

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2241

As Further Amended by Senate Committee on
Public Health and Welfare

Brief*

HB 2241, as further amended, would enact new law to allow the franchise practice of dentistry in Kansas and revise portions of the Dental Practices Act pertaining to definitions and oversight functions of the Kansas Dental Board (Board). The bill also would provide for legal remedies when a contract entered into between dentists, franchisors and any other entity is in violation of state law, the Dental Practices Act, or both. Under current law, licensed dentists are prohibited from entering into arrangements with unlicensed proprietors and specifically prohibited from the franchise practice of dentistry.

Under the bill, a “dental franchisor,” with exceptions to the definition described later in this supplemental note, would be defined as any person or entity, pursuant to a written agreement, who provides dental practice management services, or dental material or equipment necessary for dental practice management, to a licensed dentist under a lease or an agreement for compensation. A person or entity entering into an agreement with a licensed dentist for dental office administrative services would be required to register with the Board. The bill also would allow licensed dentists to practice dentistry as employees of a general hospital in counties with a population of less than 50,000.

The bill would become effective on publication in the *Kansas Register*.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Definitions

The bill would make the following changes to the Act:

- Revise the definition of “proprietor” to mean any person who employs dentists or dental hygienists in the operation of a dental office and eliminate language referring to proprietors placing or retaining ownership of dental material or equipment in the possession of a dentist or dental hygienist by lease or other agreement for compensation (Section 1);
- Add a definition for “dental franchisor,” as previously defined in the supplemental note, and clarify that a person or entity is not a dental franchisor if the agreement with the dentist:
 - Permits interference with the professional judgment of the dentist; or
 - Contains terms constituting a violation of the Dental Practices Act, rules and regulations adopted by the Board, any orders or directives issued by the Board or any other applicable law (Section 1);
- Add a definition for “licensed dentist” to mean a dentist licensed under the Dental Practices Act (New Section 6); and
- Add a definition for “unlicensed proprietor” to mean any person or entity not authorized to own or operate a dental practice that enters into an agreement with a dentist or dental hygienist related to the practice of dentistry or dental hygiene which:
 - Permits interference with the professional judgment of the dentist; or
 - Contains terms constituting a violation of the Dental Practices Act, rules and regulations adopted by the Board, any orders or directives issued by the Board or any other applicable law (Section 1).

Oversight by the Kansas Dental Board

The bill would:

- Add a new category of disciplinary action available to the Board, specifically, to limit the license of a dentist (Section 1);
- Delete the requirement to have the name of a professional dental practice approved by the Board and instead require that the name may not misrepresent the dentist to the public with the Board having the authority to determine the issue of misrepresentation (Section 3); and
- Add a new section of law requiring registration with the Board for any unlicensed person or entity (term excludes a professional corporation or limited liability company composed of dentists) entering into an agreement with a licensed dentist to provide dental office administrative services. Any person or entity required to register would have 30 days to complete the registration. The 30 days would begin on either the date of execution of the contract or agreement or 30 days from July 1, 2011, depending upon whether the contract or agreement existed prior to July 1, 2011. Any changes in the company name and contact information for the registered person or entity who are parties to the agreement must be reported within 30 days of such change. This new section includes language permitting the Board to inspect the contract or agreement (New Section 5).

Employment with General Hospitals

The bill would permit a licensed dentist to practice dentistry as an employee of a general hospital in a county with a population of less than 50,000 (Section 2).

Dental Franchises

The bill would:

- Delete language prohibiting the franchise practice of dentistry;
- Revise language to permit the division of fees between a licensed dentist and a dental franchisor;
- Add a new section of law that would do the following (New Section 6):
 - Prohibit any contract or agreement involving a licensed dentist from containing language that would permit specified functions to be controlled by a person or entity other than a licensed dentist;
 - Permit a person or entity, acting on behalf of a licensed dentist, to perform or arrange for office administrative services;
 - Specify the parties which would be allowed to enter into agreements with a licensed dentist, professional corporation or limited liability company owned by a licensed dentist; and
 - Add an indemnification clause to protect the parties to the agreement; and
- Make technical changes.

Declaratory Judgment

The bill would allow the Board to seek declaratory judgment against any dentist, franchisor or other entity contracting with a dentist, if the contract entered into appears to the Board to be in violation of the Dental Practices Act. The court would be allowed to enjoin the enforcement of contract provisions in violation of state law on finding that a dentist, franchisor or other entity is a party to an agreement that is in violation of state law, the Dental Practices Act, or both. The bill would allow the court to award reasonable attorney fees to

the prevailing party in any action for declaratory judgment brought under this new section of the Dental Practices Act (New Section 7).

Background

The bill was introduced at the request of Comfort Dental, a dental franchisor. Testimony in favor of the bill was heard before the House Committee on Health and Human Services from representatives of Comfort Dental and the Kansas Dental Association. The proponents testified that the dental franchise arrangement would help attract more dentists to Kansas to help alleviate the state's current shortage of dentists. The representative from Comfort Dental also testified that the dental franchise arrangement would lower the cost of dental care, due to the purchasing power of the franchise, and would improve access to dental care. There was no testimony opposing the bill at the House Committee hearing. Neutral testimony was heard from the General Counsel to the Kansas Dental Board who recommended changes to specific language in the bill.

The House Committee on Health and Human Services amended the original bill to: add a definition of "dental franchisor"; add language permitting the Kansas Dental Board to limit the licenses of dentists; replace language to permit the division of fees between a licensed dentist and a dental franchisor; add language providing protections for both the public and franchisors; and make technical changes including changes to conform with the recodification of the Criminal Code regarding the crime of assisted suicide.

Proponents of the bill before the Senate Public Health and Welfare Committee included representatives of Comfort Dental and the Kansas Dental Association. There was no testimony opposing the bill at the Committee hearing. Neutral testimony was presented by the General Counsel to the Kansas Dental Board. Amendments were presented which were agreed to by the interested parties. Additional

amendments were presented by Comfort Dental. The Senate Committee made the following amendments: provided clarification as to when a person or entity is not a dental franchisor; added a definition of “unlicensed proprietor”; reinserted language allowing the Board to determine when misrepresentation to the public has occurred as a result of the name used by the licensed dentist; added a provision allowing licensed dentists to practice dentistry as an employee of a general hospital in a county with a population of less than 50,000; and made technical amendments.

The Senate Public Health and Welfare Committee further amended the bill to add provisions to the Dental Practices Act for pursuit of a remedy when a contract between a dentist, franchisor or any other entity appears to be in violation of state law, the Dental Practices Act, or both. The Board would be allowed to pursue a declaratory judgment when a contract appears to be in violation. The court could enjoin the enforcement of contract provisions determined to be in violation of state law, the Dental Practices Act, or both. Reasonable attorney fees could be awarded to the prevailing party in any action for declaratory judgment brought under the new provisions of the Dental Practices Act. The bill was further amended to strike “Kansas” from the title of the Dental Practices Act, replace the phrase “independent judgment of the dentist in the performance of such dentist’s professional duties” with “professional judgment of the dentist”, change the effective date from publication in the statute book to publication in the *Kansas Register*, and make other technical amendments.

The fiscal note prepared by the Division of the Budget on the original bill indicated the Kansas Dental Board stated that passage of the original bill would have no fiscal effect on operations of the Board.