

Regular Session, 2014

SENATE BILL NO. 167

BY SENATOR MARTINY

DENTISTRY. Provides relative to the Board of Dentistry. (gov sig)

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AN ACT

To amend and reenact R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14) and to enact R.S. 37:780(B)(5), relative to the Louisiana State Board of Dentistry; to provide for definitions; to provide for dental advertisements; to provide relative to unprofessional conduct; to provide for fines; to provide for terms, procedures, and conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14) are hereby amended and reenacted and R.S. 37:780(B)(5) is hereby enacted to read as follows:

§751. Definitions; licensure; presumption; short title

A. As used in this Chapter:

(1) "Advertisement" and "advertising" means any statement, oral or written, requested and approved by a licensed dentist, disseminated to or displayed before the public or any portion thereof with the intent of selling professional dental services, offering to perform professional dental services, or inducing members of the public to enter into any obligation relating to such professional dental services. This shall apply to an approved statement of any

1 nature regardless of whether it is in the form of paid advertising. In addition,
2 listing, identifying, or grouping of dentists by an insurance company on a
3 website or by any other means of disseminating information involving a dentist
4 participating with an insurance company and an associated affiliate, including
5 but not limited to a third party payor including, without limitation, a dental
6 health maintenance organization, a dental preferred provider organization,
7 Medicaid, or a dental discount entity, shall not be deemed an advertisement or
8 advertising by the dentist. For the purposes of this Chapter, neither the
9 insurance company nor the associated affiliate shall be deemed a referral
10 company and a listed dentist shall not be considered to be advertising through
11 a referral service by participating with such company or affiliate.

12 (2) "Another state" means each of the several states, other than Louisiana,
13 and includes the District of Columbia, and the Commonwealth of Puerto Rico and
14 the Virgin Islands.

15 ~~(2)~~(3) "Board" means the Louisiana State Board of Dentistry.

16 ~~(3)~~(4) "Dental assistant" means a person who is employed by a licensed
17 practicing dentist and performs the duties authorized by the Louisiana State Board
18 of Dentistry only under his direct on-premises supervision, direction, and
19 responsibility.

20 ~~(4)~~(5) "Dental hygienist" means a person licensed under the provision of this
21 Chapter to perform those duties authorized by the Louisiana State Board of Dentistry
22 as set forth in rules and regulations promulgated by the board in accordance with the
23 Administrative Procedure Act.

24 ~~(5)~~(6) "Dentistry" means the evaluation, diagnosis, prevention, or treatment,
25 including nonsurgical, surgical, or related procedures, of diseases, disorders, or
26 conditions of the oral cavity, maxillofacial areas or the adjacent and associated
27 structures and their impact on the human body provided by a dentist within the scope
28 of his education, training, and experience, in accordance with the ethics of the
29 profession and applicable law.

1 ~~(6)~~(7) "Expanded duty dental assistant" means a person who is employed by
2 a licensed practicing dentist and has passed an expanded function for dental
3 assistants course approved by the Louisiana State Board of Dentistry that shall not
4 consist of less than thirty classroom hours, or who has graduated from a dental
5 assisting program accredited by the Commission on Dental Accreditation of the
6 American Dental Association provided the program teaches functions as provided
7 for in LAC 46:XXXIII.502 and .503. An expanded duty dental assistant may perform
8 any functions authorized by the Louisiana State Board of Dentistry for an expanded
9 duty dental assistant under the direct, on-premises supervision, direction, and
10 responsibility of the dentist.

11 ~~(7)~~(8) "Licensure by credentials" means issuing of a license using a
12 performance record in place of examinations to evaluate theoretical knowledge and
13 clinical skill when an applicant for licensure has been awarded a D.D.S. or D.M.D.
14 degree from a dental school accredited by the Commission on Dental Accreditation
15 of the American Dental Association and holds a dental license or has received a
16 degree or certificate in a dental hygiene education program accredited by the
17 Commission on Dental Accreditation of the American Dental Association and holds
18 a dental hygiene license.

19 ~~(8)~~(9) "Reciprocity" means formal reciprocal agreement between two state
20 boards under which a dentist licensed in one state may apply for and receive a
21 license in another state without examination and without fulfilling any other
22 requirements except the usual state license fees.

23 ~~(9)~~(10) "Reputable dental school" means one that is recognized as such by
24 the Louisiana State Board of Dentistry according to its rules and regulations.

25 ~~(10)~~(11) "Unlicensed person" means a person who is not licensed by the
26 board who illegally practices dentistry or dental hygiene.

27 * * *

28 §775. Unprofessional conduct defined

29 A. As used in this Chapter, "unprofessional conduct" means:

1 * * *

2 (2) Not including in advertisements the name which appears on the license
 3 or renewal certificate of the dentist, **the dentist's commonly used name**, or **the**
 4 **name** which is authorized under Chapter 11 of Title 12 of the Louisiana Revised
 5 Statutes of 1950, as amended, relative to professional dental corporations or the use
 6 in advertisements of any name other than that which appears on the license or
 7 renewal certificate of the dentist, **the dentist's commonly used name**, or **the name**
 8 which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes
 9 of 1950, as amended, relative to professional dental corporations.

10 * * *

11 (9)(a) Advertising of dental services in any medium ~~which has not been~~
 12 ~~approved by the licensed dentist and~~ which does not contain the dentist's full name
 13 **as it appears on the license or renewal certificate issued by the board or the**
 14 **dentist's commonly used name**, address, and telephone number.

15 **(b) Intentionally releasing inaccurate or misleading information by a**
 16 **dentist to any source that promotes dissemination of inaccurate or misleading**
 17 **information about the dentist by, from, or through such source and failing to**
 18 **take immediate steps to request the correction of the inaccurate or misleading**
 19 **information that has been released by the source pursuant to its relationship**
 20 **with the dentist. For the purposes of this Subparagraph, "source" includes but**
 21 **is not limited to an insurance company, dental health maintenance organization,**
 22 **a dental preferred provider organization, Medicaid, dental discount company,**
 23 **or any other thirty party.**

24 **(c) Engaging or hiring an advertising agency or any other agency or**
 25 **person to prepare material to promote the dentist's professional dental services,**
 26 **and thereafter failing to review and approve the material before publication or**
 27 **release, unless the dentist can show the failure to review and approve the**
 28 **material was caused by the failure of the agency or person and not his own.**

29 * * *

1 B.(1) Notwithstanding any provision of this Section, when it is required by
2 this Section that an advertisement include the name of the advertising dentist, either
3 as it appears on the license or renewal certificate of the dentist or the dentist's
4 commonly used name, or the specialties of all dentists practicing within or under
5 the name of a corporation, company, association, limited liability company, or trade
6 name be disclosed in the advertisement, and address and telephone number of the
7 dentist, such ~~requirement~~ requirements shall be deemed to be sufficiently satisfied
8 if the names and specialties of all dentists practicing in, with or under the said
9 corporation, company, association, limited liability company, or trade name and the
10 address and the telephone number are made available on an Internet website fully
11 disclosed in the advertisement, or are provided without delay to any individual
12 requesting such information by contacting the advertiser at a telephone number also
13 disclosed in the advertisement. ~~Whether the advertisement is run by the corporation,~~
14 ~~company, association, limited liability company, or trade name, or any individual~~
15 ~~member practicing therein, all dentists practicing in, with or under the corporation,~~
16 ~~company, association, limited liability company, or trade name shall be responsible~~
17 ~~for the content of the advertisement.~~ Whenever any advertisement is run by or
18 on behalf of a corporation, company, association, limited liability company, or
19 trade name, all dentists practicing in, with or under the corporation, company,
20 association, limited liability company, or trade name shall be responsible for the
21 content of the advertisement unless an individual dentist practicing in, with or
22 under the corporation, company, association, limited liability company, or trade
23 name, advises the board in writing prior to the time the board takes any action
24 regarding the advertisement that he assumes sole responsibility for the
25 advertisement. If an individual dentist assumes sole responsibility for the
26 advertisement pursuant to the provisions of this Paragraph, no other dentist
27 shall be responsible for such advertisement.

28 (2) Whenever the board determines that an advertisement constitutes
29 unprofessional conduct under R.S. 37:775(A)(3), (4), or (5), before taking any

1 further action, the board shall notify the advertising dentist by mail of its
 2 determination and the specific portion of the advertisement that constitutes
 3 unprofessional conduct. The dentist shall have thirty days from the date of
 4 receipt of the notice by the dentist to correct the portions of the advertisement
 5 in violation and submit to the board proof of such correction. If the
 6 advertisement is corrected to remove the violation within thirty days, the board
 7 shall take no further action against the advertising dentist for unprofessional
 8 conduct with regard to such advertisement. In the event an advertisement
 9 cannot be corrected within the thirty days, it shall be deemed sufficient if the
 10 dentist submits proof to the board within thirty days that he has directed that
 11 the correction be made at the next publication date. Pursuant to the provisions
 12 of this Paragraph, a dentist shall have this right to correct an advertisement
 13 deemed by the board to be unprofessional conduct under R.S. 37:775(A)(3), (4),
 14 or (5) only the first two times notified of such violation; there shall be no right
 15 to correct a third or any subsequent violation, whether for the same
 16 advertisement or for subsequent advertisements. If an advertisement is run by
 17 or on behalf of a corporation, company, association, limited liability company,
 18 or trade name, the aforementioned right to correct shall be limited to two times,
 19 regardless of the number of dentists in or associated with the corporation,
 20 association, limited liability company, or trade name.

21 §776. Causes for nonissuance, suspension, revocation, or imposition of restrictions
 22 of dental hygienist license

23 A. The board may refuse to issue or may suspend or revoke any license or
 24 permit or impose probationary or other limits or restrictions on any dental license or
 25 permit issued under this Chapter for any of the following reasons:

26 * * *

27 (14) Practicing under any name other than that which appears on the license
 28 or renewal certificate, the dentist's commonly used name, or the name which is
 29 authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950,

1 relating to professional dental corporations.

2 * * *

3 §780. Hearing; notice; penalty; interest

4 * * *

5 B. * * *

6 **(5) Regardless of medium, each advertisement found by the committee**
7 **to be in violation of the provisions of this Chapter shall be considered a single**
8 **violation, regardless of the actual number of violations occurring in the**
9 **advertisement or the number of dentists included in the advertisement.**
10 **Notwithstanding any other provision of this Section, any fine imposed pursuant**
11 **to this Section for an advertising violation shall be not less than five hundred**
12 **dollars nor more than five thousand dollars for the first offense, and the**
13 **maximum allowable amount of such fine shall increase incrementally by five**
14 **thousand dollars for each subsequent offense.**

15 * * *

16 Section 2. This Act shall become effective upon signature by the governor or, if not
17 signed by the governor, upon expiration of the time for bills to become law without signature
18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
20 effective on the day following such approval.

The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Ducharme.

DIGEST

Martiny (SB 167)

Proposed law defines "advertisement" and "advertising" to mean any statement, oral or written, requested and approved by a licensed dentist, disseminated to or displayed before the public or any portion thereof with the intent of selling professional dental services, offering to perform professional dental services, or inducing members of the public to enter into any obligation relating to such professional dental services. This shall apply to an approved statement of any nature regardless of whether it is in the form of paid advertising. In addition, listing, identifying, or grouping of dentists by an insurance company on a website or by any other means of disseminating information involving a dentist participating with an insurance company and an associated affiliate shall not be deemed an advertisement or advertising by the dentist. Neither the insurance company nor the associated affiliate shall

be deemed a referral company and a listed dentist shall not be considered to be advertising through a referral service by participating with such company or affiliate.

Present law defines "unprofessional conduct" to include not including in advertisements the name which appears on the license or renewal certificate of the dentist or which is authorized by law, relative to professional dental corporations or the use in advertisements of any name other than that which appears on the license or renewal certificate of the dentist or which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950, as amended, relative to professional dental corporations.

Proposed law retains present law and provides that not including the dentist's commonly used name may constitute unprofessional conduct.

Present law further defines "unprofessional conduct" to mean advertising of dental services in any medium which has not been approved by the licensed dentist and which does not contain the dentist's full name, address, and telephone number.

Proposed law amends present law to define "unprofessional conduct" to mean advertising of dental services in any medium that does not contain the dentist's full name as it appears on the license or renewal certificate issued by the board or the dentist's commonly used name, address, and telephone number.

Proposed law adds that "unprofessional conduct" shall mean:

- (1) Intentionally releasing inaccurate or misleading information by a dentist to any source that promotes dissemination of inaccurate or misleading information about the dentist by, from, or through such source and failing to take immediate steps to request the correction of the inaccurate or misleading information that has been released by the source pursuant to its relationship with the dentist.
- (2) Engaging or hiring an advertising agency or any other agency or person to prepare material to promote the dentist's professional dental services, and thereafter failing to review and approve the material before publication or release, unless the dentist can show the failure to review and approve the material was caused by the failure of the agency or person and not his own.

Present law provides when it is required that an advertisement include the name of the advertising dentist as it appears on the license or renewal certificate of the dentist or the specialties of all dentists practicing within or under the name of a corporation, company, association, limited liability company, or trade name be disclosed in the advertisement, such requirement shall be deemed to be sufficiently satisfied if the names and specialties of all dentists practicing in, with or under the said corporation, company, association, limited liability company, or trade name are made available on an Internet website fully disclosed in the advertisement, or are provided without delay to any individual requesting such information by contacting the advertiser at a telephone number also disclosed in the advertisement.

Proposed law amends present law to provide when it is required that an advertisement include the name of the advertising dentist, either as it appears on the license or renewal certificate of the dentist or the dentist's commonly used name, or the specialties of all dentists practicing within or under the name of a corporation, company, association, limited liability company, or trade name be disclosed in the advertisement, and address and telephone number of the dentist, such requirement shall be deemed to be sufficiently satisfied if the names and specialties of all dentists practicing in, with or under the said corporation, company, association, limited liability company, or trade name and the address and the telephone number are made available on an Internet website fully disclosed in the advertisement, or are provided without delay to any individual requesting such information by contacting the advertiser at a telephone number also disclosed in the advertisement.

Present law provides that whether the advertisement is run by the corporation, company, association, limited liability company, or trade name, or any individual member practicing therein, all dentists practicing in, with or under the corporation, company, association, limited liability company, or trade name shall be responsible for the content of the advertisement.

Proposed law removes present law and provides that whenever any advertisement is run by or on behalf of a corporation, company, association, limited liability company, or trade name, all dentists practicing in, with or under the corporation, company, association, limited liability company, or trade name shall be responsible for the content of the advertisement unless an individual dentist practicing in, with or under the corporation, company, association, limited liability company, or trade name, advises the board in writing prior to the time the board takes any action regarding the advertisement that he assumes sole responsibility for the advertisement. If an individual dentist assumes sole responsibility for the advertisement, no other dentist shall be responsible for such advertisement.

Proposed law provides that whenever the board determines that an advertisement constitutes a violation of certain provisions of law, before taking any further action, the board shall notify the advertising dentist by mail of its determination and the specific portion of the advertisement that constitutes a violation. The dentist shall have 30 days from the date of receipt of the notice by the dentist to correct the portions of the advertisement in violation and submit to the board proof of such correction. If the advertisement is corrected to remove the violation within 30 days, the board shall take no further action against the advertising dentist for unprofessional conduct with regard to such advertisement. In the event an advertisement cannot be corrected within the 30 days, it shall be deemed sufficient if the dentist submits proof to the board within 30 days that he has directed that the correction be made at the next publication date.

Proposed law further provides that a dentist shall have this right to correct an advertisement deemed by the board to be in violation of certain provisions of law only the first two times notified of such violation; there shall be no right to correct a third or any subsequent violation, whether for the same advertisement or for subsequent advertisements. If an advertisement is run by or on behalf of a corporation, company, association, limited liability company, or trade name, the aforementioned right to correct shall be limited to two times, regardless of the number of dentists in or associated with the corporation, association, limited liability company, or trade name.

Present law provides for penalties.

Proposed law provides that each advertisement found by the committee to be in violation of law shall be considered a single violation, regardless of the actual number of violations occurring in the advertisement or the number of dentists included in the advertisement.

Proposed law further provides that any fine imposed for an advertising violation shall be not less than \$500 nor more than \$5,000 for the first offense, and the maximum allowable amount of such fine shall increase incrementally by \$5,000 for each subsequent offense.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:751(A), 775(A)(2) and (9) and (B), and 776(A)(14); adds R.S. 37:780(B)(5))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Revises the definition of "advertisement".

2. Revises the definition of "unprofessional conduct".
3. Provides fines for advertisement violations.
4. Provides for the procedures relative to advertisement violations.