AN ACT concerning the Kansas dental practices act; relating to proprietor arrangements with licensees of dentistry; amending K.S.A. 65-1424 and 65-1425 and K.S.A. 2010 Supp. 65-1435 and 65-1436 and repealing the existing sections.

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

Section 1. K.S.A. 65-1424 is hereby amended to read as follows: 65-1424.

(a) The term "proprietor" as used in this act includes any person who:

(1) "Proprietor" means any person who:

(a) employs dentists or dental hygienists in the operation of a dental office; or

(2) "Dental franchisor" means any person or entity, pursuant to a written agreement, who provides a licensed dentist any dental practice management consulting services, which may include marketing or advertising services, signage or branding consulting, or places in possession of a licensed dentist such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation. A person or entity is not a dental franchisor if the agreement with the dentist:

(A) Permits the person or entity to interfere with the independent judgment of the dentist in the performance of such dentist's professional duties; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

(b) places in possession of a dentist or dental hygienists or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment or offices; or

(c) retains the ownership or control of dental equipment or material or office and makes the same available in any manner for the use by dentists or dental hygienists or other agents except that nothing in this subsection shall apply to bona fide sales of dental equipment or material secured
by a chattel mortgage or retain title agreement.

(3) "Unlicensed proprietor" means 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:

(A) Permits the person or entity to interfere with the independent judgment of the dentist in the performance of such dentist's professional duties; or

(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law.

A licensee of dentistry who enters into any of the above described arrangements any arrangement with an unlicensed proprietor may have such license limited, suspended or revoked by the board.

(b) The estate or agent for a deceased or substantially disabled dentist may employ dentists, for a period of not more than one year, to provide service to patients until the practice can be sold.

Sec. 2. K.S.A. 65-1425 is hereby amended to read as follows: 65-1425. Except as provided in K.S.A. 17-2706 et seq., and amendments thereto, no corporation shall practice, offer, or undertake to practice or hold itself out as practicing dentistry. Every person practicing dentistry as an employee of another shall cause his name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where such practice is conducted. Provided, however, That nothing herein contained. Nothing in this section shall prohibit a licensed dentist from practicing dentistry as the agent or employee of another licensed dentist in this state, or from practicing dentistry as the agent or employee of any state hospital or state institution where his such dentist's only remuneration is from the state, or from any corporation which provides dental service for its employees at no profit to the corporation. Nothing in this section shall prohibit a licensed dentist from practicing dentistry as an employee of a general hospital defined in K.S.A. 65-425, and amendments thereto, in a county with population of less than 50,000.

Sec. 3. K.S.A. 2010 Supp. 65-1435 is hereby amended to read as follows: 65-1435. (a) Except as otherwise provided in this section, it shall be unlawful for any person or persons to practice or offer to practice dentistry under any name except such person's own name, which shall be the name used on the license granted to such person as a dentist as provided in the Kansas dental practices this act.

(b) A licensed dentist may use the name of any association, corporation, clinic, trade name or business name in connection with the practice of dentistry, as defined in the Kansas dental practices this act, except that such name may not misrepresent the dentist to the public as
determined by the Kansas dental board. as determined by the Kansas dental board.

(c) Nothing herein contained shall be construed to prevent two or more licensed dentists:

(1) From associating together for the practice of dentistry, each in such person's own proper name; or
(2) from associating together for the practice of dentistry, each as owners, in a professional corporation, organized pursuant to the professional corporation law of Kansas, or, each as owners, in a limited liability company organized pursuant to the Kansas revised limited liability company act, and using a name that may or may not contain the proper name of any such person or persons except that such name may not misrepresent the dentist to the public if such name has been approved by the board and from employing nonowning licensees; or

(3) from associating together with persons licensed to practice medicine and surgery in a clinic or professional association under a name that may or may not contain the proper name of any such person or persons and may contain the word "clinic."

(d) It shall be unlawful, and a licensee may have a license suspended or revoked, for any licensee to conduct a dental office in the name of the licensee, or to advertise the licensee's name in connection with any dental office or offices, or to associate together for the practice of dentistry with other licensed dentists in a professional corporation or limited liability company, under a name that may or may not contain the proper name of any such person or persons or to associate together with persons licensed to practice medicine and surgery in a clinic or professional association under a name that may or may not contain the proper name of any such person or persons and may contain the word "clinic," unless such licensee is personally present in the office operating as a dentist or personally overseeing such operations as are performed in the office or each of the offices during a majority of the time the office or each of the offices is being operated.

(e) Nothing in this section shall be construed to permit the franchise practice of dentistry.

(f) The violation of any of the provisions of this section by any dentist shall subject such dentist to suspension or revocation of a license.

(g) Notwithstanding the provisions of subsection subsections (d) and (e), a licensee shall be permitted to own two dental offices in addition to the licensee's primary office location under the following conditions:

(1) The licensee's secondary dental office is located within a 125 mile radius of the licensee's primary office; and

(2) the licensee's secondary dental office is located in a county with a population of less than 10,000 according to the 2000 United States census.
Sec. 24. K.S.A. 2010 Supp. 65-1436 is hereby amended to read as follows: 65-1436. (a) The Kansas dental board may refuse to issue the license under the Kansas dental practices provided for in this act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

1. Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;
2. Habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;
3. Been determined by the board to be professionally incompetent;
4. Committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;
5. Employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of the Kansas dental practices this act;
6. Willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;
7. Engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except:
   A. The division of fees between dentists practicing in a partnership and sharing professional fees;
   B. The division of fees between, or in case of one licensed dentist employing another; or
   C. The division of fees between a licensed dentist and a proprietor as defined in K.S.A. 65-1424, and amendments thereto dental franchisor;
8. Committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;
9. Been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;
10. Prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an
individual;
(11) prescribed, purchased, administered, sold or given away
prescription drugs, including a controlled substance, for other than legal
and legitimate purposes;
(12) violated or been convicted of any federal or state law regulating
possession, distribution or use of any controlled substance;
(13) failed to pay license fees;
(14) used the name "clinic," "institute" or other title that may suggest
a public or semipublic activity except that the name "clinic" may be used
as authorized in K.S.A. 65-1435, and amendments thereto;
(15) committed, after becoming a licensee, any conduct which is
detrimental to the public health, safety or welfare as defined by rules and
regulations of the board;
(16) engaged in a misleading, deceptive, untrue or fraudulent
misrepresentation in the practice of dentistry or on any document
connected with the practice of dentistry by knowingly submitting any
misleading, deceptive, untrue or fraudulent misrepresentation on a claim
form, bill or statement, including the systematic waiver of patient co-
payment or co-insurance;
(17) failed to keep adequate records;
(18) the licensee has had a license to practice dentistry revoked,
suspended or limited, has been censured or has had other disciplinary
action taken, has had an application for license denied, or voluntarily
surrendered the license after formal proceedings have been commenced by
the proper licensing authority or another state, territory or the District of
Columbia or other country, a certified copy of the record of the action of
the other jurisdiction being conclusive evidence thereof;
(19) failed to furnish the board, or its investigators or representatives
any information legally requested by the board; or
(20) assisted suicide in violation of K.S.A. 21-3406, prior to its
repeal, or section 42 of chapter 136 of the 2010 Session Laws of
Kansas K.S.A. 21-3406, and amendments thereto, as established by any of
the following:
(A) A copy of the record of criminal conviction or plea of guilty for a
felony in violation of K.S.A. 21-3406, prior to its repeal, or section 42
of chapter 136 of the 2010 Session Laws of Kansas K.S.A. 21-3406, and
amendments thereto;
(B) a copy of the record of a judgment of contempt of court for
violating an injunction issued under K.S.A. 60-4404, and amendments
thereto; or
(C) a copy of the record of a judgment assessing damages under
K.S.A. 60-4405, and amendments thereto.
(b) Whenever it is established, after notice and opportunity for
hearing in accordance with the provisions of the Kansas administrative
procedure act, that a licensee is in any of the circumstances or has
committed any of the acts described in subsection (a), the Kansas dental
board may take one or any combination of the following actions with
respect to the license of the licensee:
  (1) Revoke the license;
  (2) suspend the license for such period of time as may be determined
      by the board;
  (3) restrict the right of the licensee to practice by imposing limitations
      upon dental or dental hygiene procedures which may be performed,
      categories of dental disease which may be treated or types of patients
      which may be treated by the dentist or dental hygienist. Such restrictions
      shall continue for such period of time as may be determined by the board,
      and the board may require the licensee to provide additional evidence at
      hearing before lifting such restrictions; or
  (4) grant a period of probation during which the imposition of one or
      more of the actions described in subsections (b)(1) through (b)(3) will be
      stayed subject to such conditions as may be imposed by the board
      including a requirement that the dentist or dental hygienist refrain from
      any course of conduct which may result in further violation of the dental
      practice act or the dentist or dental hygienist complete additional or
      remedial instruction. The violation of any provision of the dental practice
      act or failure to meet any condition imposed by the board as set forth in the
      order of the board will result in immediate termination of the period of
      probation and imposition of such other action as has been taken by the
      board.
  (c) As used in this section, "professionally incompetent" means:
      (1) One or more instances involving failure to adhere to the
          applicable standard of dental or dental hygienist care to a degree which
          constitutes gross negligence, as determined by the board;
      (2) repeated instances involving failure to adhere to the applicable
          standard of dental or dental hygienist care to a degree which constitutes
          ordinary negligence, as determined by the board; or
      (3) a pattern of dental or dental hygienist practice or other behavior
          which demonstrates a manifest incapacity or incompetence to practice
          dentistry.
  (d) In addition to or in lieu of one or more of the actions described in
      subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444,
      and amendments thereto, the board may assess a fine not in excess of
      $10,000 against a licensee. All fines collected pursuant to this subsection
      shall be remitted to the state treasurer in accordance with the provisions of
      K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
      remittance, the state treasurer shall deposit the entire amount in the state
treasury and of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.

(e) The board, upon its own motion or upon the request of any licensee who is a party to a licensure action, may require a physical or mental examination, or both, of such licensee either prior to a hearing to be held as a part of a licensure action or prior to the termination of any period of suspension or the termination of any restrictions imposed upon the licensee as provided in subsection (b).

New Sec. 4. (a) Any person who is not licensed as a dentist under the Kansas dental practices act, nor or any entity that is not a professional corporation or limited liability company composed of dentists which enter into an agreement with a dentist to provide dental office administrative services shall register with the Kansas dental board.

(b) (1) The registration shall include the company name, contact information and responsible person of such person or entity along with the address and licensed dentist practice owner names for which administrative services are being provided.

(2) Such registered person or entity shall provided any person or entity registered under this section shall provide updated information to the Kansas dental board within 30 days of any changes to the information provided in paragraph (1). Any person or entity required to register pursuant to this section shall have 30 days from the execution of any contract or agreement with a dentist or professional corporation or limited liability company to complete the registration.

(c) Any such person or entity required to register pursuant to this section operating under a contract or agreement executed prior to the effective date of this section shall be subject to the provisions of this section and shall have 30 days from the effective date of this section to complete the registration. A copy of all contracts or agreements providing for dental office administrative services shall be maintained by the registered dental office administrative services company and shall be subject to inspection during regular business hours at any time by the Kansas dental board.

New Sec. 5. (a) As used in this section, "licensed dentist" means a dentist licensed under the Kansas dental practices act.

(b) No person who is a licensed dentist or any entity that is not a professional corporation or limited liability company owned by a licensed dentist shall enter into or continue to maintain a contract or agreement with a licensed dentist in which such contract or agreement allows or provides for the following functions to be controlled by any person or
entity other than a licensed dentist pursuant to this section:

(1) Providing dental treatment to patients;
(2) the decision to accept individual patients for treatment;
(3) the direction or delegation of all professional dental services;
(4) the ownership of dental charts or patient records;
(5) except as provided in subsection (d), the ownership of dental equipment or dental materials; and
(6) the supervision of clinical dental staff.

(c) It shall not be a violation of this section for a person or entity to act on behalf of a licensed dentist to perform or arrange for others to perform office administrative services including, but not limited to:

(1) Purchasing, billing or tax preparation;
(2) compliance or quality assurance programs;
(3) legal advice or representation;
(4) payroll, advertising, training, recruiting, recordkeeping, programming or other similar functions under the direction or with the consent or approval of a licensed dentist or professional corporation or limited liability company owned by a licensed dentist.

(d) Nothing in this section shall prohibit a licensed dentist, professional corporation or limited liability company owned by a licensed dentist from entering into real estate lease, equipment lease or lease purchase agreement or bona fide sale of dental equipment or material secured by a chattel mortgage or retain title agreements with equipment manufacturers, landlords, lending institutions, leasing companies, dental franchisors or persons or entities providing dental office administrative services or similar commercial financing transactions.

(e) No contract or provision in any such agreement shall require either party to indemnify the other party for negligence, intentional acts or omissions that constitute a violation of K.S.A. 65-1422 et seq., and amendments thereto.


Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.