

BILL ANALYSIS

Senate Research Center
85R 8725 BEF-D

S.B. 319
By: Watson et al.
Agriculture, Water & Rural Affairs
4/5/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 319 is the Sunset bill for the Texas State Board of Veterinary Medical Examiners (TBVME). TBVME licenses and regulates the veterinarians, veterinary technicians, and equine dental providers practicing in Texas.

The Sunset Advisory Commission found significant administrative and operational failures at the agency, including poor financial management and significant data reliability problems. While agency management played a key role in these problems, the commission concluded they ultimately resulted from a lack of leadership and oversight from the board.

The commission also made troubling findings regarding TBVME's enforcement procedures. Texas veterinarians have a high risk of controlled substances diversion, reporting the highest theft and loss of controlled substances among all practitioners over the last five years. However, the state does not collect data on the controlled substances veterinarians dispense directly to their clients, and TBVME has only inspected about seven percent of its licensees in each of the last five years.

Finally, when TBVME has received a complaint or initiated an investigation, enforcement proceedings have been inconsistent, creating significant distrust between licensees, the public, and the agency.

Because TBVME is struggling, S.B. 319 only continues the agency for four years and requires it to submit quarterly reports regarding its implementation of the commission's recommendations. S.B. 319 also sweeps the current board and prohibits members appointed on or before January 1, 2016, from being reappointed. Further, S.B. 319 modifies the structure of the board to ensure it more accurately reflects its licensee population.

In light of the enforcement problems TBVME has experienced, S.B. 319 makes several changes to the agency's investigatory and disciplinary procedures. These changes are designed to improve consistency, fairness, and transparency along each stage of the process.

S.B. 319 also increases the reporting, monitoring, and oversight of veterinarians' use of controlled substances. For example, S.B. 319 requires veterinarians to report and review certain information in the Prescription Monitoring Program. S.B. 319 also allows TBVME to perform risk-based inspections related to controlled substances. These changes should reduce the diversion of dangerous drugs in Texas.

Taken together, the provisions of S.B. 319 provide much-needed reforms to an agency that has struggled to comply with its basic management functions and oversee the licensee population it regulates on behalf of the state.

As proposed, S.B. 319 amends current law relating to the continuation and functions of the State Board of Veterinary Medical Examiners; authorizes a reduction in fees; and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Veterinary Medical Examiners (TBVME) and the Texas State Board of Pharmacy in SECTION 15 (Section 801.3591,

Occupations Code) of this bill and to TBVME in SECTION 20 (Section 801.411, Occupations Code) of this bill.

Rulemaking authority previously granted to TBVME is modified in SECTION 4 (Section 801.154, Occupations Code) and Section 6 (Section 801.205, Occupations Code) of this bill.

Rulemaking authority previously granted to TBVME is rescinded in SECTION 21 (Section 801.452, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 801.003, Occupations Code, to provide that this chapter expires on September 1, 2021, rather than September 1, 2017.

SECTION 2. Amends Section 801.051(a), Occupations Code, to amend the composition of the State Board of Veterinary Medical Examiners, as follows:

- (1) five, rather than six, veterinarian members, including one veterinarian member who is associated with an animal shelter and one veterinarian member who has at least three years of experience practicing veterinary medicine in this state on certain large animals;
- (2) one licensed veterinary technician member; and
- (3) redesignates existing Subdivision (2) as Subdivision (3) and makes no further changes to this subdivision.

SECTION 3. Amends Section 801.057, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

- (b) Requires that the training program provide the person appointed to the board with certain information.
- (d) Requires the executive director of the State Board of Veterinary Medical Examiners (TBVME) (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each TBVME member. Requires each TBVME member to sign and submit to the executive director a statement acknowledging receipt of the training manual on receipt of the training manual.

SECTION 4. Amends Section 801.154, Occupations Code, to delete designation of Subsection (a) and existing text prohibiting TBVME from setting a fee that existed on September 1, 1993, in an amount that is less than the fee on that date.

SECTION 5. Amends Subchapter D, Chapter 801, Occupations Code, by adding Section 801.164, as follows:

Sec. 801.164. RISK-BASED INSPECTIONS RELATED TO CONTROLLED SUBSTANCES PRACTICES. Authorizes TBVME to conduct a risk-based inspection of a veterinarian's practice based on information obtained from the veterinarian or another source concerning the veterinarian's use, handling, prescribing, dispensing, or deliver of controlled substances.

SECTION 6. Amends Section 801.205, Occupations Code, to delete existing text requiring the rules to require that a written explanation be given to the person who filed the complaint explaining the action taken on the dismissed complaint.

SECTION 7. Amends Section 801.2055, Occupations Code, as follows:

Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) Requires a certain complaint to be reviewed by one or more veterinarians designated by TBVME,

rather than by two or more veterinarian TBMVE members. Requires the veterinarian reviewers, rather than the TBMVE members, to make certain determinations.

(b) Provides that if the veterinarian reviewers determine to:

(1) dismiss the complaint, the dismissal must be approved by TBVME at a public meeting; or

(2) refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408 (Informal Proceedings).

(c) Provides that, if TBVME designates more than one veterinarian reviewer and the reviewers, rather than if the veterinarian members, do not agree to dismiss or refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408.

(d) Prohibits a TBVME member who reviews a complaint under this section from participating in any subsequent disciplinary proceedings related to the complaint.

SECTION 8. Amends Section 801.207, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that each complaint, investigation file and record, and other investigation report and all other investigative information in the possession of or received or gathered by TBVME or TBVME's employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than TBVME or TBVME employees or agents involved in discipline of a license holder. Deletes existing text providing that an investigation record of TBVME, including a record relating to a complaint that is found to be groundless, is confidential.

(c) Requires TBVME to protect the identity of a complainant to the extent possible.

SECTION 9. Amends Subchapter E, Chapter 801, Occupations Code, by adding Section 801.208, as follows:

Sec. 801.208. NOTIFICATION TO COMPLAINANT REGARDING COMPLAINT DISPOSITION. (a) Requires TBVME to promptly notify a complainant of the final disposition of the complaint, including certain notice.

(b) Requires TBVME to include with the notification a copy of any public sanction imposed by TBVME.

(c) Requires TBVME to include in the notification a certain explanation.

(d) Prohibits the explanation from including information that is confidential under Section 801.207(b) (relating to a record of a groundless complaint).

SECTION 10. Amends Subchapter E, Chapter 801, Occupations Code, by adding Section 801.209, as follows:

Sec. 801.209. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines "anonymous complaint," "insurance professional," and "insurer."

(b) Prohibits TBVME from accepting anonymous complaints.

(c) Requires a complaint filed with TBVME against a license holder by a pharmaceutical company or by an insurance professional or insurer relating to insurance covering veterinary services to include the name and address of the pharmaceutical company, insurance professional, or insurer filing the complaint,

notwithstanding any confidentiality requirements under Chapter 552 (Public Information), Government Code. Requires TBVME, not later than the 15th day after the complaint is filed with TBVME, to notify the license holder who is the subject of the complaint of the name and address of the pharmaceutical company, insurance professional, or insurer who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 11. Amends Subchapter F, Chapter 801, Occupations Code, by adding Section 801.267, as follows:

Sec. 801.267. **CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE.** (a) Requires TBVME to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by TBVME, to TBVME or to the Texas Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation.

(b) Prohibits TBVME from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TBVME to conduct a criminal history record information check of each applicant for a license using certain information.

(d) Authorizes TBVME to enter into certain agreements and authorizes DPS to collect certain costs.

SECTION 12. Amends Section 801.301, Occupations Code, as follows:

Sec. 801.301. **New heading: LICENSE TERM AND RENEWAL.** (a) Requires TBVME to provide that each type of license under this chapter is valid for a term of one year or two years and for the renewal, rather than annual renewal, of a license.

(b) Makes no changes to this subsection.

(c) Requires TBVME to prorate license fees on a monthly basis to achieve certain outcomes, rather than requires license fees payable on March 1 to be prorated on a monthly basis to achieve certain outcomes, for a certain year.

SECTION 13. Amends Sections 801.307(b) and (c), Occupations Code, as follows:

(b) Includes that TVBME is authorized, for a license valid for two years, to provide a one year or two year period for the completion of continuing education.

(c) Replaces references to year with period.

SECTION 14. Amends Subchapter G, Chapter 801, Occupations Code, by adding Section 801.309, as follows:

Sec. 801.309. **CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL.** (a) Requires an applicant renewing a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 801.267.

(b) Authorizes TBVME to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under certain sections.

SECTION 15. Amends Subchapter H, Chapter 801, Occupations Code, by adding Section 801.3591 as follows:

Sec. 801.3591. **REPORT OF CONTROLLED SUBSTANCES DISPENSED.** (a) Requires a veterinarian to submit to the Texas State Board of Pharmacy (TSBP) a record of each controlled substance dispensed by the veterinarian, including certain information.

(b) Requires TBVME and TSBP to jointly adopt rules to implement this section, including certain rules.

(c) Requires TSBP to make information submitted under this section available in the manner provided by Section 481.076 (Official Prescription Information; Duties of Texas State Board of Pharmacy), Health and Safety Code. Provides that for purposes of Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, a record submitted to TSBP under this section is considered to be official prescription information submitted to TSBP under Section 481.074(q) (relating to dispensing pharmacists sending certain information to TSBP) or 481.075 (Official Prescription Program), Health and Safety Code.

SECTION 16. Amends Subchapter H, Chapter 801, Occupations Code, by adding Section 801.3592, as follows:

Sec. 801.3592. **DUTIES RELATED TO PRESCRIBING OR DISPENSING CERTAIN DRUGS.** (a) Prohibits a veterinarian from providing a prescription for or deliver a drug listed in Subsection (b) to a client unless the veterinarian has reviewed the prescription and dispensing history of animals associated with the client by accessing the prescription and dispensing information submitted to TSBP as authorized by Section 481.076(a)(5) (relating to a pharmacist or pharmacy technician acting at the direction of a pharmacist or a practitioner), Health and Safety Code.

(b) Provides that Subsection (a) applies only to the prescribing and dispensing of certain controlled substances.

(c) Provides that failure by a veterinarian to comply with the requirements of this section is grounds for disciplinary action under Section 801.402 (General Grounds for License Denial or Disciplinary Action).

SECTION 17. Amends Section 801.402, Occupations Code, to include among the reasons for which a person is subject to denial of a license or to disciplinary action if the person violates Section 801.3591 or a joint rule adopted under that section or violates Section 801.3592.

SECTION 18. Amends the heading to Section 801.407, Occupations Code, to read as follows:

Sec. 801.407. **RIGHT TO HEARING.**

SECTION 19. Amends Section 801.407(c), Occupations Code, to require the State Office of Administrative Hearings to use the schedule of sanctions under Section 801.411, rather than the schedule of sanctions adopted by TBVME rule, for certain sanctions imposed.

SECTION 20. Amends Subchapter I, Chapter 801, Occupations Code, by adding Section 801.411, as follows:

Sec. 801.411. **SCHEDULE OF SANCTIONS.** (a) Requires TBVME, by rule, to adopt a schedule of penalties, disciplinary actions, and other sanctions that the board may impose under this chapter.

(b) Requires TBVME, in adopting the schedule of sanctions under Subsection (a), to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. Requires the schedule

to provide that the type of disciplinary action or other sanction and the amount of a penalty imposed under this chapter must be based on certain factors.

SECTION 21. Amends Sections 801.452(b) and (c), Occupations Code, as follows:

(b) Requires the amount of the penalty to be based on the schedule of sanctions adopted under Section 801.411, rather than certain factors.

(c) Requires a certain committee to recommend the amount of the administrative penalty based on the schedule of sanctions adopted under Section 801.411, rather than a standardized penalty schedule. Deletes existing text requiring TBVME, by rule, to develop the standardized penalty schedule based on certain criteria.

SECTION 22. Amends Subchapter K, Chapter 801, Occupations Code, by adding Section 801.5011, as follows:

Sec. 801.5011. MONITORING HARMFUL PRESCRIBING AND DISPENSING PATTERNS. (a) Requires TBVME to periodically check the prescribing and dispensing information submitted to TSBP as authorized by Section 481.076(a)(1) (relating to an investigator for certain entities), Health and Safety Code, to determine whether a veterinarian is engaging in potentially harmful prescribing or dispensing patterns or practices.

(b) Requires TBVME, in coordination with TSBP, to determine the conduct that constitutes a potentially harmful prescribing or dispensing pattern or practice for purposes of Subsection (a). Requires TVBME, in determining the conduct that constitutes a potentially harmful prescribing or dispensing pattern or practice, at a minimum, to consider certain factors.

(c) Authorizes TBVME to, if TBVME suspects that a veterinarian may be engaging in potentially harmful prescribing or dispensing patterns or practices, notify the veterinarian of the potentially harmful prescribing or dispensing pattern or practice.

(d) Authorizes TBVME to initiate a complaint against a veterinarian based on information obtained under this section.

SECTION 23. (a) Requires the Sunset Advisory Commission (Sunset) to conduct a special-purpose review of TBVME for the 87th Legislature for purposes of Section 801.003 (Application of Sunset Act), Occupations Code, as amended by this Act.

(b) Provides that, in conducting the special-purpose review under this section:

(1) the Sunset staff evaluation and report is required to be limited to reviewing the effectiveness of recommendations made by Sunset to the 85th Legislature; and

(2) Sunset's recommendations to the 87th Legislature are authorized to include any recommendation Sunset considers appropriate based on the special-purpose review.

SECTION 24. (a) Provides that the terms of office of the members of TBVME expire September 1, 2017.

(b) Requires the governor to appoint certain members to TBVME as soon as practicable on or after September 1, 2017.

(c) Provides that a person who was appointed to TBVME on or before January 1, 2016, is not eligible for appointment under Subsection (b) of this section.

(d) Requires the members of TBVME holding office on August 31, 2017, to, notwithstanding Subsection (a) of this section, continue to perform the duties of their offices until the first date on which at least five members appointed under Subsection (b) of this section have completed the training program under Section 801.057, Occupations Code, as amended by this Act.

SECTION 25. (a) Provides that, except as provided by Subsection (b) of this section, Section 801.057, Occupations Code, as amended by this Act, applies to a member of TBVME appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TBVME who, before the effective date of this Act, completed the training program required by Section 801.057, Occupations Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 801.057, Occupations Code. Prohibits a board member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TBVME held on or after December 1, 2017, until the member completes the additional training.

SECTION 26. (a) Provides that certain changes in law apply only to a complaint filed with TBVME on or after the effective date of this Act.

(b) Provides that a complaint filed before the effective date of this Act is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

SECTION 27. Makes application of Sections 801.267 and 801.309, Occupations Code, as added by this Act, prospective.

SECTION 28. Requires TBVME and TSBP to jointly adopt rules under Section 801.3591, Occupations Code, as added by this Act as soon as practicable after this Act has become law for purposes of Section 2001.006, Government Code.

SECTION 29. Makes application of Sections 801.407(c), 801.452(b), and 801.452(c), Occupations Code, as amended by this Act, prospective.

SECTION 30. (a) Provides that, except as otherwise provided by Subsection (b) of this section, this Act takes effect September 1, 2017.

(b) Provides that Sections 801.3592 and 801.402(23), Occupations Code, as added by this Act, take effect September 1, 2018.