

## **BILL ANALYSIS**

Senate Research Center  
85R2773 TSR-D

S.B. 313  
By: Schwertner et al.  
Health & Human Services  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission (Sunset) on the Texas State Board of Dental Examiners (TSBDE). TSBDE seeks to safeguard public health and safety by regulating dental care in Texas.

TSBDE is subject to abolishment under the Sunset Act on September 1, 2017, unless continued by the legislature. Sunset found the unusually large TSBDE has pursued high-profile rule packages that appear more motivated by business interests than demonstrated concern for public safety. Meanwhile, high-profile media cases have exposed gaps in TSBDE's regulation of dental anesthesia. Sunset's recommendations would sweep TSBDE and strengthen anesthesia regulation through clear enforcement tools, improved training and education requirements for permit holders, and broader avenues for stakeholder input.

TSBDE is governed by Chapters 251-267, Occupations Code.

This legislation addresses issues differently from current law by:

- Continuing TSBDE for 12 years.
- Sweeping TSBDE and reducing the size of TSBDE from 15 to 11 members.
- Streamlining regulation of dental assistants by combining TSBDE's four dental assistant certificate programs into one registration.
- Authorizing TSBDE to conduct risk-based inspections of dentists administering anesthesia in office settings, including pre-permit, random, and compliance inspections.
- Clarifying TSBDE's authority to regulate parenteral—or intravenous—anesthesia, in addition to enteral—or oral—anesthesia.
- Providing four levels of anesthesia permits and requiring TSBDE to establish minimum standards, education, and training for dentists administering anesthesia.
- Defining pediatric and high-risk patients and requiring additional training on anesthesia administration for those patients.
- Requiring TSBDE to ensure dentists with an anesthesia permit maintain written emergency management plans and establish minimum emergency preparedness standards necessary before administering anesthesia.
- Defining portability and requiring TSBDE to adopt rules requiring additional training and detailing methods to obtain a portability permit.
- Creating a standing advisory committee to advise TSBDE on dental anesthesia.
- Requiring TSBDE to query the Prescription Monitoring Program for potentially harmful prescribing patterns among its licensees.

- Requiring dentists to review a patient’s prescription history before prescribing certain drugs.
- Providing more detailed language on structure and conduct of informal proceedings.
- Creating a Dental Review Committee consisting of nine governor-appointed members to serve at informal settlement conferences on a rotating basis.
- Updating licensing and enforcement processes that have not kept up with best practices.

As proposed, S.B. 313 amends current law relating to the continuation and functions of the State Board of Dental Examiners and imposes fees.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the State Board of Dental Examiners (TSBDE) is modified in SECTION 6 (Section 254.010, Occupations Code), SECTION 17 (Section 258.153, Occupations Code), and SECTION 22 (Section 263.007, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TSBDE in SECTION 18 (Sections 258.1551, 258.1552, 258.1553, and 258.1554, Occupations Code), SECTION 19 (Section 258.156, Occupations Code), SECTION 22 (Section 263.007, Occupations Code), SECTION 23 (Section 263.0072, Occupations Code), SECTION 26 (Sections 265.0016 and 265.0018, Occupations Code), and SECTION 32 (Sections 265.008 and 265.009, Occupations Code) of this bill.

Rulemaking authority previously granted to TSBDE is rescinded in SECTION 25 (Section 265.001, Occupations Code) of this bill, effective September 1, 2018.

Rulemaking authority previously granted to TSBDE is rescinded in SECTION 34 (Sections 262.102, 262.1025, and 263.0075, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 251.005, Occupations Code, to provide that, unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the State Board of Dental Examiners (TSBDE) is abolished September 1, 2029, rather than September 1, 2017.

SECTION 2. Amends Section 252.001(a), Occupations Code, as follows:

(a) Provides that TSBDE consists of 11, rather than 15, members appointed by the governor with the advice and consent of the senate as follows:

(1) decreases from eight to six the number of reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) increases from two to three the number of reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and

(3) decreases from five to two the number of members who represent the public.

SECTION 3. Amends Section 252.003, Occupations Code, as follows:

Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Redefines “Texas trade association” (TTA).

(b) Prohibits a person from being a member of TSBDE and from being a TSBDE employee employed in a “bona fide executive, administrative, or professional capacity,” as that phrase is used for purposes of establishing an exemption to the

overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is an officer, employee, or paid consultant of a TTA in the field of health care; or the person's spouse is an officer, manager, or paid consultant of a TTA in the field of health care. Deletes existing text prohibiting an officer, employee, or paid consultant of a TTA in the field of health care from being a member or employee of TSBDE who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule. Deletes existing text prohibiting a person who is the spouse of an officer, manager, or paid consultant of a TTA in the field of health care from being a TSBDE member and from being a TSBDE employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule.

(c) Redesignates existing Subsection (d) as Subsection (c). Makes a nonsubstantive change.

SECTION 4. Amends Section 252.010, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the training program to provide the person with information regarding:

- (1) the law governing TSBDE operations, rather than Subtitle D (Dentistry);
- (2) the programs, functions, rules, and budget of TSBDE, rather than the programs operated by TSBDE; the role and functions of TSBDE; the rules of TSBDE, with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for TSBDE;
- (3) the scope of and limitations on the rulemaking authority of TSBDE;
- (4) redesignates existing Subdivision (6) as Subdivision (4) and makes no further changes to this subdivision;
- (5) redesignates existing Subdivision (7) as Subdivision (5). The requirements of:
  - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest, rather than the open meetings law, Chapter 551 (Open Meetings), Government Code; the public information law, Chapter 552 (Public Information), Government Code; the administrative procedure law, Chapter 2001 (Administrative Procedure), Government Code; and other laws relating to public officials, including conflict of interest laws; and
  - (B) other laws applicable to members of TSBDE in performing their duties; and
- (6) redesignates existing Subdivision (8) as Subdivision (6) and makes no further changes to this subdivision.

(d) Requires the executive director of TSBDE (executive director) to create a training manual that includes the information required by Subsection (b) and to distribute a copy of the training manual annually to each TSBDE member. Requires each TSBDE member, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 5. Amends Chapter 254, Occupations Code, by adding Section 254.0065, as follows:

Sec. 254.0065. CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING LICENSE HOLDER. (a) Provides that, except as provided by Subsection (b), all information, records, and proceedings of TSBDE or an authorized agent of TSBDE relating to the participation of a license holder in a peer assistance program or the evaluation of a license holder under Section 263.0025, which is added by this Act, are confidential and not subject to disclosure under Chapter 552, Government Code.

(b) Authorizes TSBDE to disclose a disciplinary action taken against a license holder in the enforcement of certain paragraphs of Section 263.002(a) (authorizing TSBDE to take certain actions against certain persons who hold a license). Prohibits TSBDE from disclosing the nature of the impairment or condition that resulted in TSBDE's action.

SECTION 6. Amends Section 254.010(b), Occupations Code, as follows:

(b) Requires rules adopted under this section (Monitoring of License Holder) 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 under Section 263.002 (Grounds for Disciplinary Action in General).

SECTION 7. Amends Chapter 254, Occupations Code, by adding Section 254.0105, as follows:

Sec. 254.0105. MONITORING HARMFUL PRESCRIBING PATTERNS. (a) Requires TSBDE to periodically check the prescribing information submitted to the Texas State Board of Pharmacy (TSBP) as authorized by Section 481.076(a)(1) (prohibiting TSBP from permitting any person access to certain information except certain persons or entities), Health and Safety Code, to determine whether a dentist licensed under this subtitle is engaging in potentially harmful prescribing patterns or practices.

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

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

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

SECTION 8. Amends Section 256.002(a), Occupations Code, as follows:

(a) Deletes an existing requirement that an applicant for a license to practice dentistry be of good moral character. Makes nonsubstantive changes.

SECTION 9. Amends Section 256.053, Occupations Code, as follows:

Sec. 256.053. ELIGIBILITY FOR LICENSE. (a) Deletes an existing requirement that an applicant for a license to practice dental hygiene in this state be of good moral character. Redesignates existing Subdivisions (3) and (4) as Subdivisions (2) and (3) and makes no further changes to these subdivisions.

(b) Requires a school of dentistry or dental hygiene described by Subsection (a)(3), rather than by Subsection (a)(4), to include at least two full academic years of instruction or its equivalent at the postsecondary level.

SECTION 10. Amends Chapter 257, Occupations Code, by adding Section 257.003, as follows:

Sec. 257.003. REFUSAL FOR VIOLATION OF BOARD ORDER. Authorizes TSBDE to refuse to renew a license issued under this subtitle if the license holder is in violation of a TSBDE order.

SECTION 11. Amends Section 258.002(a), Occupations Code, to authorize a licensed dentist to delegate to a qualified and trained dental assistant acting under the dentist's general or direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if, among certain other conditions, the person to whom the dental act is delegated is registered under Chapter 265 (Regulation of Dental Assistants), if registration is required to perform the act, rather than if the person to whom the dental act is delegated holds the appropriate certificate, if a certificate is required to perform the act.

SECTION 12. Amends Subchapter B, Chapter 258, Occupations Code, by adding Section 258.0535, as follows:

Sec. 258.0535. DUTIES RELATED TO CERTAIN PRESCRIPTIONS. (a) Prohibits a dentist from prescribing a drug listed in Subsection (b) to a patient unless the dentist has reviewed the patient's prescription history by accessing the prescription information submitted to TSBP as authorized by Section 481.076(a)(5) (prohibiting TSBP from permitting any person access to certain information except a certain pharmacist or pharmacy technician), Health and Safety Code.

(b) Provides that Subsection (a) only applies to the prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(c) Provides that failure by a dentist to comply with the requirements of this section is grounds for disciplinary action under Section 263.002.

SECTION 13. Amends Section 258.054(c), Occupations Code, to prohibit a dentist from authorizing a dental assistant to make a dental x-ray unless the dental assistant is registered under Chapter 265, rather than unless the dental assistant holds an x-ray certificate issued under Section 265.005 (X-Ray Certificate).

SECTION 14. Amends the heading to Subchapter D, Chapter 258, Occupations Code, to read as follows:

#### SUBCHAPTER D. ADMINISTRATION OF ANESTHESIA

SECTION 15. Amends Section 258.151, Occupations Code, as follows:

Sec. 258.151. New heading: DEFINITIONS. Defines "high-risk patient" and "pediatric patient." Deletes existing definition of "enteral." Makes a nonsubstantive change.

SECTION 16. Amends Subchapter D, Chapter 258, Occupations Code, by adding Section 258.1521, as follows:

Sec. 258.1521. ADVISORY COMMITTEE ON DENTAL ANESTHESIA. (a) Requires TSBDE to establish an advisory committee (committee) to advise TSBDE regarding the adoption and amendment of rules related to dental anesthesia. Provides that the committee consists of nine members appointed by TSBDE's presiding officer and requires it to include persons who have certain occupations.

(b) Requires TSBDE to designate an attorney employed by TSBDE to act as counsel and provide legal advice to the committee and be present during the committee's meetings and deliberations.

(c) Requires the committee to report to TSBDE at least annually regarding the committee's recommendations or other findings related to dental anesthesia. Requires TSBDE to post on TSBDE's Internet website any recommendations or findings reported by the committee.

(d) Prohibits a TSBDE member from serving as a member of the committee.

(e) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the committee.

SECTION 17. Amends Sections 258.153, 258.154, and 258.155, Occupations Code, as follows:

Sec. 258.153. RULES. (a) Requires TSBDE to adopt rules to administer this subchapter, including rules to establish the minimum standards for the administration of anesthesia by a dentist. Deletes existing text requiring TSBDE to establish by rule the minimum standards for the enteral administration of anesthesia by a dentist.

(b) Requires the rules adopted by TSBDE to be designed to protect the health, safety, and welfare to the public and include requirements relating to, among certain other requirements, the methods authorized to be used to administer an anesthetic or the anesthetic agents authorized to be used, for each level of permit held, rather than the methods used to enterally administer an anesthetic and the anesthetic agents authorized to be used.

Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) Requires a dentist who practices dentistry in this state and who administers anesthesia or performs a procedure for which anesthesia is administered to comply with the rules adopted under this subchapter, rather than requires a dentist, on and after August 31, 2002, who practices dentistry in this state and who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered to comply with the rules adopted under this subchapter.

(b) Makes a conforming change.

Sec. 258.155. New heading: ANNUAL PERMIT REQUIRED. (a) Requires TSBDE to issue permits to administer anesthesia in certain categories based on the extent to which the intended procedure will alter the patient's mental status and the method of anesthetic delivery.

(b) Creates this subsection from existing text. Prohibits a dentist from administering anesthesia or performing a procedure for which anesthesia is administered unless the dentist annually obtains the appropriate permit issued under this section. Deletes existing text requiring TSBDE to, not later than September 1, 2002, require each dentist who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered to annually obtain a permit from TSBDE by completing a form prescribed by TSBDE.

(c) Creates this subsection from existing text. Requires TSBDE to set and impose a fee for issuance of a permit, rather than to set and impose a fee for the permit, in an amount designed to recover the costs of regulating a permit holder under this subchapter.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes no further changes to this subsection.

SECTION 18. Amends Subchapter D, Chapter 258, Occupations Code, by adding Sections 258.1551, 258.1552, 258.1553, and 258.1554, as follows:

Sec. 258.1551. PERMIT QUALIFICATIONS. (a) Requires TSBDE, by rule, to establish the qualifications to obtain each level of permit described by Section 258.155, including the education and training required to obtain the permit.

(b) Requires the rules adopted under Subsection (a) to require an applicant for certain permits to complete training on certain matters.

Sec. 258.1552. PORTABILITY OF ANESTHESIA SERVICES. (a) Prohibits a dentist who holds a permit issued under this subchapter from providing a permitted anesthesia service in a location other than a facility or satellite facility unless the dentist obtains authorization from TSBDE under this section.

(b) Requires TSBDE to adopt rules establishing procedures and other requirements for a permit holder to apply for and obtain an authorization described by Subsection (a).

(c) Requires rules adopted under Subsection (b) to require an applicant to complete advanced didactic and clinical training and authorizes the rules to require additional training of, or establish additional qualifications for, an applicant who will administer anesthesia to pediatric or high-risk patients.

Sec. 258.1553. ADMINISTRATION OF ANESTHESIA TO CERTAIN PATIENTS. (a) Prohibits a permit holder under this subchapter from administering anesthesia under certain permits to a pediatric or high-risk patient unless the permit holder has demonstrated to the satisfaction of TSBDE that the permit holder has advanced didactic and clinical training and obtained authorization from TSBDE under this section.

(b) Authorizes TSBDE, by rule, to establish limitations on the administration of anesthesia by a permit holder to a pediatric or high-risk patient.

Sec. 258.1554. MINIMUM EMERGENCY PREPAREDNESS STANDARDS. (a) Requires TSBDE to adopt rules to establish minimum emergency preparedness standards and requirements for the administration of anesthesia under a permit issued under this subchapter. Requires the rules to require a permit holder to fulfill certain criteria.

(b) Requires rules adopted under Subsection (a)(4) to require a holder of certain permits to develop policies and procedures that include advanced cardiac life support rescue protocols, advanced airway management techniques, and, if the permit holder is authorized to administer anesthesia to pediatric patients, pediatric advanced life support rescue protocols.

SECTION 19. Amends Section 258.156, Occupations Code, as follows:

Sec. 258.156. INSPECTIONS. (a) Authorizes TSBDE, except as provided by Subsection (g), to conduct inspections of a dentist who applies for or holds a permit issued under this subchapter as necessary to enforce this subchapter, including inspections of an office site, equipment, a facility, and any document of the dentist, rather than authorizing TSBDE to conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a dentist's practice that relate to the enteral administration of anesthesia. Makes a nonsubstantive change.

(b) Requires TSBDE to conduct an inspection with respect to a dentist who holds certain permits not less than once every five years and to adopt a risk-based inspection schedule for inspections required by this subsection.

(c) Creates this subsection from existing text. Makes no further changes to this subsection.

(d) Creates this subsection from existing text. Provides that TSBDE is not required to give notice before conducting an inspection. Deletes existing text requiring TSBDE, unless it would jeopardize an ongoing investigation, to provide at least five business days' notice before conducting an on-site inspection.

(e) Requires TSBDE to maintain records of inspections conducted.

(f) Authorizes TSBDE, by rule, to establish education and training requirements for inspectors who conduct inspections.

(g) Prohibits TSBDE from conducting an inspection with respect to a dentist who administers anesthesia exclusively in a state-licensed hospital or state-licensed ambulatory surgical center. Authorizes TSBDE, by rule, to except from inspection a dentist who administers anesthesia exclusively in any other facility that is subject to inspection by the Department of State Health Services or an accrediting body under state law. Provides that TSBDE retains all other authority provided by this subtitle over a dentist described by this subsection. Deletes existing text providing that this section does not require TSBDE to make an on-site inspection of a dentist's office.

SECTION 20. Amends Chapter 263, Occupations Code, by adding Section 263.0025, as follows:

Sec. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION. (a) Authorizes TSBDE or an authorized agent of TSBDE, in enforcing certain paragraphs of Section 263.002(a) and on probable cause as determined by TSBDE or agent, to request a license holder to submit to a mental or physical evaluation by a physician or other health care professional designated by TSBDE.

(b) Requires TSBDE, if the license holder refuses to submit to the requested evaluation, to issue an order requiring the license holder to show cause why the license holder will not submit to the evaluation. Requires TSBDE to schedule a hearing on the order not later than the 30th day after the date notice is served on the license holder and to notify the license holder of the order and hearing by personal service or certified mail, return receipt requested.

(c) Provides that, at the hearing, the license holder and the license holder's attorney are entitled to present testimony or other evidence to show why the license holder should not be required to submit to the evaluation. Provides that the license holder has the burden of proof.

(d) Requires TSBDE to, after the hearing, by order, require the license holder to submit to the evaluation not later than the 60th day after the date of the order or withdraw the request for an evaluation, as applicable.

SECTION 21. Amends Section 263.0065(c), Occupations Code, to require a complaint delegated under this section (Delegation of Certain Complaint Dispositions) to be referred for informal proceedings under Section 263.007 (Informal Proceeding), rather than under Section 263.0075 (Informal Settlement Conference; Restitution), under certain conditions.

SECTION 22. Amends Section 263.007, Occupations Code, by amending Subsection (b) and adding Subsections (c) through (k), as follows:

(b) Sets forth certain requirements for the rules adopted under this section. Deletes existing text relating to certain legal procedures required for the rules adopted under this section.

(c) Provides that the license holder is entitled at the informal settlement conference (ISC) to reply to the staff's presentation and present the facts the license holder reasonably believes the license holder could prove at a hearing by competent evidence or qualified witnesses.

(d) Requires the ISC panel, after ample time is given for the presentations, to recommend that the investigation be closed or make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.



(e) Requires TSBDE, if the license holder has previously been the subject of disciplinary action by TSBDE, to schedule the ISC as soon as practicable but not later than the 180th day after the date TSBDE's official investigation of the complaint is commenced.

(f) Requires a notice under Subsection (b)(2) to be accompanied by a written statement of the nature of the allegations and the information TSBDE intends to use at the ISC. Authorizes the license holder, if TSBDE does not provide the statement or information at that time, to use that failure as grounds for rescheduling the ISC. Requires the notice, if the complaint includes an allegation that the license holder has violated the standard of care in the practice of dentistry or dental hygiene, to include a copy of the report by the expert reviewer. Requires the license holder to provide to TSBDE the license holder's rebuttal not later than the 15th day before the date of the ISC in order for that information to be considered at the ISC.

(g) Requires TSBDE, by rule, to define circumstances constituting good cause for purposes of Subsection (b)(1), including an expert reviewer's delinquency in reviewing and submitting a report to TSBDE under Section 255.0067 (Reports; Procedures for Expert Review).

(h) Requires TSBDE, by rule, to define circumstances constituting good cause to grant a request by a license holder for a continuance of the ISC.

(i) Provides that information presented by TSBDE or TSBDE staff in an ISC is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) Requires TSBDE, on request by the license holder under review, to make a recording of the ISC proceeding. Provides that the recording is a part of the investigative file and prohibits it from being released to a third party unless authorized under this subtitle. Authorizes TSBDE to charge the license holder a fee to cover the cost of recording the proceeding.

(k) Requires TSBDE to provide a copy of the recording to the license holder on the license holder's request.

SECTION 23. Amends Chapter 263, Occupations Code, by adding Sections 263.0071, 263.0072, and 263.0073, as follows:

Sec. 263.0071. DENTAL REVIEW COMMITTEE. (a) Provides that the dental review committee (review committee) consists of nine members—six dentist members and three dental hygienist members—appointed by the governor.

(b) Provides that a member of the review committee serves a six-year term.

(c) Requires the governor, if a vacancy occurs during a member's term, to appoint a replacement to fill the unexpired term.

(d) Provides that a member of the review committee is entitled to receive a per diem for actual duty in the same manner provided for TSBDE members.

(e) Provides that a member of the review committee is subject to law and the rules of TSBDE, including certain sections of the Occupations Code, as if the review committee member were a member of TSBDE, except that a review committee member is not subject to Chapter 572 (Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest), Government Code. Requires the training program that a review committee member is required to complete under Section 252.010 (Board Member Training) to be an abbreviated version of the program under that section that is limited to training relevant to serving on a review committee.

Sec. 263.0072. INFORMAL SETTLEMENT CONFERENCE PANEL. (a) Requires TSBDE to appoint members of TSBDE and the review committee to serve, on a rotating basis, as panelists on an ISC panel.

(b) Requires TSBDE, in an ISC under Section 263.007, to appoint at least two panelists to determine whether an informal disposition is appropriate. Requires at least one of the panelists to be a dentist.

(c) Requires TSBDE, by rule, to require that at least one panelist be physically present at the ISC and authorizes TSBDE to authorize another panelist to appear by video conference.

(d) Authorizes an ISC, notwithstanding Subsection (b), to be conducted by one panelist if the license holder who is the subject of the complaint waives the requirement that at least two panelists conduct the ISC. Authorizes the panelist, if the license holder waives that requirement, to be a dentist, a dental hygienist, or a member who represents the public.

(e) Authorizes an ISC conducted under Section 263.007 to show compliance with an order or remedial plan of TSBDE, notwithstanding Subsections (b) and (d), to be conducted by one panelist.

Sec. 263.0073. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL SETTLEMENT CONFERENCE. (a) Requires the panel, at an ISC under Section 263.007, to make recommendations for the disposition of the complaint or allegation. Authorizes the panel to request the assistance of a TSBDE employee at any time.

(b) Requires TSBDE employees to present a summary of the allegations against the license holder and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) Requires an attorney for TSBDE to act as counsel to the panel and to be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. Authorizes the attorney to ask questions of participants in the ISC to clarify any statement made by the participant and requires the attorney to perform certain functions. Authorizes the attorney, during the panel's deliberations, to be present only to advise the panel to legal issues and to provide information on comparable cases that have appeared before TSBDE.

(d) Requires the panel and TSBDE employees to provide an opportunity for the license holder and the license holder's authorized representative to reply to TSBDE employees' presentation and to present oral and written statements and facts that the license holder and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) Prohibits a TSBDE employee and certain persons from being present during the deliberations of the panel. Authorizes only the members of the panel and the attorney serving as counsel to the panel to be present during the deliberations.

(f) Prohibits the panel, during the deliberations, from reconsidering an expert panel's determinations that are included in a final written report issued under Section 255.0067.

(g) Requires the panel to recommend the dismissal of the complaint or allegations or, if the panel determines that the license holder has violated a statute or TSBDE rule, authorizes the panel to recommend TSBDE action and terms for an informal settlement of the case.

(h) Requires the panel's recommendations under Subsection (g) to be made in writing and presented to the license holder and the license holder's authorized representative. Authorizes the license holder to accept the proposed settlement within the time established by the panel at the ISC. Authorizes TSBDE, if the license holder rejects the proposed settlement or does not act within the required time, to proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

SECTION 24. Amends Section 264.011, Occupations Code, to provide that this subchapter does not prevent TSBDE from assessing an administrative penalty using an informal proceeding under Section 263.007, rather than under Section 263.003 (Hearing).

SECTION 25. Amends Section 265.001, Occupations Code, as follows:

Sec. 265.001. REGISTRATION. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that this section expires September 1, 2018.

SECTION 26. Amends Chapter 265, Occupations Code, by adding Sections 265.0015, 265.0016, 265.0017, and 265.0018, as follows:

Sec. 265.0015. REGISTRATION REQUIRED FOR CERTAIN DENTAL ACTS. Prohibits a dental assistant, unless the dental assistant is registered under this chapter, from applying a pit and fissure sealant, making a dental x-ray, performing coronal polishing, or monitoring the administration of nitrous oxide.

Sec. 265.0016. ELIGIBILITY REQUIREMENTS FOR REGISTRATION. (a) Requires TSBDE, by rule, to establish the requirements for registration under this chapter, including requiring a dental assistant to meet certain qualifications.

(b) Authorizes TSBDE to approve courses of instruction and examinations that are provided by private entities.

Sec. 265.0017. FEES. Requires TSBDE to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering this chapter, including registration and renewal fees.

Sec. 265.0018. REGISTRATION EXPIRATION AND RENEWAL. (a) Provides that a registration under this chapter is valid for two years.

(b) Authorizes a dental assistant to renew a registration by paying the required renewal fee and complying with any other renewal requirements established by TSBDE.

(c) Prohibits a dental assistant whose registration has expired from engaging in an activity that requires registration until the registration has been renewed.

(d) Authorizes TSBDE, by rule, to adopt a system under which registrations expire on various dates during the year. Requires TSBDE, for the year in which the expiration date is changed, to prorate registration fees on a monthly basis so that each registration holder pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. Provides that, on renewal of the registration on the new expiration date, the total renewal fee is payable.

SECTION 27. Amends Section 265.003, Occupations Code, by amending Subsections (a) and (a-1) and adding Subsections (c) and (d), as follows:

(a) Authorizes a dental assistant who is not registered under this chapter to be employed by and work in the office of a licensed and practicing dentist and perform one or more delegated dental acts under the direct supervision, direction, and responsibility of the dentist, including the application of fluoride varnish; or, under the general supervision, direction, and responsibility of the dentist, limited to the provision of treatment of a minor dental emergency under certain conditions. Deletes existing text authorizing a dental assistant who is not professionally licensed to be employed by and work in the office of a licensed and practicing dentist and perform one or more delegated dental acts under the direct supervision, direction, and responsibility of the dentist, including the application of a pit and fissure sealant and coronal polishing, if the dental assistant holds a certificate under Section 265.006 (Coronal Polishing Certificate); or, under the general supervision, direction, and responsibility of the dentist, limited to the making of dental x-rays in compliance with Section 265.005. Makes conforming and nonsubstantive changes.

(a-1) Requires a treating dentist who delegates the provision of interim treatment of a minor emergency dental condition to a dental assistant under Subsection (a)(2), rather than under Subsection (a)(2)(B), to take certain actions.

(c) Provides that a delegating dentist remains responsible for the dental acts of a registered or nonregistered dental assistant performing the delegated dental acts.

(d) 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.

SECTION 28. Amends Section 265.004, Occupations Code, by adding Subsection (f) to provide that this section expires September 1, 2018.

SECTION 29. Amends Section 265.005, Occupations, by adding Subsection (p) to provide that this section expires September 1, 2018.

SECTION 30. Amends Section 265.006, Occupations Code, by adding Subsection (c) to provide that this section expires September 1, 2018.

SECTION 31. Amends Section 265.007, Occupations Code, by adding Subsection (d) to provide that this section expires September 1, 2018.

SECTION 32. Amends Chapter 265, Occupations Code, by adding Sections 265.008 and 265.009, as follows:

Sec. 265.008. CONTINUING EDUCATION REQUIRED FOR REGISTRATION RENEWAL. Requires TSBDE, by rule, to establish continuing education requirements for dental assistants registered under this chapter, including a minimum number of hours of continuing education required to renew a registration.

Sec. 265.009. GROUNDS FOR DISCIPLINARY ACTION. (a) Authorizes TSBDE, after notice and hearing, to take certain disciplinary actions against a person registered under this chapter.

(b) Requires TSBDE, by rule, to establish the grounds and procedures for disciplinary action under this chapter.

(c) Provides that a proceeding under this section is subject to Chapter 2001, Government Code.

SECTION 33. Amends the heading to Subchapter C, Chapter 266, Occupations Code, to read as follows:

#### SUBCHAPTER C. BOARD POWERS AND DUTIES

SECTION 34. Repealers: Sections 256.0531(h) (relating to requiring TSBDE to adopt an alternative dental hygiene training program by a certain date), (i) (relating to requiring TSBDE to appoint certain members for an advisory committee related to the alternative dental hygiene training program), and (j) (relating to requiring the advisory committee to consider standards adopted by the Commission on Dental Accreditation), Occupations Code.

Repealer: Subchapter B (Dental Hygiene Advisory Committee), Chapter 262 (Regulation of Dental Hygienists), Occupations Code.

Repealers: Sections 262.001(1) (defining “advisory committee”), 262.102(c) (prohibiting TSBDE from adopting a certain rule before a certain date), 262.1025 (Authority of Advisory Committee to Recommend Rules; Adoption by Board), 262.103 (Notice of Meetings), Occupations Code.

Repealers: Sections 263.0075 (Informal Settlement Conference; Restitution) and 263.0076 (Informal Settlement Conference Notice), Occupations Code.

Repealer: Subchapter B (Dental Laboratory Certification Council), Chapter 266 (Regulation of Dental Laboratories), Occupations Code.

Repealers: Sections 266.001(1) (defining “council”), 266.101 (Council Powers and Duties), 266.102(a) (relating to requiring TSBDE to take certain actions relating to proposed rules) and (d) (requiring TSBDE to allow the Dental Laboratory Certification Council to review and comment on proposed rules for a certain period), Occupations Code.

SECTION 35. Requires TSBDE to, not later than March 1, 2018, adopt rules and fees necessary to implement Chapters 258 and 265, Occupations Code, as amended by this Act, and adopt rules necessary to implement Chapter 263, Occupations Code, as amended by this Act.

SECTION 36. (a) Provides that the term of a TSBDE member serving on September 1, 2017, expires on that date.

(b) Requires the governor, not later than December 1, 2017, to appoint 11 members to TSBDE in accordance with Section 252.001(a), Occupations Code, as amended by this Act. Requires the governor to appoint certain persons to serve certain staggered terms.

(c) Requires the members whose terms expire under Subsection (a), notwithstanding Section 252.001, Occupations Code, as amended by this Act, to continue to perform the duties of office as a 15-member board until six members are appointed under Subsection (b) and qualified.

(d) Authorizes the governor to appoint to TSBDE under Subsection (b) a member whose term expires under Subsection (a). Provides that the expired term of a member described by this subsection does not constitute a full term for purposes of Section 252.004(b) (relating to TSBDE member term limits), Occupations Code.

SECTION 37. Requires the presiding officer of TSBDE, not later than December 1, 2017, to appoint the members of the advisory committee established under Section 258.1521, Occupations Code, as added by this Act.

SECTION 38. Requires the governor, not later than December 1, 2017, to appoint the members of the review committee in accordance with Section 263.0071, Occupations Code, as added by this Act. Requires the governor, in making the appointments, to appoint a certain number of members to terms expiring on certain staggered dates.

SECTION 39. (a) Provides that, except as provided by Subsection (b), Section 252.010, Occupations Code, as amended by this Act, applies to a member of TSBDE appointed before, on, or after the effective date of this Act.

(b) Provides that a TSBDE member appointed after the effective date of this Act who, before the effective date of this Act, completed the training program required by Section 252.010, Occupations Code, as that law existed before the effective date of this Act, is required to complete additional training only on the subjects added by this Act to the training program as required by Section 252.010, Occupations Code. Prohibits a TSBDE member described by this subsection from voting, deliberating, or being counted as a member in attendance at a TSBDE meeting held on or after December 1, 2017, until the member completes the additional training.

SECTION 40. Makes application of Section 258.0535, Occupations Code, as added by this Act, prospective to September 1, 2018.

SECTION 41. Makes application of Section 265.008, Occupations Code, as added by this Act, prospective to September 1, 2018.

SECTION 42. (a) Provides that a registration or certificate issued under former Section 265.001, 265.004, 265.005, or 265.006, Occupations Code, expires September 1, 2018.

(b) Requires TSBDE, as soon as practicable after September 1, 2018, to issue a prorated refund of any fees paid by a holder of a registration or certificate that expires under Subsection (a).

SECTION 43. (a) Makes application of Chapter 263, Occupations Code, as amended by this Act, prospective to March 1, 2018.

(b) Provides that the changes in law made by this Act do not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date of this Act and that is pending before a court or other governmental entity on that date.

SECTION 44. (a) Provides that a violation of a law that is repealed by this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

(b) Provides that, for purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

SECTION 45. (a) Effective date, except as provided by Subsections (b) and (c) of this section: September 1, 2017.

(b) Effective date, Section 258.155, Occupations Code, as amended by this Act, and Sections 258.1552 and 258.1553, Occupations Code, as added by this Act: March 1, 2018.

(c) Effective date, Sections 258.002 and 258.054, Occupations Code, as amended by this Act, and Section 265.0015, Occupations Code, as added by this Act: September 1, 2018.