

CHAPTER 876

H.B. No. 488

An Act relating to the regulation of advertising by dentists and to certain exceptions from the definition of dentistry.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Article 4548f, Revised Statutes, is amended by amending Subsection (b) and by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(b) The Board may not adopt rules restricting competitive bidding ~~[or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person].~~

(c) *As to a person, firm, or corporation engaged in the practice of dentistry regulated by the Board, the Board may adopt and enforce reasonable restrictions on advertising arising out of or in connection with the practice of dentistry which prohibit communications to the public that:*

- (1) are false, misleading, or deceptive;*
- (2) contain a statement of opinion as to the quality of dental services;*
- (3) appeal to an individual's anxiety in an excessive or unfair way, or which intimidate or exert undue pressure or undue influence over a prospective patient;*
- (4) create unjustified expectations concerning the potential result of any dental treatment;*
- (5) refer to benefits or other attributes of dental procedures or products that involve significant risks but that do not include realistic assessments of the safety and efficacy of those procedures or products;*

(6) contain statistical data, representations, or other information that is not susceptible to reasonable verification by the public;

(7) refer to a fee or fees for dental services and fail to disclose that additional fees may be involved in individual cases, if the possibility of incurring such additional charges may be reasonably foreseen;

(8) offer a discount for dental services without disclosing the total fee from which the discount will apply; or

(9) fail to make truthful disclosure of the source and authorship of any message published under a dentist's byline.

(d) It shall be unlawful for any person, firm, or corporation regulated by the Board to engage in advertising arising out of or in connection with the practice of dentistry that does not comply with the reasonable restrictions adopted by the Board pursuant to Subsection (c) of this section. However, as to an initial violation by a person, firm, or corporation of the Board's restrictions relating to advertising, no prosecution under this Act may be commenced until the person, firm, or corporation involved has been given 30 days' written notice by certified or registered mail, return receipt requested, of the violation. Furthermore, as to such initial violation, said notice shall:

(1) include a copy of the applicable portions of this Act and all Board rules pertaining to advertising; and

(2) describe the unlawful advertising involved and the Board restriction violated; and

(3) state that the person, firm, or corporation involved has 30 days from the date of notice to cure the violation. If an initial violation is not cured within the required period, prosecution may be commenced as prescribed by this Act. As to any subsequent violation by a person, firm, or corporation of the Board's restrictions relating to advertising, the 30-day notice and right to cure is not applicable.

(e) Nothing in this article shall authorize the Board to discipline a dentist for the acts of advertising agents that result in communications to the public that do not comply with the restrictions adopted by the Board pursuant to Subsection (c) of this section if the advertisement does not specify the name of the dentist or the name of a corporation, company, association, or trade name under which the dentist practices unless:

(1) the advertising agent is owned or controlled by the dentist;

(2) the dentist provided information to the advertising agent for distribution to the public which does not comply with the restrictions adopted by the Board pursuant to Subsection (c) of this section; or

(3) the content of the advertising is determined by the dentist.

(f) The Board may bring an action in the district court to enjoin an advertising agent from using any advertisement, marketing scheme, or practice that does not comply with the restrictions adopted by the Board pursuant to Subsection (c) of this section. Notwithstanding any other provision of this article or this Chapter 9, Title 71, an injunction pursuant to this Subsection (f) shall be the sole remedy which the State Board of Dental Examiners may exercise against an advertising or marketing agent for a violation under this article.

(g) The remedies provided in this Act are in addition to the procedures and remedies provided for in Subchapter E, Chapter 17, Business & Commerce Code.

SECTION 2. Section 2, Article 4548f, Revised Statutes, is amended to read as follows:

Sec. 2. PROHIBITING ADVERTISING OF OUT-OF-STATE PRACTICE OF DENTISTRY. It shall be unlawful for any person, firm, or corporation to advertise in this state or cause or permit to be advertised, published directly or indirectly, printed or circulated in this state any notice, statement or offer of, any service, skill, method, drug or fee in the practice of dentistry by any person, firm, or corporation, which is not domiciled and located in this state and subject to laws of this state, unless it is conspicuously disclosed in said advertising that such person, firm, or corporation is not licensed to practice dentistry in this state.

SECTION 3. Section 11, Chapter 244, General Laws, Acts of the 44th Legislature, Regular Session, 1935 (Article 4551b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The definition of dentistry as contained in Chapter 9 of Title 71, of the Revised Civil Statutes of Texas as amended, shall not apply to (1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college; or to (2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college; or to (3) persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or to (4) physicians and

surgeons legally authorized to practice medicine as defined by the law of this state; or to (5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to (6) those persons who as members of an established church practice healing by prayer only; or to (7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state; or to (8) Dental Health Service Corporations legally chartered under Subsection (1) of Article 2.01, of the Texas Nonprofit Corporation Act; or to (9) dental interns *and* dental residents ~~and dental assistants~~ as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations; *or to (10) students of a reputable dental hygiene school who practice dental hygiene without pay in strict conformity with the laws of this state regulating the practice of dental hygiene; or to (11) dental assistants who perform the duties permitted by Article 4551e-1, Revised Statutes, in strict conformity with the laws of this state; or to (12) dentists licensed by another state or foreign country who perform clinical procedures only for professional and technical education demonstration purposes, provided that such dentists must first obtain a temporary license for such purpose from the State Board of Dental Examiners. [Nothing in this Act applies to one legally engaged in the practice of dentistry in this state at the time of the passage of this law, except as hereinbefore provided.]*

SECTION 4. This Act takes effect September 1, 1985.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 24, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 488 on May 20, 1985, by a non-record vote; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985