

Amendments submitted By Daniel T. Doherty, Jr on behalf of MSDA

SENATE BILL 611

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2lr1264

CF 2lr218

By: **Senators Beidle, Elfreth, and Reilly**

Introduced and read first time: February 2, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

State Board of Dental Examiners – ~~Membership~~, Training, and Disciplinary Processes – Revisions

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FOR the purpose of altering provisions of the Dental Practice Act related to ~~nominations and qualifications of members of the State Board of Dental Examiners~~; establishing Board member training requirements; establishing and codifying Board disciplinary processes related to the issuance of final decisions and summary suspensions of licenses; and generally relating to the State Board of Dental Examiners.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–202(a) and (b), 4–205(c), and 4–318
Annotated Code of Maryland
(2021 Replacement Volume)

BY adding to
Article – Health Occupations
Section 4–318.1
Annotated Code of Maryland
(2021 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

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Article – Health Occupations

4–202.

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(a) (1) The Board consists of 16 members.

(2) Of the 16 Board members:

(i) 9 shall be licensed dentists;

1 (ii) 4 shall be licensed dental hygienists; and

2 (iii) 3 shall be consumer members.

3 ~~(3) OF THE 9 LICENSED DENTIST MEMBERS:~~

4 ~~(i) EACH OF THE BUSINESS MODELS USED BY DENTISTS IN THE~~
5 ~~STATE MUST BE REPRESENTED; AND~~

6 ~~(ii) AT LEAST 2 MUST SERVE PATIENTS WHO RECEIVE DENTAL~~
7 ~~SERVICES THROUGH THE MARYLAND MEDICAL ASSISTANCE PROGRAM.~~

8 ~~(4) OF THE 3 CONSUMER MEMBERS, TO THE EXTENT PRACTICABLE, 1 MAY~~
9 ~~BE RECEIVING, OR HAVE RECEIVED, DENTAL CARE THROUGH THE MARYLAND~~
10 ~~MEDICAL ASSISTANCE PROGRAM.~~
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12 ~~{(3)}~~~~(5)~~ (i) Subject to subsection (b)(1) of this section, the Governor shall appoint the dentist
Board members, with the advice of the Secretary and the advice and consent of the Senate,
from a list of names submitted to the Governor by the Board.

15 (ii) The number of names on the list for one vacancy shall be at least four names, for two
vacancies at least three names for each vacancy, and for three or more vacancies at least two
names for each vacancy.

18 ~~{(4)}~~~~(6)~~ (i) Subject to subsection (b)(2) of this section, the Governor shall appoint the dental
hygienist Board members, with the advice of the Secretary and the advice and consent of the
Senate, from a list of names submitted to the Governor by the Board.

22 (ii) The number of names on the list shall be ~~AT LEAST~~ four times the number of vacancies.

24 ~~{(5)}~~~~(7)~~ The Governor shall appoint the consumer members with the
25 advice of the Secretary and the advice and consent of the Senate.

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~~{(6)}~~ ~~(8)~~ To the extent practicable, the members appointed to the Board shall reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.

(b) (1) For each licensed dentist vacancy, the Board shall:

(i) Send by electronic mail or regular mail a solicitation for nominations to fill the vacancy to:

1. Each dentist licensed by the Board; ~~{and}~~
2. Each State dental organization affiliated with a national organization; and

~~3. ANY OTHER PROFESSIONAL DENTAL ORGANIZATION THAT REPRESENTS AT LEAST 25 LICENSED DENTISTS; AND~~

(ii) ~~{Conduct a balloting process by which each dentist licensed by the State is eligible to vote to select} SUBMIT the names of the licensed dentists {to be submitted} FOR WHICH THE BOARD RECEIVES NOMINATIONS UNDER ITEM (I) OF THIS PARAGRAPH~~ to the Governor.

(2) For each licensed dental hygienist vacancy, the Board shall:

(i) Send by electronic mail or regular mail a solicitation for nominations to fill the vacancy to:

1. Each dental hygienist licensed by the Board; ~~{and}~~
2. Each State dental hygienist organization affiliated with a national organization; and

~~3. ANY OTHER DENTAL HYGIENIST ORGANIZATION THAT REPRESENTS AT LEAST 25 LICENSED DENTAL HYGIENISTS; AND~~

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(ii) ~~{Conduct a balloting process by which each dental hygienist licensed by the State is eligible to vote to select} **SUBMIT** the names of the licensed dental hygienists {to be submitted} ~~FOR WHICH THE BOARD RECEIVES NOMINATIONS UNDER ITEM (I) OF THIS PARAGRAPH~~ to the Governor.~~

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~~{(3) The Board shall develop guidelines for the solicitation of nominations and balloting process that to the extent possible will result in the overall composition of the Board reasonably reflecting the geographic, racial, ethnic, and gender diversity of the 25 State.}~~

26 4-205.

27 (c) **(1)** In addition to the duties set forth elsewhere in this title, the Board shall:

29 [(1) **(I)** Keep a record of each license and each action taken under §
30 4-315 of this title;

31 [(2) **(II)** Have an official seal; [and]

2 ~~**(III) BE TRAINED FOR AT LEAST 1 HOUR EACH YEAR AT LEAST 3 HOURS EACH TERM UNDER THE AUSPICES OF THE OFFICE OF THE MARYLAND ATTORNEY GENERAL ON THE POWERS, DUTIES, AND PROCEDURES, INCLUDING COMPLAINT AND HEARING PROCEDURES, OF THE BOARD; AND**~~

4 [(3) **(IV)** Adopt rules, regulations, and bylaws as may be necessary to
5 carry out the provisions of this title.

9 ~~**(2) TO BE DETERMINED TO BE IN COMPLIANCE WITH THE TRAINING 8 REQUIREMENT UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION, THE BOARD SHALL:**~~

12 ~~**(I) SELECT AN ATTORNEY, AFTER CONSULTATION WITH THE MARYLAND STATE BAR ASSOCIATION, WITH THE APPROPRIATE EXPERTISE TO PROVIDE THE TRAINING TO THE BOARD;**~~

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~~(H)~~ **REQUIRE EACH MEMBER OF THE BOARD TO ATTEND THE TRAINING AND RECEIVE DOCUMENTATION OF COMPLETION FROM THE ATTORNEY PROVIDING THE TRAINING; AND**

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~~(H)~~ **(II) INCLUDE A SUMMARY OF THE TRAINING AND ATTENDANCE IN THE BOARD'S ANNUAL REPORT.**

4-318.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 4-315 of this subtitle, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.

22 (b) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

24 (c) In accordance with the State budget, the Board may authorize payment of fees and travel expenses of witnesses who testify in a proceeding under this section.

26 (d) The individual may be represented at the hearing by counsel.

27 (e) The Board may administer oaths and take depositions of witnesses in any proceeding under this section.

29 (f) (1) Over the signature of an officer or the administrator of the Board, the Board may issue subpoenas and administer oaths to witnesses in connection with any investigation under this title and any hearings or proceedings before it.

(2) The Board shall issue subpoenas on behalf of the individual if the individual requests in writing that the Board do so.

3 (3) If, without lawful excuse, a person disobeys a subpoena from the Board or an order by the Board to take an oath or to testify or answer a question, then, on petition of the Board, a court of competent jurisdiction may punish the person as for contempt of court.

7 (4) If, without lawful excuse, an individual disobeys a subpoena from the Board or an order by the Board to take an oath, testify, or answer a question, on petition of the Board, a court of competent jurisdiction may compel compliance with the subpoena.

10 (g) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

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12 (H) (1) EXCEPT AS PROVIDED IN § 4-318.1 OF THIS SUBTITLE, THE BOARD SHALL
ISSUE A FINAL DECISION ON AN ACTION WITHIN 120 DAYS AFTER THE FINAL DAY OF A
HEARING.

14 (2) IF THE BOARD DOES NOT ISSUE A FINAL DECISION WITHIN 120
19 DAYS UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE INDIVIDUAL
WHO IS THE SUBJECT OF THE ACTION MAY PROVIDE WRITTEN NOTICE
TO THE BOARD THAT THE INDIVIDUAL HAS NOT RECEIVED A FINAL
DECISION IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

23 (3) IF, WITHOUT GOOD CAUSE, THE BOARD DOES NOT ISSUE A FINAL
DECISION ON AN ACTION WITHIN 30 DAYS AFTER RECEIVING A WRITTEN
NOTICE UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COURT OF
COMPETENT JURISDICTION MAY ENTER THE FINAL DECISION SHALL BE
IN FAVOR OF THE INDIVIDUAL WHO IS THE SUBJECT OF THE ACTION.

4-318.1.

(A) THE BOARD MAY ORDER THE SUMMARY SUSPENSION OF A LICENSE IF THE
BOARD DETERMINES THERE IS A SUBSTANTIAL LIKELIHOOD THAT A LICENSEE
27 POSES A RISK OF HARM TO THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(B) NOTICE SHALL BE PROVIDED THAT THE LICENSEE, UPON
WRITTEN REQUEST, SHALL BE ENTITLED TO A SHOW CAUSE
HEARING 30 DAYS OF THE BOARD'S RECEIPT OF A REQUEST TO
SHOW CAUSE WHY THE LICENSEE'S LICENSE SHOULD NOT BE
SUSPENDED~~(1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,~~
~~BASED ON INFORMATION GATHERED DURING AN INVESTIGATION OR OTHERWISE~~
~~PROVIDED TO THE BOARD, THE BOARD SHALL ISSUE A NOTICE OF INTENT TO~~
~~SUMMARILY SUSPEND A LICENSE BEFORE EXECUTING AN ORDER OF SUMMARY~~
~~SUSPENSION THAT INCLUDES:~~

32 (1) ~~A PROPOSED ORDER OF SUMMARY SUSPENSION, THAT IS~~
33 ~~UNEXECUTED AND INCLUDES:~~

1. ~~THE STATUTORY AUTHORITY FOR THE PROPOSED~~
ACTION;

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3 ~~2. THE FACTUAL ALLEGATIONS ON WHICH THE BOARD~~
4 ~~HAS BASED ITS DETERMINATION THAT THERE IS A~~
5 ~~SUBSTANTIAL LIKELIHOOD THAT THE LICENSEE POSES A~~
6 ~~RISK OF HARM TO THE PUBLIC HEALTH, SAFETY, OR~~
7 ~~WELFARE; AND~~

7 ~~3. NOTICE TO THE LICENSEE OF THE RIGHT TO~~
8 ~~REQUEST A FULL HEARING ON THE MERITS OF THE~~
9 ~~SUMMARY SUSPENSION IF THE BOARD EXECUTES THE~~
10 ~~PROPOSED ORDER OF SUMMARY SUSPENSION; AND~~

12 ~~(II) AN ORDER OR A SUMMONS TO APPEAR BEFORE THE BOARD TO SHOW~~
13 ~~CAUSE WHY THE BOARD SHOULD NOT EXECUTE THE ORDER OF SUMMARY~~
14 ~~SUSPENSION THAT PROVIDES NOTICE TO THE LICENSEE OF THE~~
15 ~~CONSEQUENCES OF FAILING TO APPEAR.~~

18 ~~(2) IF THE BOARD ISSUES A NOTICE OF INTENT TO SUMMARILY SUSPEND~~
19 ~~A LICENSE, THE BOARD SHALL OFFER THE RESPONDENT THE~~
20 ~~OPPORTUNITY TO APPEAR BEFORE THE BOARD TO SHOW CAUSE AS TO~~
21 ~~WHY THE RESPONDENT'S LICENSE SHOULD NOT BE SUSPENDED~~
22 ~~BEFORE THE BOARD EXECUTES THE ORDER OF SUMMARY SUSPENSION.~~

23 ~~(3) THE BOARD MAY ORDER THE SUMMARY SUSPENSION OF A~~
24 ~~LICENSE WITHOUT FIRST ISSUING A NOTICE OF INTENT TO~~
25 ~~SUMMARILY SUSPEND A LICENSE OR PROVIDING A LICENSEE~~
26 ~~WITH AN OPPORTUNITY FOR A PRE-DEPRIVATION HEARING IF:~~

27 ~~(i) THE BOARD DETERMINES THAT THE PUBLIC HEALTH,~~
28 ~~SAFETY, AND WELFARE REQUIRE THE IMMEDIATE SUSPENSION OF~~
29 ~~THE LICENSE WITHOUT PRIOR NOTICE AND AN OPPORTUNITY TO~~
30 ~~BE HEARD; AND~~

31 ~~(II) THE LICENSEE IS PROVIDED WITH AN OPPORTUNITY FOR A HEARING~~
32 ~~BEFORE THE BOARD AT THE BOARD'S NEXT REGULARLY SCHEDULED~~
33 ~~MEETING BUT NOT TO EXCEED 30 DAYS FROM THE DATE OF THE LICENSEE'S~~
34 ~~REQUEST.~~

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30 (C) THE BOARD SHALL ISSUE A FINAL DECISION ON A SUMMARY
31 SUSPENSION WITHIN 60 DAYS AFTER THE FINAL DAY OF AN EVIDENTIARY
HEARING. HELD UNDER § 4-318 OF THIS SUBTITLE, IF APPLICABLE. THE
EVIDENTIARY SHOW CAUSE HEARING.

32 ~~(D) (1) IF THE BOARD ISSUES A NOTICE OF INTENT TO SUMMARILY~~ 34
SUSPEND A LICENSE BEFORE SUMMARILY SUSPENDING A LICENSE, AFTER THE
SHOW CAUSE HEARING UNDER SUBSECTION (B)(2) OF THIS SECTION, THE
BOARD MAY VOTE TO:

3 (I) ORDER A SUMMARY SUSPENSION;

4 (II) DENY THE SUMMARY SUSPENSION;

5 (III) ENTER INTO AN ORDER AGREED ON BY THE PARTIES; OR

8 (IV) ENTER INTO ANY INTERIM ORDER WARRANTED BY THE CIRCUMSTANCES OF
THE CASE, INCLUDING AN ORDER TO STAY THE SUMMARY SUSPENSION SUBJECT TO
SPECIFIED CONDITIONS.

9 (2) IF THE BOARD ORDERS A SUMMARY SUSPENSION BEFORE A SHOW 10 CAUSE
HEARING UNDER SUBSECTION (B)(2) OF THIS SECTION, AT THE CONCLUSION
11 OF A SUBSEQUENT HEARING, THE BOARD MAY VOTE TO:

12 (I) AFFIRM ITS ORDER OF SUMMARY SUSPENSION;

13 (II) RESCIND THE ORDER FOR SUMMARY SUSPENSION;

14 (III) ENTER INTO AN ORDER AGREED ON BY THE PARTIES; OR

17 (IV) ENTER INTO ANY INTERIM ORDER WARRANTED BY THE 16 CIRCUMSTANCES OF
THE CASE, INCLUDING AN ORDER TO STAY THE SUMMARY SUSPENSION SUBJECT TO
SPECIFIED CONDITIONS.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 19 October
1, 2022.