

1 SB442
2 129378-1
3 By Senator Keahey
4 RFD: Health
5 First Read: 26-APR-11

SYNOPSIS: Existing law provides for the Board of
Dental Examiners of Alabama.

This bill would further provide guidelines
for just cause to remove a member from the board
and would provide campaign guidelines for nominees
and board members.

This bill would provide guidelines for
dentists and dental hygienist nominees soliciting
votes and would provide for investigations of
alleged misconduct of a board member.

This bill would provide for solicitation of
campaign contributions by dental hygienist
candidates and prohibit solicitation of money or
anything of value by dental hygienist board
members.

A BILL
TO BE ENTITLED
AN ACT

1 To amend Section 34-9-40 of the Code of Alabama
2 1975, relating to the Board of Dental Examiners of Alabama; to
3 further provide guidelines for just cause to remove a member
4 from the board; to provide campaign guidelines for nominees
5 and board members; to provide guidelines for dentists and
6 dental hygienist nominees soliciting votes; to provide for
7 investigations of alleged misconduct of a board member; to
8 provide for solicitation of campaign contributions by dental
9 hygienist candidates; and to prohibit solicitation of money or
10 anything of value by dental hygienist board members.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 34-9-40 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§34-9-40.

15 "(a) (1) In order to accomplish the purposes and to
16 provide for the enforcement of this chapter, there is hereby
17 created the Board of Dental Examiners of Alabama. The board is
18 hereby vested with the authority to carry out the purposes and
19 enforce the provisions of this chapter. On June 24, 1959, the
20 members of the present board now in existence shall hold
21 office for the remainder of their respective terms for which
22 they have been elected and thereafter until their successors
23 are elected and qualified and shall constitute the board under
24 this chapter. The board shall consist of six dentists who
25 shall be selected in the method set forth herein all of whom
26 having been actively engaged in the practice of dentistry in
27 the State of Alabama for at least five years next preceding

1 the date of their election and one dental hygienist elected
2 at-large as provided in subsection (b). Each member of the
3 board shall be a citizen of this state. No member of the board
4 shall be a member of the faculty of any dental school, dental
5 college, dental hygiene school, or dental hygiene college or
6 receive any financial benefits for teaching in any dental
7 school, dental college, dental hygiene school, or dental
8 hygiene college or have a financial interest in a commercial
9 dental laboratory or a dental supply business. Beginning in
10 October 2009, and every five years thereafter, one member, who
11 is qualified as provided herein, shall be selected by the
12 Alabama Dental Society no later than July 1, 2009, and every
13 five years thereafter. As for all elections of members, any
14 group of 10 or more licensed dentists, residing and practicing
15 dentistry in the state, may nominate a candidate for the
16 position of board member by submitting a petition bearing
17 their signatures to the secretary of the board to be
18 postmarked not later than the first day of July in the year of
19 the election. The board shall cause the election ballots to be
20 mailed not later than September 1 in the year of the election
21 to all the licensed dentists residing and practicing in the
22 state and currently registered as prescribed by law, along
23 with the annual registration form for the forthcoming fiscal
24 year. Both the annual registration form and fee must accompany
25 the separately sealed ballot that shall be postmarked no later
26 than October 1 and returned to the secretary of the board no
27 later than the first board workday following October 1 each

1 year, ballots being nullified unless accompanied by completed
2 annual registration form and annual registration fee. Three
3 members of the board shall be present at the canvassing of the
4 ballots. Any candidate receiving a majority of the votes shall
5 be declared elected to the board and will take the oath of
6 office on or before October 15 in the year of his or her
7 election. In the event no candidate receives a majority of the
8 votes cast, the board shall conduct a run-off election between
9 the two candidates receiving the largest number of votes. The
10 board shall cause the ballots pertaining to the run-off
11 election to be mailed on or before October 15 of the election
12 year to all the licensed dentists residing and practicing in
13 the state and currently registered as prescribed by law, and
14 the ballots pertaining to the run-off election shall be
15 postmarked no later than the first day of November in the year
16 of the run-off election and received by the secretary of the
17 board no later than the first board workday following the
18 first day of November. All ballots received after this date
19 shall be nullified. In the event of a run-off election, the
20 candidate receiving the largest number of votes in the run-off
21 election shall be declared elected to the board and shall
22 immediately take the oath of office and begin his or her term
23 of office. Every member elected shall hold office for a period
24 of five years, which terms shall begin immediately upon taking
25 an oath to properly and faithfully discharge the duties of his
26 or her office and until his or her successor is elected and
27 qualified, and the member so elected shall not at the

1 expiration of the term be eligible to succeed himself or
2 herself. The membership of the board shall be inclusive and
3 reflect the racial, gender, geographic, urban/rural, and
4 economic diversity of the state. Except for the board member
5 position selected by the Alabama Dental Society, vacancies on
6 the board shall be filled by the board by the appointment of
7 the immediate past member of the board, and if for any reason
8 the immediate past member of the board is unable to accept the
9 appointment, then the board shall fill the vacancy by
10 appointment of the most recent past board member who is
11 willing to accept the appointment. If no past board member
12 accepts the appointment, then the board may, by unanimous
13 vote, appoint any licensed dentist qualified under the
14 provisions of this chapter. In the event of a vacancy in the
15 position selected by the Alabama Dental Society, the Alabama
16 Dental Society shall select a dentist who is qualified as
17 provided herein to fill the vacancy. Members of the board
18 shall be removed by a two-thirds vote of the registered
19 dentists in the state for neglect of duty or any just cause,
20 by petition to the secretary of the board by 10 percent of the
21 licensed dentists in the state. On or before July 1, 1962, the
22 board shall send a copy of this section to all licensed
23 dentists in the state.

24 "(2) When a member of the board is removed under
25 subdivision (1), just cause shall include, but not be limited
26 to, any of the following:

27 "a. Willful neglect of duty.

1 "b. Corruption in office.

2 "c. Incompetency.

3 "d. Intemperance in the use of intoxicating liquors
4 or narcotics to such an extent in view of the dignity of the
5 office and the importance of its duties that would disqualify
6 the member from the discharge of his or her duties.

7 "e. Conviction of a felony.

8 "f. Commission of a terrorist act.

9 "g. Moral turpitude.

10 "h. Dereliction of sworn duties.

11 "i. Willful destruction of board or state property.

12 "(3) In addition to the requirements for nominees
13 and board members under subdivision (1), all nominees and
14 board members shall comply with all of the following
15 requirements:

16 "a. All potential nominees for board election shall
17 undergo a criminal records background check to be conducted by
18 the Alabama Bureau of Investigation of the Department of
19 Public Safety. Information obtained in a criminal records
20 background check shall be forwarded to the attorney for the
21 board. A potential nominee whose criminal background check
22 information reveals a conviction of a felony or other serious
23 crimes, as defined by board rule, shall be declared ineligible
24 for election to the board. A criminal records background check
25 shall not be required for current sitting board members on the
26 effective date of the act adding this subdivision.

27 "b. Be of good moral and ethical character.

1 "c. Not be a family member, as defined by board
2 rule, spouse, employer, or employee of a sitting board member.

3 "d. Not be an officer of an organized state or
4 national dental group, except as an officer of a regional or
5 national organization of dental examiners, except this
6 paragraph shall not apply to any present member of the board
7 or sitting board member on the effective date of the act
8 adding this subdivision.

9 "e. Not violate major state laws or regulations, as
10 defined by board rule.

11 "f. Not solicit or receive campaign contributions
12 greater than two hundred fifty dollars (\$250) per dental
13 licensee. All campaign contributions shall be disclosed and
14 posted on the website of the board.

15 "g. Not solicit or receive money or anything of
16 value from dental organizations, dental corporations, dental
17 nonprofit entities, dental schools, dental laboratories,
18 dental product companies, dental supply companies, or dental
19 insurance companies that could reasonably be construed as an
20 attempt to influence decisions made by the board or from any
21 source, individual, or agents acting on behalf of any of the
22 aforementioned that could reasonably be construed as an
23 attempt to influence decisions made by the board.

24 "(4) Investigations of alleged misconduct of a board
25 member shall be conducted in accordance with Section 36-11-3.

26 "(5) A solicitation for votes by a dentist or a
27 dental hygienist nominee shall not do any of the following:

1 "a. Be false or misleading or imply an endorsement
2 by the board.

3 "b. Contain a material misrepresentation of fact.

4 "c. Misrepresent credentials, degrees, education, or
5 experience of the candidate.

6 "d. Include false or misleading testimonials or
7 endorsements.

8 "e. Mislead or deceive because only a partial
9 disclosure of relevant facts is made.

10 "f. Contain representations or implications that the
11 solicitation materials were generated by the board, or use or
12 refer to the name of the board or any variation of the name of
13 the board on the letterhead, envelopes, postcards, or other
14 printed or electronic media of a candidate.

15 "(b) (1) One member of the board shall be a licensed
16 dental hygienist. The dental hygienist member shall be of good
17 moral and ethical character and shall have been actively
18 engaged in the practice of dental hygiene in the State of
19 Alabama for at least five years preceding the date of
20 election. No dental hygienist member shall be a member of the
21 faculty of any dental school, dental college, dental hygiene
22 school, or dental hygiene college or receive any financial
23 benefits for teaching in any dental school, dental college,
24 dental hygiene school, or dental hygiene college or have a
25 financial interest in a commercial dental laboratory or dental
26 supply business while serving on the board.

1 "(2) The dental hygienist member shall be elected as
2 follows:

3 "a. Any group of 10 or more licensed dental
4 hygienists, residing and practicing dental hygiene in the
5 State of Alabama, may nominate a candidate for the dental
6 hygienist position by submitting a petition bearing their
7 signatures to the secretary of the board no later than the
8 first day of July in the year of an election. The board shall
9 cause election ballots to be mailed no later than September 1
10 in the year of an election to all the licensed dental
11 hygienists residing and practicing in the state and currently
12 registered as prescribed by law. Both the annual registration
13 form and the registration fee must accompany a separately
14 sealed ballot that shall be postmarked no later than October 1
15 and returned to the secretary of the board no later than the
16 first board workday following October 1 each year, and the
17 ballots will be nullified unless the voter has complied with
18 Section 34-9-28, concerning annual registration.

19 "b. Three members of the board shall be present at
20 the canvassing of the ballots. Any candidate receiving a
21 majority of the votes shall be the dental hygienist member and
22 shall take the oath of office on or before October 15 in the
23 year of his or her election. In the event no candidate
24 receives a majority of the votes cast, the board shall conduct
25 a run-off election between the two candidates receiving the
26 largest number of votes. The board shall cause the ballots
27 pertaining to any run-off election to be mailed on or before

1 October 15 of the election year to all licensed dental
2 hygienists residing and practicing in the state and currently
3 registered as prescribed by law, and the ballots pertaining to
4 the run-off election shall be postmarked no later than
5 November 1 in the year of the run-off election and received by
6 the secretary of the board no later than the first board
7 workday following November 1. Ballots received after November
8 1 shall be nullified. In the event of a run-off election, the
9 dental hygienist receiving the largest number of votes in the
10 run-off election shall be declared elected to the board and
11 shall immediately take the oath of office and begin his or her
12 term of office.

13 "c. All elections as described above shall be
14 conducted by the board.

15 "(3) The dental hygienist member shall be removed by
16 a two-thirds vote of the registered dental hygienists in the
17 state for neglect of duty or any just cause by petition to the
18 secretary of the board by 10 percent of the licensed dental
19 hygienists in the state.

20 "(4) The dental hygienist member shall hold that
21 position for a period of five years, which term shall begin
22 immediately upon taking an oath to properly and faithfully
23 discharge the duties of his or her office and continue until
24 his or her successor is elected and qualified, and the member
25 so elected shall not at the expiration of the term be eligible
26 to succeed himself or herself. If a vacancy occurs in the
27 position of dental hygienist, the unexpired term shall be

1 filled by the board by the appointment of the immediate past
2 dental hygienist member. If for any reason the immediate past
3 dental hygienist member is unable to accept the appointment,
4 then the board shall fill the vacancy by a unanimous vote of
5 the other board members by the appointment of some other past
6 dental hygienist member. If a vacancy occurs and there is not
7 an immediate past dental hygienist member or other past dental
8 hygienist member, the vacancy shall be filled by a unanimous
9 vote of the board by the appointment of some otherwise
10 qualified dental hygienist.

11 "(5) The dental hygienist member shall advise the
12 board on matters relating to dental hygiene and shall only be
13 permitted to vote on matters relating to dental hygiene. The
14 board shall provide the dental hygienist member with timely
15 notice of all board meetings and the dental hygienist member
16 shall be allowed to attend all meetings unless prohibited by
17 law from attendance at any disciplinary hearings. The board
18 shall not adopt any rule relating to the practice of dental
19 hygiene unless the proposed rule has been submitted to the
20 dental hygienist member for review and comment at least 30
21 days prior to its adoption. The dental hygienist member shall
22 be entitled to the same compensation and expenses paid to
23 dentist members of the board pursuant to Section 34-9-41.

24 "(6) A dental hygienist candidate for board member
25 shall not solicit or receive campaign contributions greater
26 than one hundred dollars (\$100) per licensee who would be
27 under his or her regulation if elected. A dental hygienist

1 candidate may solicit campaign contributions from any dentist
2 not to exceed two hundred fifty dollars (\$250). Disclosure of
3 all campaign contributions shall be posted on the website of
4 the board.

5 "(7) A dental hygienist board member shall not
6 solicit or receive money or anything of value from dental
7 organizations, dental corporations, dental nonprofit entities,
8 dental schools, dental laboratories, dental product companies,
9 dental supply companies, or dental insurance companies that
10 could reasonably be construed as an attempt to influence
11 decisions made by the board or from any source, individual, or
12 agents acting on behalf of any of the aforementioned that
13 could reasonably be construed as an attempt to influence
14 decisions made by the board.

15 "(c) Any dentist or dental hygienist who has been
16 found guilty of violating this chapter or any provision of a
17 dental practice act of any other state and as a result his or
18 her license was revoked, suspended, or placed on probation or
19 who has been convicted of a felony, shall not be eligible for
20 election or membership on the board for a period of five years
21 from the termination of any such revocation, suspension, or
22 probation."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.