



SPONSOR: Sen. DeLuca & Rep. Ulbrich
Sens. Bunting, Sokola, Simpson, Still;
Reps. Hudson, Valihura, DiLiberto &
Keeley

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 240

AN ACT TO AMEND CHAPTER 11, TITLE 24 OF THE DELAWARE CODE RELATING TO DENTISTRY AND DENTAL HYGIENE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter II, Chapter 11, Title 24 of the Delaware Code by striking said Subchapter in its entirety,
2 including §§1121 through 1135 of said Subchapter II, and by substituting the following in lieu thereof:

3 "Subchapter II. Dentistry and Dental Hygiene.

4 §1121. License required.

5 (a) No person shall practice dentistry or dental hygiene or hold himself or herself out to the public in this State as
6 being qualified to practice dentistry or dental hygiene; or use in connection with his or her name, or otherwise assume or use,
7 any title or description conveying or tending to convey the impression that he or she is qualified to practice dentistry or dental
8 hygiene, unless such person has been duly licensed under this Chapter.

9 (b) A dental hygienist licensed under this Chapter shall practice dental hygiene only under the general supervision of a
10 licensed dentist, in the office of the licensed dentist, or in any public school or other public institution of this State.

11 (c) A licensed dental hygienist may practice under the general supervision of the State Dental Director, or his or her
12 designee, who shall be a licensed Delaware dentist, in schools and state institutions. They may also practice under the general
13 supervision of the State Dental Director, or his or her designee, who shall be a Delaware licensed dentist, in federally qualified
14 health centers, non-profit organizations and other locations as designated by the Delaware Health Care Commission in
15 consultation with DIDER. The protocols under which the hygienists practice in these settings will be established by the State
16 Dental Director and shall be subject to the approval of the Delaware Board of Dental Examiners.

17 (d) The State Dental Director shall be a Delaware licensed dentist. In the event that the State Dental Director does not
18 have a Delaware dental license when hired, he or she must obtain a Delaware license within two years of assuming the
19 position. The Board may grant a temporary license for a period no longer than two years, to the State Dental Director,
20 provided he or she has met all licensure requirements except successful completion of the practical exam. The authority to
21 practice dentistry under such a temporary license will be limited to the performance of the duties as the State Dental Director.

22 (e) Whenever a license to practice as a dentist or dental hygienist in this State has expired or has been suspended or
23 revoked, it shall be unlawful for the person to practice dentistry or dental hygiene in this State.

24 §1122. Qualifications of applicant; report to Attorney General; judicial review.

25 (a) An applicant, who is applying for licensure as a dentist under this Chapter, shall submit evidence, verified by oath
26 and satisfactory to the Board, that such person:

27 (1) Has received a degree in dentistry from an accredited dental college or university accredited by the
28 Commission on Dental Accreditation of the American Dental Association.

29 (2) Before matriculating in a dental college or university, has completed at least two years of undergraduate
30 study in an accredited college or university.

31 (3) Has acquired one year's experience as a dental intern or resident in a school, institution, or hospital
32 approved by the Board; or, in lieu thereof, has participated in a preceptorship or reciprocity program established under Section
33 1105 of this Chapter, or has had three years of active dental practice in another state or territory of the United States.

34 (4) Has achieved the passing score on all examinations prescribed by the Board.

35 (b) An applicant, who is applying for licensure as a dental hygienist under this Chapter, shall submit evidence, verified
36 by oath and satisfactory to the Board, that such person:

37 (1) Has graduated from high school or has received a general equivalency diploma (G.E.D.).

38 (2) Has graduated from a dental hygiene college or university program, accredited by the Commission on
39 Dental Accreditation of the American Dental Association, of at least two academic years' duration; or,

40 (3) Has graduated, prior to 1953, from a dental hygiene program of at least one year's duration, which
41 program had been approved by the Board at the time of the person's graduation; and

42 (4) Has achieved the passing score on all examinations prescribed by the Board.

43 (c) All applicants shall have complied with the following conditions:

44 (1) Shall submit proof of current certification in cardiopulmonary resuscitation (CPR) technique in
45 accordance with regulations adopted by the Board.

46 (2) Shall not have been the recipient of any administrative penalties regarding his or her practice of dentistry
47 or dental hygiene, including but not limited to fines, formal reprimands, license suspension or revocation, (except for license
48 revocations for non-payment of license renewal fees) probationary limitations, or has not entered into any 'consent agreements'
49 which contain conditions placed by a Board on his or her professional conduct and practice, including any voluntary surrender
50 of a license while under investigation.

51 (3) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to
52 undertake the practice of dentistry or dental hygiene in a manner consistent with the safety of the public.

53 (4) Shall not have been convicted of a felony.

54 (5) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the
55 circumstances of which substantially relate to the practice of dentistry or dental hygiene. Applicants who have criminal
56 conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or
57 charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge
58 is substantially related to the practice of dentistry or dental hygiene.

59 (6) Shall not have engaged in any of the acts or offenses that would be grounds for disciplinary action under
60 this Chapter, and shall have no disciplinary proceedings or unresolved complaints pending against him or her in any
61 jurisdiction where the applicant has previously been or currently is licensed.

62 (d) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false
63 information has been intentionally supplied, the Board shall deny the application and report its findings to the Attorney General
64 for further action.

65 §1123. Examinations.

66 (a) An applicant for a license to practice dentistry or dental hygiene in this State shall:

67 (1) Successfully pass, with a score established by the Board, a practical examination prepared and
68 administered by the Board. The practical test in dentistry and dental hygiene and its methods of administration shall be
69 validated as to content and scoring by a member of the faculty of an accredited school of dentistry. Such faculty member shall
70 not be licensed to practice dentistry in Delaware and shall be agreed upon by the Division and the Board. An applicant, who

71 has failed the practical examination three times, may not take the examination again, unless the applicant can provide evidence
72 of mitigating circumstances to the satisfaction of the Board.

73 (2) For licensure as a dentist, submit proof satisfactory to the Board that the applicant has successfully
74 completed the National Board of Dental Examiners' examination in dentistry with a score of at least 80, when Parts I and II are
75 averaged; for licensure as a dental hygienist, submit proof satisfactory to the Board that the applicant has successfully passed
76 the National Board of Dental Examiners' examination in dental hygiene.

77 (3) For licensure as a dentist, successfully pass a written jurisprudence examination on Delaware laws
78 pertaining to dentistry; for licensure as a dental hygienist, successfully pass a written jurisprudence examination on Delaware
79 laws pertaining to dental hygiene. All examinations shall be approved by the Division and the Board.

80 §1124. Dentists and Dental Hygienists Licensed in Other Jurisdictions.

81 (a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by
82 the Board, the Board shall grant a license to practice dentistry or dental hygiene to each applicant, who shall present proof of
83 current licensure in 'good standing' in another state, the District of Columbia, or territory of the United States, who meets the
84 following criteria:

85 (1) Has maintained his or her license in 'good standing' and has satisfied all requirements of §1122(c)(2)
86 through (6) of this Chapter.

87 (2) Shall, subject to (b) below, have passed the examinations required in §1123(a)(1), (2), and (3) of this
88 Chapter.

89 (3) For licensure as a dentist, shall submit proof that the applicant has had three years of active dental
90 practice in another state, the District of Columbia, or territory of the United States.

91 (4) Shall submit proof of current certification in cardiopulmonary resuscitation (CPR) technique in
92 accordance with regulations adopted by the Board.

93 (b) An applicant for licensure as a dental hygienist, who shall have practiced for a minimum of three of the last five
94 years in the state in which he or she currently is or has been licensed, may be licensed provided that he or she meets the
95 qualifications of paragraphs (1), (2), and (4) of subsection (a) of this section, except for the completion of the practical
96 examination.

97 (c) All applicants for licensure under this section shall have remained academically current through continuing
98 education or otherwise, as determined by the Board.

99 §1125. Fees.

100 The amount to be charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs
101 necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on
102 behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose
103 not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each
104 licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or
105 activity, the appropriate Board fees for the licensure biennium.

106 §1126. Issuance and renewal of licenses.

107 (a) The Board shall issue a license to each applicant, who meets the requirements of this Chapter for licensure as a
108 dentist or dental hygienist and who pays the fee established in §1125 of this Chapter.

109 (b) Each license shall be renewed biennially, in such manner as is determined by the Division, upon payment of the
110 appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing
111 education requirements established by the Board and proof that the licensee has not been convicted of a felony.

112 (c) The Board, in its rules and regulations, shall determine the period of time within which a licensed dentist or dental
113 hygienist may still renew his or her license, notwithstanding the fact that such licensee has failed to renew on or before the
114 renewal date, provided however that such period shall not exceed one year.

115 (d) All licenses issued under this Chapter shall be displayed in view of the public in the place of business of the
116 licensee.

117 §1127. Complaints.

118 (a) All complaints shall be received and investigated by the Division of Professional Regulation in accordance with
119 §8807 of Title 29 of the Delaware Code, and the Division shall be responsible for issuing a final written report at the
120 conclusion of its investigation.

121 (b) When it is determined that an individual is engaging, or has engaged, in the practice of dentistry or dental hygiene,
122 or is using the title 'dentist' or 'dental hygienist' and is not licensed under the laws of this State, the Board shall report to the
123 Office of the Attorney General for appropriate action.

124 §1128. Grounds for discipline.

125 (a) A practitioner licensed under this Chapter shall be subject to disciplinary actions set forth in §1129 of this Chapter,
126 if, after a hearing, the Board finds that the dentist or dental hygienist:

127 (1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a
128 dentist or dental hygienist; has impersonated another person holding a license; or has allowed another person to use his or her
129 license; or has aided or abetted a person not licensed as a dentist or dental hygienist to represent himself or herself as a dentist
130 or dental hygienist;

131 (2) Has practiced dentistry or dental hygiene in an incompetent or grossly negligent manner or has otherwise
132 been guilty of misconduct or unprofessional conduct;

133 (a) In addition to such acts or omissions as the Board may define as unprofessional conduct by
134 Rules and Regulations, unprofessional conduct shall include, but shall not be limited to,
135 practicing in a corporation or other business entity, which actually limits or restricts the exercise
136 and application of professional judgment by the dentist or dental hygienist to the detriment of his
137 or her patients.

138 (3) Has been convicted of a felony;

139 (4) Has been convicted of any offense, the circumstances of which substantially relate to the practice of
140 dentistry or dental hygiene. A copy of the record of conviction certified by the clerk of the court entering the conviction shall
141 be conclusive evidence thereof;

142 (5) Has engaged in an act of consumer fraud or deception; engaged in the illegal restraint of competition; or
143 participated in illegal price-fixing activities;

144 (6) Has violated a provision of this Chapter, or any regulation established thereunder;

145 (7) Has had his or her license as a dentist or dental hygienist suspended or revoked, or has had other
146 disciplinary action taken against him or her by the appropriate licensing authority in another jurisdiction; provided, however,
147 that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the
148 Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the
149 acts prohibited by this Chapter. Every person licensed as a dentist or dental hygienist in this State shall be deemed to have
150 given consent to the release of this information by the Board or other comparable agency in another jurisdiction and to waive
151 all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

152 (8) Has failed to notify the Board that his or her license as a dentist or dental hygienist in another state has
153 been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action,
154 surrender, suspension or revocation shall be conclusive evidence thereof;

155 (9) Has a physical condition such that the performance of dentistry or dental hygiene is or may be injurious
156 or prejudicial to the public; or

157 (10) Has had his or her United States Drug Enforcement Administration (DEA) privileges restricted or
158 revoked.

159 (11) Has engaged in the excessive use or abuse of drugs.

160 §1129. Disciplinary sanctions.

161 (a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the
162 conditions or violations set forth in §1128 of this Chapter applies to a practitioner regulated by this Chapter:

163 (1) Issue a letter of reprimand;

164 (2) Censure a practitioner;

165 (3) Place a practitioner on probationary status, and require the practitioner to:

166 a. Report regularly to the Board upon the matters, which are the basis of the probation;

167 b. Limit all practice and professional activities to those areas prescribed by the Board;

168 (4) Suspend any practitioner's license;

169 (5) Revoke any practitioner's license;

170 (6) Impose a monetary penalty not to exceed \$500 for each violation;

171 (7) Take such other disciplinary action as the Board may deem necessary and appropriate.

172 (b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies, which required
173 such action, have been remedied.

174 (c) Upon the filing of a formal complaint by the Attorney General's office, the Board may temporarily suspend a
175 practitioner's license in advance of a final adjudication, but only in cases where there is clear and immediate danger to the
176 health and safety and welfare of the public if the licensee is allowed to continue to practice. Such suspension may be appealed
177 to Superior Court.

178 (d) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may
179 impose such disciplinary or corrective measures as are authorized under this Chapter.

180 §1130. Hearing procedures.

181 (a) If a complaint is filed with the Board by the Office of the Attorney General pursuant to §8807 of Title 29 of the
182 Delaware Code, alleging violation of §1128 of this Chapter, the Board shall set a time and place to conduct a hearing on the

183 complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative
184 Procedures Act, Chapter 101 of Title 29 of the Delaware Code.

185 (b) The technical rules of evidence shall not apply to hearings before the Board. If the Board finds, by a majority vote
186 of all members hearing the case, that the complaint has been established by a preponderance of evidence, the Board shall take
187 such action permitted under this Chapter, as it deems necessary. The Board's decision shall be in writing and shall include its
188 reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

189 (c) Where the practitioner is in disagreement with the action of the Board, he or she may appeal the Board's decision
190 to the Superior Court.

191 §1131. Reinstatement of a suspended license; removal from probationary status; replacement of license.

192 (a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may
193 reinstate such license if, after a hearing, the Board is satisfied that the licensee has taken the prescribed corrective actions and
194 otherwise satisfied all of the conditions of the suspension and/or the probation, and can practice dentistry or dental hygiene
195 with reasonable skill and safety to the public.

196 (b) Applicants for reinstatement shall pay the appropriate fees and submit documentation required by the Board as
197 evidence that all the conditions of a suspension or probation have been met. Proof that the applicant has met the continuing
198 education requirements of this Chapter may also be required, as appropriate.

199 (c) A new license to replace any license lost, destroyed, or mutilated may be issued subject to the rules of the Board.
200 A charge shall be made for such issuance.

201 §1132. Limited license; fee.

202 (a) Upon completion of an application approved by the Board, and payment of a fee established by the Division, the
203 Board may issue a limited license to an applicant for licensure as a dentist, who has fulfilled the requirements of §1122(a)(1)
204 and (2), and who furnishes proof satisfactory to the Board that the applicant has been appointed a dental intern in a hospital or
205 other institution maintained by this State, by a county or municipality thereof, or in a hospital or dental infirmary incorporated
206 under the laws of this State.

207 (b) The limited license shall entitle the applicant to practice dentistry only in the hospital or other institution
208 designated on the license and only on bona fide patients of the hospital or institution and under the direction of a licensed
209 dentist employed therein or on the staff thereof.

210 (c) The applicant for limited license shall comply with the provisions of §1122(c)(1) through (6) of this Chapter.

211 (d) The holder of a limited license shall be bound by all other applicable provision of this Chapter.

212 (e) The limited license shall be renewed annually."

213 Section 2. Amend Subchapter III, Chapter 11, Title 24 of the Delaware Code by striking said Subchapter in its entirety,
214 including §§1151 through 1159 of said Subchapter III, and by substituting the following in lieu thereof:

215 "Subchapter III. Other Provisions.

216 §1133. Exemptions.

217 Nothing in this Chapter shall be construed to prevent:

218 (a) A licensed dentist and dental hygienist serving in any branch of the United States Armed Services, Veterans'
219 Administration, or Public Health Service, from discharging his or her official duties;

220 (b) A licensed physician or surgeon from extracting teeth or treating pathological conditions of the mouth, teeth, or
221 oral tissues, or of radiographing such tissues, unless the such person practices dentistry as a specialty;

222 (c) A lawful practitioner of dentistry in another state, the District of Columbia, or territory of the United States from
223 making a clinical demonstration before a dental society, convention, association of dentists, or dental college, or performing
224 duties in connection with a specific case on which the practitioner may have been called to this State by a legally qualified
225 practitioner of dentistry of this State.

226 (d) A practitioner of dentistry, who maintains a lawful dental license to practice in another state, the District of
227 Columbia, or territory of the United States from making a clinical demonstration in connection with the lawful research and
228 development of dental product(s) manufactured by a dental manufacturer complying with guidelines set forth by the United
229 States Food and Drug Administration.

230 (e) A person, otherwise qualified under this chapter, from rendering dental services in a nonprofit, tax-
231 exempt organization as described in §§501(c) (3), 509 (a)(1) and 170 (b)(1)(A)(iii) of the Internal Revenue Code [26 U.S.C. §§
232 (c)(3), 509(a)(1), and 170 (b)(1)(A)(iii), that does not charge for its services and is affiliated with a hospital, licensed by the
233 Department of Health and Social Services and accredited by the Joint Commission on Accreditation of Hospitals or the
234 American Osteopathic Association.

235 §1134. Penalty.

236 A person not currently licensed as a dentist or dental hygienist under this chapter, who engages in the practice of
237 dentistry or dental hygiene, or uses in connection with his or her name, or otherwise assumes or uses any title or description
238 conveying, or tending to convey, the impression that he or she is qualified to practice dentistry or dental hygiene, shall be

239 guilty of a misdemeanor. Upon the first offense, he or she shall be fined not less than \$500 nor more than \$1,000 for each
240 offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense.
241 Justice of the Peace Courts shall have jurisdiction over all violations of this section."

242 "§1135. Certain unlawful acts; supervision by dentists.

243 No person shall repair, construct, adjust or alter any appliance, denture or dental restoration, except under the
244 authorization and responsibility of a licensed practitioner of dentistry as defined by this Chapter.

245 §1136. Prescriptions for dentists.

246 Pharmacists, licensed by this State, may fill prescriptions of dentists, licensed by this State, for any drug
247 necessary in the practice of dentistry, dental surgery or oral surgery."

248 Section 3. Amend Subchapter I, Chapter 11, Title 24 of the Delaware Code by redesignating present §1101 through
249 §1105 as new §1102 through §1106, and by adding thereto a new §1101, which shall read as follows:

250 "§1101. Definitions.

251 The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them under
252 this section, except where the context clearly indicates a different meaning:

253 (1) 'Board' shall mean the State Board of Dental Examiners established in this Chapter.

254 (2) 'Dentist' shall mean a person who is qualified to practice dentistry as prescribed in the Chapter.

255 (3) 'Dental hygienist' shall mean a person, who is qualified to practice dental hygiene as prescribed in this Chapter.

256 (4) 'Division' shall mean the State Division of Professional Regulation.

257 (5) 'Excessive use or abuse of drugs' shall mean any use of narcotics, controlled substances, or illegal drugs without a
258 prescription from a licensed individual with valid prescriptive authority, or the abuse of alcoholic beverage or prescription or
259 non-prescription drugs, such that it impairs his or her ability to perform the work of a dentist or dental hygienist.

260 (6) 'Person' shall mean a corporation, company, association and partnership, as well as an individual.

261 (7) 'Practice of dentistry' is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or
262 related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and
263 associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training
264 and experience, in accordance with the ethics of the profession and applicable law. A person shall be construed to practice
265 dentistry, who by verbal claim, sign, advertisement, opening of an office, or in any other way, including use of the words
266 'Dentist', 'Dental Surgeon', the letters 'D.D.S.', 'D.M.D.', or other letters or titles, represents himself or herself to be a dentist, or

267 who holds himself or herself out as able to perform, or who does perform, dental services or work. A person shall be regarded
268 as practicing dentistry, who is a manager, proprietor, operator, or conductor of a place for performing dental operations; or who
269 for a fee, salary, or other reward paid, or to be paid either to himself or herself, or to another person, performs or advertises to
270 perform dental operations of any kind.

271 (8) 'Practice of dental hygiene' shall mean the removal of calculus deposits, plaque, and stains from all surfaces of the
272 teeth, and making instrumental examinations of the oral cavity, and assembling all necessary information for use by the dentist
273 in diagnosis and treatment planning, and the performance of such prophylactic or preventive measures in the case of teeth,
274 including the application of chemicals to the teeth and periodontal tissues, designed and approved for the prevention of dental
275 caries, as the Board may authorize; but the 'practice of dental hygiene' shall not include any other operation on the teeth or
276 tissues of the mouth.

277 (9) 'State' shall mean the state of Delaware."

SYNOPSIS

This Act would implement the Joint Sunset Committee 1995 recommendations for the Board of Dentistry and Dental Hygiene. The Sunset Committee found that statutory language is seriously outdated and in need of rewriting. Among other provisions, the Act would refer to 'license' throughout; would strike the mandate that Secretary-Treasurer of the Board attest to applicant's 'moral character'; would strike citizenship requirement for licensure; would strike Corps of Oral Hygienists, which is no longer active.

The subchapters have been rewritten, reorganized, and updated to reflect the responsibilities of the Director of the Division of Professional Regulation regarding fees and complaints; outdated language has been stricken; grounds for discipline, disciplinary sanctions, and hearing procedures have been standardized. The statute would be gender neutral.

Author: Senator DeLuca