

1 HB272
2 148360-1
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 14-FEB-13

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SYNOPSIS: Under existing law, the State Board of Dental Examiners is the entity responsible for licensing and regulating dentists and dental hygienists in the state.

This bill would authorize the board to charge and collect an Impaired Dental Professionals Committee annual monitoring fee.

This bill would provide further for run-off elections.

This bill would authorize the president of the board to designate any member of the board to issue subpoenas.

This bill would also provide that depositions taken in matters pending before the circuit court be returnable directly to the board office in lieu of returning them to the circuit clerk.

A BILL
TO BE ENTITLED

1 AN ACT

2
3 To amend Sections 34-9-16, 34-9-40, 34-9-46,
4 34-9-47, and 34-38-2, Code of Alabama 1975, relating to the
5 State Board of Dental Examiners and the Alabama Impaired
6 Professionals Committee; to authorize the board to charge and
7 collect an Impaired Dental Professionals Committee annual
8 monitoring fee; to provide further for run-off elections; to
9 authorize the president of the board to designate any member
10 of the board to issue subpoenas; and to provide that
11 depositions taken in matters pending before the circuit court
12 be returnable directly to the board office.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 34-9-16, 34-9-40, 34-9-46,
15 34-9-47, and 34-38-2 of the Code of Alabama 1975, are amended
16 to read as follows:

17 "§34-9-16.

18 "The board shall establish and collect reasonable
19 fees provided for in this chapter within the ranges set forth
20 below and without having to engage in the rulemaking process:

21 "Description	Not More Than
22 "Dental Examination Applica-	
23 tion Fee	\$750.00
24 "Dental Examination Fee	\$2,500.00
25 "Dental Examination Materials	\$500.00

1	Fee	
2	"Dental Licensure by Creden-	
3	tials Application Fee	\$4,000.00
4	"Dental Licensure by Regional	
5	Exam Application Fee	\$1,000.00
6	"Special Purpose Licensure Fee	\$750.00
7	"Special Purpose Licensure Re-	
8	newal Fee	\$750.00
9	"Dental Annual Registration	
10	Fee	\$500.00
11	"Dental License Reinstatement	
12	Penalty	\$500.00
13	"Dental Hygiene Program Appli-	
14	cation Fee	\$500.00
15	"Alabama Dental Hygiene Train-	
16	ing Permit Fee	\$450.00
17	"Alabama Dental Hygiene Train-	
18	ing Education Fee	\$600.00
19	"Alabama Dental Hygiene Pro-	
20	gram Instructor Certification	
21	Course Fee	\$200.00
22	"Alabama Dental Hygiene Pro-	
23	gram Instructional Materials	
24	Fee	\$950.00

1	"Dental Hygiene By Regional	
2	Exam Application Fee	\$75.00
3	"Dental Hygiene Examination	
4	Application Fee	\$500.00
5	"Dental Hygiene Examination	
6	Fee	\$600.00
7	"Dental Hygiene Examination	
8	Materials Fee	\$400.00
9	"Dental Hygiene Licensure by	
10	Credentials Fee	\$2,000.00
11	"Dental Hygiene Annual Regis-	
12	tration Fee	\$75.00
13	"Dental Hygiene License Rein-	
14	statement Penalty	\$200.00
15	"License Certificate Fee	\$500.00
16	"Duplicate or Replacement Li-	
17	cence Fee	\$150.00
18	"Dental Faculty Teaching Per-	
19	mit Fee	\$350.00
20	"Dental Faculty Special Teach-	
21	ing Permit Fee	\$500.00
22	"Alabama Controlled Substance	
23	Permit Fee	\$400.00
24	"Alabama Controlled Substance	\$400.00

1	Permit Renewal Fee	
2	"General Anesthesia Permit Fee	\$1,500.00
3	"General Anesthesia Permit Re-	
4	newal Fee	\$750.00
5	"Parenteral Sedation Permit	
6	Fee	\$1,500.00
7	"Parenteral Sedation Permit	
8	Renewal Fee	\$750.00
9	"Oral Conscious Sedation Per-	
10	mit Fee	\$250.00
11	"Oral Conscious Sedation Per-	
12	mit Renewal Fee	\$250.00
13	"Mobile Dental Applica-	
14	tion/Inspection Fee	\$1,500.00
15	"Mobile Dental Renewal Fee	\$1,500.00
16	"Mobile Dental Facil-	
17	ity/Portable Dental Operation	
18	Application for Certificate of	
19	Registration Fee	\$750.00
20	"Mobile Dental Facil-	
21	ity/Portable Dental Operation	
22	Renewal of Certificate of Reg-	
23	istration Fee	\$500.00
24	<u>"Alabama Impaired Dental Pro-</u>	<u>\$2,000.00</u>

1 professionals Committee Annual
2 Monitoring Fee

3 "§34-9-40.

4 "(a) In order to accomplish the purposes and to
5 provide for the enforcement of this chapter, there is hereby
6 created the Board of Dental Examiners of Alabama. The board is
7 hereby vested with the authority to carry out the purposes and
8 enforce the provisions of this chapter. On June 24, 1959, the
9 members of the present board now in existence shall hold
10 office for the remainder of their respective terms for which
11 they have been elected and thereafter until their successors
12 are elected and qualified and shall constitute the board under
13 this chapter. The board shall consist of six dentists who
14 shall be selected in the method set forth herein all of whom
15 having been actively engaged in the practice of dentistry in
16 the State of Alabama for at least five years next preceding
17 the date of their election and one dental hygienist elected
18 at-large as provided in subsection (b). Each member of the
19 board shall be a citizen of this state. No member of the board
20 shall be a member of the faculty of any dental school, dental
21 college, dental hygiene school, or dental hygiene college or
22 receive any financial benefits for teaching in any dental
23 school, dental college, dental hygiene school, or dental
24 hygiene college or have a financial interest in a commercial
25 dental laboratory or a dental supply business. One member, who

1 is qualified as provided herein, shall be selected by the
2 Alabama Dental Society every five years. As for all elections
3 of members, any group of 10 or more licensed dentists,
4 residing and practicing dentistry in the state, may nominate a
5 candidate for the position of board member by submitting a
6 petition bearing their signatures to the secretary of the
7 board to be postmarked no later than the first day of July in
8 the year of the election. The board shall cause the election
9 ballots to be mailed or published digitally not later than
10 September 1 in the year of the election to all the licensed
11 dentists residing and practicing in the state and currently
12 registered as prescribed by law, along with the annual
13 registration form for the forthcoming fiscal year. Both the
14 annual registration form and fee must accompany the ballot
15 that shall be postmarked, or otherwise submitted
16 electronically, no later than October 1 to the secretary of
17 the board no later than the first board workday following
18 October 1 each year, ballots being nullified unless
19 accompanied by or electronically filed with completed annual
20 registration form and annual registration fee. Three members
21 of the board shall be present at the time the ballots, digital
22 or physical, are tallied. Any candidate receiving a majority
23 of the votes shall be declared elected to the board and will
24 take the oath of office on or before October 15 in the year of
25 his or her election. In the event no candidate receives a
26 majority of the votes cast, the board shall conduct a run-off
27 election between the two candidates receiving the largest

1 number of votes. The board shall cause the ballots pertaining
2 to the run-off election to be mailed or digitally published on
3 or before October 31 of the election year to all the licensed
4 dentists who have renewed their licenses for the succeeding
5 year as of October 1 of the current year, are residing and
6 practicing in the state, and are currently registered as
7 prescribed by law, and the ballots pertaining to the run-off
8 election shall be postmarked or digitally published no later
9 than the fourteenth day of November in the year of the run-off
10 election and received, if mailed, by the secretary of the
11 board no later than the first board workday following the
12 fourteenth day of November. All mailed ballots received after
13 this date shall be nullified. In the event of a run-off
14 election, the candidate receiving the largest number of votes
15 in the run-off election shall be declared elected to the board
16 and shall take the oath of office and begin his or her term of
17 office no later than the next scheduled board meeting. Every
18 member elected shall hold office for a period of five years,
19 which terms shall begin immediately upon taking an oath to
20 properly and faithfully discharge the duties of his or her
21 office and until his or her successor is elected and
22 qualified, and the member so elected shall not at the
23 expiration of the term be eligible to succeed himself or
24 herself. The membership of the board shall be inclusive and
25 reflect the racial, gender, geographic, urban/rural, and
26 economic diversity of the state. Except for the board member
27 position selected by the Alabama Dental Society, vacancies on

1 the board shall be filled by the board by the appointment of
2 the immediate past member of the board, and if for any reason
3 the immediate past member of the board is unable to accept the
4 appointment, then the board shall fill the vacancy by
5 appointment of the most recent past board member who is
6 willing to accept the appointment. If no past board member
7 accepts the appointment, then the board may, by majority vote,
8 appoint any licensed dentist qualified under the provisions of
9 this chapter. In the event of a vacancy in the position
10 selected by the Alabama Dental Society, the Alabama Dental
11 Society shall select a dentist who is qualified as provided
12 herein to fill the vacancy. Members of the board shall be
13 removed by a two-thirds vote of the registered dentists in the
14 state for neglect of duty or any just cause, by petition to
15 the secretary of the board by 10 percent of the licensed
16 dentists in the state. On or before July 1, 1962, the board
17 shall send a copy of this section to all licensed dentists in
18 the state.

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

1 dental hygiene school, or dental hygiene college or have a
2 financial interest in a commercial dental laboratory or dental
3 supply business while serving on the board.

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

6 "a. Any group of 10 or more licensed dental
7 hygienists, residing and practicing dental hygiene in the
8 State of Alabama, may nominate a candidate for the dental
9 hygienist position by submitting a petition bearing their
10 signatures to the secretary of the board no later than the
11 first day of July in the year of an election. The board shall
12 cause election ballots to be mailed or published digitally no
13 later than September 1 in the year of an election to all the
14 licensed dental hygienists residing and practicing in the
15 state and currently registered as prescribed by law. Both the
16 annual registration form and the registration fee must
17 accompany the ballot that shall be postmarked or otherwise
18 submitted electronically no later than October 1 to the
19 secretary of the board no later than the first board workday
20 following October 1 each year, and the ballots will be
21 nullified unless accompanied by or electronically filed with a
22 completed annual registration form and the annual registration
23 fee.

24 "b. Three members of the board shall be present at
25 the time the ballots, digital or physical, are tallied. Any
26 candidate receiving a majority of the votes shall be declared
27 elected to the board and shall take the oath of office on or

1 before October 15 in the year of his or her election. In the
2 event no candidate receives a majority of the votes cast, the
3 board shall conduct a run-off election between the two
4 candidates receiving the largest number of votes. The board
5 shall cause the ballots pertaining to any run-off election to
6 be mailed or digitally published on or before October 31 of
7 the election year to all licensed dental hygienists who have
8 renewed their licenses for the succeeding year as of October 1
9 of the current year, are residing and practicing in the state,
10 and are currently registered as prescribed by law, and the
11 ballots pertaining to the run-off election shall be postmarked
12 or digitally submitted no later than the fourteenth day of
13 November in the year of the run-off election and received, if
14 mailed, by the secretary of the board no later than the first
15 board workday following November 14. All mailed ballots
16 received after November 14 shall be nullified. In the event of
17 a run-off election, the dental hygienist candidate receiving
18 the largest number of votes in the run-off election shall be
19 declared elected to the board and shall take the oath of
20 office and begin his or her term of office no later than the
21 next scheduled board meeting.

22 "c. All elections as described above shall be
23 conducted by the board.

24 "(3) The dental hygienist member shall be removed by
25 a two-thirds vote of the registered dental hygienists in the
26 state for neglect of duty or any just cause by petition to the

1 secretary of the board by 10 percent of the licensed dental
2 hygienists in the state.

3 "(4) The dental hygienist member shall hold that
4 position for a period of five years, which term shall begin
5 immediately upon taking an oath to properly and faithfully
6 discharge the duties of his or her office and continue until
7 his or her successor is elected and qualified, and the member
8 so elected shall not at the expiration of the term be eligible
9 to succeed himself or herself. If a vacancy occurs in the
10 position of dental hygienist, the unexpired term shall be
11 filled by the board by the appointment of the immediate past
12 dental hygienist member. If for any reason the immediate past
13 dental hygienist member is unable to accept the appointment,
14 then the board shall fill the vacancy by a majority vote of
15 the other board members by the appointment of some other past
16 dental hygienist member. If a vacancy occurs and there is not
17 an immediate past dental hygienist member or other past dental
18 hygienist member, the vacancy shall be filled by a unanimous
19 vote of the board by the appointment of some otherwise
20 qualified dental hygienist.

21 "(5) The dental hygienist member shall advise the
22 board on matters relating to dental hygiene and shall only be
23 permitted to vote on matters relating to dental hygiene. The
24 board shall provide the dental hygienist member with timely
25 notice of all board meetings and the dental hygienist member
26 shall be allowed to attend all meetings unless prohibited by
27 law from attendance at any disciplinary hearings. The board

1 shall not adopt any rule relating to the practice of dental
2 hygiene unless the proposed rule has been submitted to the
3 dental hygienist member for review and comment at least 30
4 days prior to its adoption. The dental hygienist member shall
5 be entitled to the same compensation and expenses paid to
6 dentist members of the board pursuant to Section 34-9-41.

7 "(c) Any dentist or dental hygienist who has been
8 found guilty of violating this chapter or any provision of a
9 dental practice act of any other state and as a result his or
10 her license was revoked, suspended, or placed on probation or
11 who has been convicted of a felony, shall not be eligible for
12 election or membership on the board for a period of five years
13 from the termination of any such revocation, suspension, or
14 probation.

15 "§34-9-46.

16 "In all matters pending before it, the board shall
17 have the power to issue subpoenas and compel the attendance of
18 witnesses and the production of all necessary papers, books,
19 and records, documentary evidence and materials or other
20 evidence. Any person failing or refusing to appear or testify
21 regarding any matter about which he or she may be lawfully
22 questioned or to produce any papers, books, records,
23 documentary evidence, or materials or other evidence in the
24 matter to be heard, after having been required by order of the
25 board or by a subpoena of the board to do so, may, upon
26 application by the board to any circuit judge of the State of
27 Alabama, be ordered to comply therewith; and, upon failure to

1 comply with the order of the circuit judge, the court may
2 compel obedience by attachment as for contempt as in case of
3 disobedience of a similar order or subpoena issued by the
4 court. The president ~~and secretary-treasurer of the board~~
5 shall have authority to issue subpoenas, in a writing filed
6 with the board, may designate and authorize any member of the
7 board to issue subpoenas, and any board member shall have
8 authority to administer oaths to witnesses, or to take their
9 affirmation. A subpoena or other process of paper may be
10 served upon any person named therein, anywhere within the
11 State of Alabama with the same fees and mileage by any officer
12 authorized to serve subpoenas or such other process or paper
13 in civil actions, in the same manner as is prescribed by law
14 for subpoenas issued out of the circuit courts of this state,
15 the fees and mileage and other costs to be paid as the board
16 directs.

17 "§34-9-47.

18 "Depositions may be taken within or without the
19 State of Alabama in the manner provided for by the laws of
20 Alabama and the Alabama Rules of Civil Procedure for the
21 taking of depositions in matters pending in the circuit courts
22 of this state. The depositions shall be returnable to the
23 ~~clerk of the circuit court of the county wherein the hearing~~
24 ~~before the board is pending, and the clerk shall deliver the~~
25 ~~depositions to the board upon request~~ board office, and the
26 depositions may be opened or used by the parties to the
27 proceedings the same as is provided for in matters pending

1 before the circuit courts. ~~The circuit court shall, upon~~
2 ~~request of any interested party in any proceedings before the~~
3 ~~state board, issue commissions for the taking of depositions~~
4 ~~in the same manner as is provided for the issuance of~~
5 ~~commissions for the taking of depositions in matters pending~~
6 ~~before the circuit courts of this state.~~

7 "§34-38-2.

8 "It shall be the duty and obligation of the State
9 Board of Dental Examiners and the State Board of Pharmacy to
10 promote the early identification, intervention, treatment, and
11 rehabilitation of individuals within the respective
12 jurisdiction, licensed to practice in the State of Alabama,
13 who may be impaired by reason of illness, inebriation,
14 excessive use of drugs, narcotics, controlled substances,
15 alcohol, chemicals, or other dependent forming substances, or
16 as a result of any physical or mental condition rendering such
17 person unable to meet the standards of his or her profession.
18 For the purposes of this chapter, the term "impaired" shall
19 mean the inability of a dentist, hygienist, or pharmacist to
20 practice with reasonable skill and safety to patients by
21 reason of illness, inebriation, excessive use of drugs,
22 narcotics, controlled substances, alcohol, chemicals, or other
23 dependent forming substances, or as a result of any physical
24 or mental condition rendering such person unable to meet the
25 standards of his or her profession. In order to carry out this
26 obligation, each board, individually or jointly, is hereby
27 empowered to contract with any nonprofit corporation, health

1 provider, or professional association for the purpose of
2 creating, supporting, and maintaining a committee of
3 professionals to be designated the Alabama Impaired
4 Professionals' Committee. The committee shall consist of not
5 less than three nor more than 15 professionals licensed to
6 practice dentistry or pharmacy in the State of Alabama, and
7 selected in a manner prescribed by the board or boards. The
8 authority of the Alabama Impaired Professionals' Committee
9 shall not supersede the authority of the board or boards to
10 take disciplinary action against individuals subject to this
11 chapter. Nothing in this chapter shall limit the power and
12 authority of the board or boards to discipline an impaired
13 individual subject to its jurisdiction; provided that where an
14 individual is impaired and currently in need of intervention,
15 treatment, or rehabilitation and such individual is currently
16 participating in programs or rehabilitation recommended by the
17 committee, then in its discretion, the board or boards may
18 refrain from taking or continuing disciplinary action against
19 such individual; and further provided that where the board or
20 boards, upon reasonable cause to believe an individual subject
21 to its jurisdiction is impaired, has referred such individual
22 to the committee for evaluation, then in its discretion, the
23 board or boards may refrain from taking or continuing
24 disciplinary action against such individual. The board, or
25 boards, ~~is authorized to~~ may collect or expend such funds as
26 are available to it as deemed necessary to adequately provide
27 for the operational expenses of the Alabama Impaired

1 Professionals' Committee, including, but not limited to, the
2 actual cost of travel, office overhead and personnel expense,
3 and compensation for the members of the committee and its
4 staff; provided that operational expenses of the Alabama
5 Impaired Professionals' Committee shall not include the cost
6 of treatment or rehabilitation programs recommended by the
7 committee to individuals subject to this chapter. The funds
8 provided by the board or boards, under this section for the
9 purposes stated herein shall not be subject to any provision
10 of law requiring competitive bidding."

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