

BILL ANALYSIS

S.B. 313
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The State Board of Dental Examiners, which oversees the dental profession in Texas, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. S.B. 313 seeks to continue the board with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTIONS 19, 24, 25, 26, 32, 33, 38, and 42 of this bill.

ANALYSIS

S.B. 313 amends the Occupations Code to postpone from September 1, 2017, to September 1, 2029, the date on which the State Board of Dental Examiners is abolished unless continued in existence as provided by the Texas Sunset Act. The bill reduces the board's membership from 15 members to 11 members and revises the board's composition. The bill sets the terms of board members serving on September 1, 2017, to expire on that date, requires the governor to appoint 11 members to the board not later than December 1, 2017, and sets out provisions relating to those board members' terms, the continued performance of duties of currently serving board members until a specified number of member appointments are made, and the governor's reappointment of board members whose terms the bill sets to expire. The bill revises provisions relating to prohibitions on board conflicts of interest and provisions related to the training program required for a person who is appointed to and qualifies for office as a board member, requires the executive director of the board to create a training manual for such a program, provides for the information to be included in the manual, and for the acknowledgment of receipt by each board member. The bill's provisions relating to board member training apply to a board member appointed before, on, or after the bill's effective date. The bill requires a board member appointed after the bill's effective date who, before the effective date, completed the required training program under the law as it existed before the effective date to complete additional training only on the subjects added by the bill to the training program and prohibits such a board member from voting, deliberating, or being counted as a member in attendance at a board meeting held on or after December 1, 2017, until the member completes the additional training.

S.B. 313 authorizes the board or an authorized agent of the board, on probable cause, as determined by the board or agent, to enforce certain disciplinary actions based on specified impairments or conditions, to request an applicant for or holder of a license under the Dental Practice Act to submit to a mental or physical evaluation by a physician or other health care professional designated by the board and sets out provisions related to the hearing process for an

applicant or license holder requested to submit to such an evaluation. The bill makes all information, records, and proceedings of the board or an authorized agent of the board relating to the participation of an applicant for or holder of a license issued under that act in a peer assistance program or the mental or physical evaluation of the applicant or license holder confidential and exempt from disclosure under state public information law, except that the board may disclose certain disciplinary action taken against a license holder due to those impairments or conditions. The bill prohibits the board from disclosing the nature of the impairment or condition that resulted in the board's action.

S.B. 313 requires the rules adopted by the board to develop a system to monitor the compliance of a person licensed under the Dental Practice Act with that act to include procedures to periodically review reports filed with the National Practitioner Data Bank for any report of disciplinary action taken against a license holder by another state that would constitute grounds for disciplinary action against the license holder. The bill requires a complaint filed with the board by a licensed insurance agent, insurer, pharmaceutical company, or third-party administrator with a certificate of authority issued under the Insurance Code against a license holder to include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint and prohibits the board from accepting a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint. The bill requires the board, not later than the 15th day after the date the complaint is filed with the board, to notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation. The bill expands the persons subject to a complaint filed with the board for whom the board is required to determine if such a person constitutes a continuing threat to the public welfare before completing a preliminary investigation of the complaint to include any person regulated under the Dental Practice Act. The bill removes good moral character as an eligibility requirement for a license to practice dentistry or dental hygiene and authorizes the board to refuse to renew a license issued under the Dental Practice Act if the license holder is in violation of a board order.

S.B. 313 sets the term during which a license issued under the Dental Practice Act is valid at one or two years, as determined by board rule, and removes a limitation on which license fees are required to be prorated on a monthly basis under certain circumstances. The bill revises the scope of the board's rulemaking responsibility as it pertains to the required continuing education for a license holder to renew a license to allow the board to establish the minimum required hours of continuing education required for license renewal.

S.B. 313 requires the board by rule to establish conditions under which the board may temporarily or permanently appoint a person as custodian of a dentist's billing or dental patient records. In adopting those rules, the board is required to consider the death of a dentist, the mental or physical incapacitation of a dentist, and the abandonment of billing or dental patient records by a dentist as conditions for appointment of a custodian.

S.B. 313 expands the scope of the board's rulemaking authority with regard to the administration of anesthesia by a dentist and revises provisions relating to those rules. The bill expands the board's authority to regulate the administration of all forms of anesthesia by removing references to enteral anesthesia from applicable statutory provisions. The bill revises permitting requirements for the administration of anesthesia by a dentist by creating a tiered permitting scheme based on the extent to which the intended procedure will alter the patient's mental status and the method of anesthetic delivery. The bill requires the board by rule to establish the qualifications for obtaining each permit, including the required education and training, and requires those rules to require an applicant to complete training on specified matters for a level 2, level 3, or level 4 permit. The bill requires the board to develop and administer a specified online jurisprudence examination; sets out provisions relating to the portability of permitted anesthesia services and the administration of anesthesia to a pediatric or specified high-risk patient; and requires a permit holder who is administering anesthesia for which a level 4 permit is required to

use capnography during the administration of anesthesia. The bill requires the board to adopt rules to establish minimum emergency preparedness standards and requirements for the administration of anesthesia under a permit issued to a dentist and sets out provisions related to those rules. The bill sets out provisions relating to the development of emergency preparedness protocols, including a requirement that the board adopt rules prescribing the content that a permit holder must include in those protocols. The bill's provisions creating the tiered permitting scheme and relating to the administration of services to a pediatric or specified high-risk patient are effective March 1, 2018.

S.B. 313 clarifies the board's authority to conduct inspections to enforce statutory provisions governing the administration of anesthesia by a dentist; authorizes the board to evaluate a dentist's competency in the administration of anesthesia during such an inspection; and requires the board by rule to adopt a risk-based inspection policy for conducting an inspection to enforce those provisions. The bill sets out certain requirements for such a policy and requires the board to conduct an inspection with respect to a dentist who holds a level 2, level 3, or level 4 anesthesia permit not later than the first anniversary of the date the permit is issued. The bill sets out provisions relating to such inspections and prohibits the board from conducting an inspection with respect to a dentist who administers anesthesia exclusively in a state-licensed hospital or state-licensed ambulatory surgical center. The bill requires the board to conduct an inspection with respect to a dentist who holds a level 2, level 3, or level 4 permit issued before the bill's effective date not later than September 1, 2022.

S.B. 313 requires the board to establish a six-member advisory committee to analyze and report on data and associated trends concerning anesthesia-related deaths or incidents. The bill sets out provisions relating to the committee's composition, the appointment of committee members, an application process for appointment to the committee, member terms, the filing of a vacancy on the committee, committee meetings, and committee funding. The bill sets out provisions regarding the compilation and analysis of certain information, designation of a counsel for the committee, the confidentiality and privileged nature of certain information pertaining to a committee investigation, subpoena and discovery of a committee work product or confidential or privileged committee information, and immunity from liability for committee members or certain other persons associated with the committee. The bill requires the board to appoint the committee's members not later than December 1, 2017.

S.B. 313 exempts the board's deliberations with regard to an application for a license under the Dental Practices Act from state open meetings law.

S.B. 313 repeals provisions relating to the establishment of procedures for informal settlement to resolve complaints against a person licensed under the Dental Practices Act and instead revises the required contents of the rules adopted by the board to establish procedures governing certain informal board proceedings, includes a requirement that those rules provide for an informal settlement conference after the board's official investigation of a complaint is commenced, and sets out provisions relating to such a conference, including provisions establishing that information presented by the board or board staff in such a conference is confidential and not subject to disclosure under state public information law and requiring the board by rule to define circumstances constituting good cause for specified purposes.

S.B. 313 establishes the dental review committee as a nine-member committee appointed by the governor and sets out provisions relating to the committee's composition, length of member terms, the filling of committee vacancies, a per diem for members, and member training. The bill requires the governor to appoint the committee members not later than December 1, 2017, and provides for staggered member terms. The bill subjects a committee member to law and board rules as if the committee member were a board member, with certain exceptions, and provides for the creation of an informal settlement conference panel consisting of board and committee members. The bill sets out provisions relating to such panels, provisions establishing roles and responsibilities of participants in an information settlement conference, and provisions relating to

the dismissal of a complaint the board determines is a baseless or unfounded complaint, including a requirement for the board to adopt rules that establish criteria for determining that a complaint is baseless or unfounded. The bill revises provisions relating to an informal settlement conference notice regarding certain complaints.

S.B. 313 revises provisions relating to the board's subpoena power relating to an investigation of an alleged violation of state law relating to the practice of dentistry, authorizes the board to administer oaths and take testimony regarding any matter within the board's jurisdiction, and requires the board to pay a reasonable fee, in an amount not to exceed the amount the board may charge for copies of the board's records, for photocopies subpoenaed at the request of the board's staff.

S.B. 313 repeals provisions relating to pit and fissure sealant certificates and coronal polishing certificates and sets previously-issued certificates to expire on the bill's effective date. The repeal of those provisions expressly does not entitle a person to a refund of an application, licensing, or other fee paid by the person before the bill's effective date. The bill sets to expire on September 1, 2018, provisions relating to x-ray certificates issued to dental assistants, as well as provisions establishing certain continuing education requirements for holders of a certificate issued under the Dental Practices Act. The bill instead requires the board by rule to establish the requirements for registration as a dental assistant, sets out provisions relating to those eligibility requirements, and prohibits a nonregistered dental assistant from making a dental x-ray or monitoring the administration of nitrous oxide. The bill provides for fees to cover the costs of regulating dental assistants and provides for the expiration and renewal of a dental assistant's registration. The bill sets out certain other provisions relating to the registration of dental assistants, including registration with the board to perform other dental acts, and provisions relating to a one-year exception to the prohibition against a dental assistant making dental x-rays. The bill establishes that a delegating dentist remains responsible for the dental acts of a registered or nonregistered dental assistant performing the delegated dental acts; and prohibits a dental assistant to whom a delegation is made from representing to the public that the dental assistant is authorized to practice dentistry or dental hygiene. The bill provides for the issuance of a dental x-ray registration or a nitrous oxide monitoring registration, as applicable, on or after September 1, 2018, to a qualifying dental assistant who holds an unexpired dental x-ray certificate or a current nitrous oxide monitoring certificate and sets such certificates to expire on September 1, 2019.

S.B. 313 requires the board by rule to establish continuing education requirements for registered dental assistants, including a minimum number of hours of continuing education required to renew a registration. Those continuing education requirements apply only to the renewal of a registration on or after September 1, 2018. The bill's provisions requiring a dental assistant to register with the board to perform specified dental acts and certain other related provisions take effect September 1, 2018.

S.B. 313 repeals provisions establishing the Dental Hygiene Advisory Committee and provisions establishing the Dental Laboratory Certification Council. The bill requires the board to adopt rules and fees necessary to implement the bill's provisions relating to the practice of dentistry by a dentist and the regulation of dental assistants and to adopt rules necessary to implement the bill's provisions relating to license denial and disciplinary proceedings under the Dental Practice Act not later than March 1, 2018. The bill's provisions regarding such license denials and disciplinary proceedings apply only to the investigation or disposition of a complaint filed with the board on or after March 1, 2018.

S.B. 313 repeals the following provisions of the Occupations Code:

- Sections 256.0531(h), (i), and (j)
- Section 262.001(1)
- Subchapter B, Chapter 262

- Section 262.102(c)
- Section 262.1025
- Section 262.103
- Section 263.0075
- Section 265.003(b)
- Section 265.004
- Section 265.006
- Section 266.001(1)
- Subchapter B, Chapter 266
- Section 266.101
- Sections 266.102(a) and (d)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2017.