simultaneous regional examinations of applicants for a license to
16 practice dentistry, dental hygiene, or a dental specialty;

17 3. Maintain a list of the name, current mailing address and
18 principal office address of all persons who hold a license or permit
19 issued by the Board;

20 4. Account for all receipts and expenditures of the monies of
21 the Board, including annually preparing and publishing a statement
22 of receipts and expenditures of the Board for each fiscal year;

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1 5. Within limits prescribed in the State Dental Act, set all
2 fees and administrative penalties to be imposed and collected by the
3 Board;

4 6. ~~Maintain an office staff and employ~~ Employ an Executive
5 Director, legal counsel and other advisors to the Board, including
6 advisory committees;

7 7. Investigate and issue investigative and other subpoenas,
8 pursuant to Article II of the Administrative Procedures Act;

9 8. Initiate individual proceedings and issue orders imposing
10 administrative penalties, pursuant to Article II of the
11 Administrative Procedures Act, against any dentist, dental
12 hygienist, dental assistant, dental laboratory technician, or holder
13 of a permit to operate a dental laboratory who has violated the
14 State Dental Act or the rules of the Board;

15 9. Conduct, in a uniform and reasonable manner, inspections of
16 dental offices and dental laboratories and their business records;

17 10. Establish guidelines for courses of study necessary for
18 expanded duties of dental assistants and, when appropriate, issue
19 permits authorizing dental assistants to perform expanded duties;

20 11. Establish continuing education requirements for dentists,
21 dental hygienists, and dental assistants who hold expanded duty
22 permits issued by the Board;

23 12. Recognize the parameters of care established and approved
24 by the American Dental Association;

1 13. Formulate, adopt, and promulgate rules, pursuant to Article
2 I of the Administrative Procedures Act, as may be necessary to
3 implement and enforce the provisions of the Oklahoma Dental
4 Mediation Act;

5 ~~14. Hire one or more investigators to conduct investigations of~~
6 ~~alleged violations of the State Dental Act or the rules of the~~
7 ~~Board. The investigator may be a certified peace officer who shall~~
8 ~~be commissioned with all the powers and authority of peace officers~~
9 ~~of this state;~~

10 ~~15.~~ Seek and receive advice and assistance of the Office of the
11 Attorney General of this state;

12 ~~16.~~ 15. Promote the dental health of the people of this state;

13 ~~17.~~ 16. Inform, educate, and advise all persons who hold a
14 license or permit issued by the Board, or who are otherwise
15 regulated by the Board, regarding the State Dental Act and the rules
16 of the Board;

17 ~~18.~~ 17. Affiliate with the American Association of Dental
18 Examiners as an active member, pay regular dues, and send members of
19 the Board as delegates to its meetings;

20 ~~19.~~ 18. Enter into contracts;

21 ~~20.~~ 19. Acquire by purchase, lease, gift, solicitation of gift
22 or by any other manner, hold, encumber, and dispose of personal
23 property as is needed, maintain, use and operate or contract for the
24 maintenance, use and operation of or lease of any and all property

1 of any kind, real, personal or mixed or any interest therein unless
2 otherwise provided by the State Dental Act; provided, all contracts
3 for real property shall be subject to the provisions of Section 63
4 of Title 74 of the Oklahoma Statutes.

5 ~~21.~~ 20. Receive or accept the surrender of a license, permit,
6 or certificate granted to any person by the Board as provided in
7 Section 328.44a of this title; and

8 ~~22.~~ 21 Take all other actions necessary to implement and
9 enforce the State Dental Act.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 328.15B of Title 59, unless
12 there is created a duplication in numbering, reads as follows:

13 The Board of Dentistry shall employ an Executive Director. The
14 Executive Director shall be authorized to:

15 1. Employ and maintain an office staff;

16 2. Employ one or more investigators who may be certified peace
17 officers who shall be commissioned with all the powers and authority
18 of peace officers of this state;

19 3. Enter into contracts on behalf of the Board; and

20 4. Perform other duties on behalf of the Board as needed or
21 directed.

22 SECTION 4. AMENDATORY 59 O.S. 2011, Section 328.23, is
23 amended to read as follows:

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1 Section 328.23. A. 1. The Board of Dentistry may issue a
2 license to practice dentistry, without examination, to an out-of-
3 state dentist who has been engaged in the practice of dentistry in
4 another state for at least five (5) years, upon presentation to the
5 Board of a certificate from the dental licensing agency of that
6 state, certifying the applicant's length of practice and that the
7 applicant is in good standing with the agency, and upon the payment
8 of a fee established by the rules of the Board; provided, however,
9 the state from which the applicant presents a license to practice
10 dentistry shall have required the applicant to meet professional
11 education, competency, and moral character standards substantially
12 equivalent to the standards required by the Board for issuance of a
13 license by examination to practice dentistry in this state.

14 2. The Board shall not issue a license pursuant to this
15 subsection to any person who would not otherwise be eligible to
16 receive a license to practice dentistry.

17 3. The Board may require:

18 a. an applicant for a license to practice dentistry
19 pursuant to this subsection to have completed the same
20 continuing education requirements as required of
21 dentists in this state, and

22 b. that the state from which the applicant presents
23 credentials afford substantially equivalent licensure
24 by credentialing to dentists of this state.

1 B. Any dentist who is in good standing with the Board shall,
2 upon application to the Board and payment of a fee established by
3 the rules of the Board, receive a certificate which shall attest
4 that the dentist is in good standing with the Board.

5 C. The President of the Board, upon verification that a person
6 meets the requirements provided for in this section and any other
7 requirements provided for in the State Dental Act, may issue a
8 temporary license to practice dentistry for thirty (30) days. A
9 temporary license may be extended but shall not exceed ninety (90)
10 days.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 328.28a of Title 59, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Every applicant for any type of license or permit issued by
15 the Board of Dentistry shall be subject to a criminal background
16 check.

17 B. Each applicant shall submit two (2) completed fingerprint
18 cards as required by the Board. The fingerprint cards shall be
19 required to be in a clear, readable format acceptable to the
20 Oklahoma State Bureau of Investigation.

21 C. Each applicant shall include a money order or cashier's
22 check made payable to the Oklahoma State Bureau of Investigation for
23 the purposes of a local and national criminal background check.

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1 D. The Board shall forward the fingerprint cards, along with
2 the applicable fee for a national fingerprint criminal history
3 records search, to the Bureau.

4 E. The Bureau shall retain one set of fingerprints in the
5 Automated Fingerprint Identification System and submit the other set
6 to the Federal Bureau of Investigation for a national criminal
7 history records search.

8 SECTION 6. AMENDATORY 59 O.S. 2011, Section 328.43a, is
9 amended to read as follows:

10 Section 328.43a. A. Any person may file a written and signed
11 complaint with the Board of Dentistry, alleging that the respondent
12 has sought to practice or has illegally practiced dentistry or
13 dental hygiene, has violated the provisions relating to dental
14 assistants, or has otherwise violated the provisions of the State
15 Dental Act or the rules of the Board, and the facts upon which the
16 allegations are based. The complaint shall be directed by the
17 president of the Board to two specific Board members for
18 investigation and review. The review panel, in its discretion, may
19 notify the respondent of the complaint at any time prior to its
20 dismissal of the complaint or making a recommendation to the Board.
21 If the Board initiates an individual proceeding under paragraph 1 of
22 subsection D of this section, the respondent of the individual
23 proceeding shall be provided a copy of the recommendation and any
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1 exculpatory information as required by the Administrative Procedures
2 Act.

3 B. The Board members who review a complaint shall constitute a
4 review panel. A review panel shall confer and shall conduct or
5 cause to be conducted any investigation of the allegations in the
6 complaint as it reasonably determines may be needed to establish,
7 based on the evidence available to the panel, whether it is more
8 likely than not that:

9 1. A violation of the provisions of the State Dental Act or the
10 rules of the Board has occurred; and

11 2. The person named in the complaint has committed the
12 violation.

13 C. In conducting its investigation, a review panel may seek
14 evidence, take statements, take and hear evidence, and administer
15 oaths and affirmations. A review panel may also use Board attorneys
16 and investigators appointed by the Board to seek evidence.

17 D. 1. If a review panel determines, based on the evidence
18 available to the panel, that it is more likely than not that a
19 violation of the provisions of the State Dental Act or the rules of
20 the Board has occurred and that the respondent has more likely than
21 not committed the violation, the review panel may recommend in
22 writing to the Board that the Board initiate an individual
23 proceeding, pursuant to Article II of the Administrative Procedures
24 Act, against the respondent.

1 2. The Board shall determine whether to accept or reject the
2 recommendation that an individual proceeding be initiated.

3 3. If the Board determines that the recommendation should be
4 accepted, a formal Statement of Complaint shall be filed within ten
5 (10) days of the action of the Board.

6 4. The individual proceeding shall be conducted according to
7 the rules of the Board and the requirements of the Administrative
8 Procedures Act. The members of the review panel shall be excluded
9 from participating as Board members in an individual proceeding
10 initiated by the Board based upon their recommendation.

11 5. The review panel may decide to enter into a public or
12 private settlement agreement with the respondent. A public or
13 private settlement agreement:

- 14 a. shall specify the provisions of the State Dental Act
15 or the rules of the Board which such person is alleged
16 to have violated,
- 17 b. shall provide that such person agrees not to violate
18 the provisions of the State Dental Act or the rules of
19 the Board in the future,
- 20 c. may contain any of the penalties specified in Section
21 328.44a of this title, and
- 22 d. may contain any other provisions agreeable to the
23 review panel and the person involved.

1 A private settlement agreement shall remain part of the
2 investigation file, and may be disclosed or used against the
3 respondent only if the respondent violates the settlement agreement
4 or if ordered by a court of competent jurisdiction. All settlement
5 agreements shall be reported to the Board. The Board may require
6 that a private settlement agreement be made a public settlement
7 agreement. A respondent may withdraw from the settlement agreement
8 if the Board determines a private settlement agreement shall be made
9 public.

10 6. A public or private settlement agreement must receive final
11 review and approval by the Board if it contains any of the following
12 penalties specified in Section 328.44a of this title:

- 13 a. suspension of a license or permit issued by the Board,
- 14 b. revocation of a license or permit issued by the Board,
- 15 c. issuance of a censure,
- 16 d. placement on probation,
- 17 e. restriction of the services that can be provided by a
18 dentist or a dental hygienist, or
- 19 f. an administrative penalty not to exceed One Thousand
20 Five Hundred Dollars (\$1,500.00) per violation.

21 E. If a review panel does not make the determination specified
22 in subsection D of this section, the panel shall dismiss the
23 complaint and direct the principal administrative officer of the
24 Board to give written notification of the dismissal to the person

1 who filed the complaint and to the respondent. Although evidence
2 against a respondent does not warrant formal proceedings, a review
3 panel may issue a confidential letter of concern to a respondent
4 when there are indications of possible misconduct by the respondent
5 that could lead to serious consequences or formal action.

6 F. A review panel may act without complying with the Oklahoma
7 Open Meeting Act.

8 G. The Board of Dentistry, its employees, independent
9 contractors, appointed committee members and other agents shall keep
10 confidential all information obtained in the following
11 circumstances:

12 1. During an investigation into allegations of violations of
13 the Oklahoma Dental Act, including but not limited to:

- 14 a. any review or investigation made to determine whether
15 to allow an applicant to take an examination, or
16 b. whether the Board shall grant a license, certificate,
17 or permit;

18 2. In the course of conducting an investigation;

19 3. Reviewing investigative reports provided to the Board by a
20 registrant; and

21 4. Receiving and reviewing examination and test scores.

22 H. Any information obtained and all contents of any
23 investigation file shall be exempt from the provisions of the
24 Oklahoma Open Records Act. Except for the approval of private

1 settlement, a final order issued by the Board shall be subject to
2 the Open Records Act.

3 I. Information obtained by the Board or any of its agents shall
4 be considered competent evidence, subject to the rules of evidence,
5 in a court of competent jurisdiction ~~only in the following~~
6 circumstances for:

7 1. Matters ~~directly related to actions of the Board where~~
8 criminal charges are filed in a municipal or district court action;
9 or

10 2. Matters ~~resulting from the Board obtaining information where~~
11 complaints have not been found to be actionable in either a civil or
12 criminal matter which shall not be open to the public.

13 Information obtained by the Board or its agents shall not be
14 admissible as evidence in any other type of civil or criminal
15 action.

16 SECTION 7. This act shall become effective November 1, 2012.

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1 Passed the Senate the 14th day of March, 2012.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

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8 _____
9 Presiding Officer of the House
10 of Representatives