

## **BILL ANALYSIS**

Senate Research Center

S.B. 319  
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Agriculture, Water & Rural Affairs  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 319 is the Sunset bill for the Texas 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 (Sunset) 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, Sunset concluded they ultimately resulted from a lack of leadership and oversight from TBVME.

Sunset 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 Sunset'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 TBVME 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. (Original Author's / Sponsor's Statement of Intent)

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 Texas Board of Veterinary Medical Examiners (TBVME) in SECTION 21 (Section 801.411, Occupations Code) of this bill.

Rulemaking authority previously granted to TBVME is modified in SECTION 7 (Section 801.154, Occupations Code), SECTION 9 (Section 801.205, Occupations Code) and SECTION 16 (Section 801.306, Occupations Code) of this bill.

Rulemaking authority previously granted to TBVME is rescinded in SECTION 22 (Section 801.452, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 826.042, Health and Safety Code, by adding Subsections (f) and (g), as follows:

(f) Requires the veterinarian or local rabies control authority, as applicable, at the time an owner submits for quarantine an animal described by Subsection (b) (relating to requiring the local rabies control authority or a veterinarian to quarantine or test any animal that is believed to be rabid in accordance with the Department of State Health Services rules), to provide the animal's owner certain information.

(g) Requires a veterinarian or local rabies control authority, as applicable, to identify each animal quarantined under this section (Quarantine of Animals) with a placard or other marking on the animal's kennel that indicates the animal is quarantined under this section.

SECTION 2. Amends Section 826.043, Health and Safety Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Authorizes the veterinarian or local rabies control authority, except as provided by Subsection (e), to sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period.

(e) Prohibits a veterinarian or local rabies control authority from destroying an animal following the final day of the quarantine period unless the veterinarian or local rabies control authority has notified the animal's owner, if available, of the animal's scheduled destruction.

SECTION 3. Amends Section 801.003, Occupations Code, to provide that the Texas Board of Veterinary Medical Examiner (TBVME) is abolished and this chapter (Veterinarians) expires September 1, 2021, rather than September 1, 2017.

SECTION 4. Amends Section 801.004, Occupations Code, as follows:

Sec. 801.004. APPLICATION OF CHAPTER. Provides that this chapter does not apply to a licensed health care professional who, without expectation of compensation and under the direct supervision of a veterinarian on staff, provides treatment or care to an animal owned by or in the possession, control, or custody of an entity accredited by the Association of Zoos and Aquariums, or the Global Federation of Animal Sanctuaries or the Zoological Association of America that has a veterinarian on staff.

SECTION 5. Amends Section 801.051(a), Occupations Code, as follows:

(a) Amends the composition of TBVME, to include:

(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 horses, livestock, or other 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 6. 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 TBVME with certain information.

(d) Requires the executive director of 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 7. Amends Section 801.154, Occupations Code, to delete the existing 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 8. 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 delivery of controlled substances.

SECTION 9. Amends Section 801.205, Occupations Code, to delete existing text requiring that TBVME's rules require that a written explanation be given to the person who filed the complaint explaining the action taken on the dismissed complaint.

SECTION 10. Amends Section 801.2055, Occupations Code, as follows:

Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) Requires that a certain complaint 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 is required to 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 proceeding related to the complaint.

SECTION 11. Amends Section 801.207, Occupations Code, by amending Subsection (b) and adding Subsections (c), (d), and (e), 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's 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.

(d) Requires TBVME, not later than the 30th day after the date of receipt of a written request from a license holder who is the subject of a formal complaint initiated and filed under this subchapter (Public Access and Information; Complaint Procedures) or from the license holder's counsel of record, and subject to any other privilege or restriction set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, to provide the license holder with access to all information in its possession that TBVME intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. Provides that TBVME is not required to provide certain documents and information.

(e) Provides that furnishing information under Subsection (d) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

SECTION 12. 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 notification from including information that is confidential under Section 801.207(b).

SECTION 13. 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 that 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 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 14. 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 to authorize DPS to collect certain costs.

SECTION 15. 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 to provide 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 that license fees payable on March 1 be prorated on a monthly basis to achieve certain outcomes, for a certain year.

SECTION 16. Amends Section 801.306, Occupations Code, as follows:

Sec. 801.306. **INACTIVE STATUS.** Authorizes TBVME, by rule, to provide for the placement of a license holder on inactive status. Prohibits, rather than requires, that the rules adopted under this section include a limit on the time a license holder may remain on inactive status.

SECTION 17. 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 and years with period and makes a nonsubstantive change.

SECTION 18. 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 19. Amends the heading to Section 801.407, Occupations Code, to read as follows:

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

SECTION 20. 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 21. 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 TBVME 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 that the schedule provide that the type of disciplinary action or other sanction and the amount of a penalty imposed under this chapter be based on certain factors.

SECTION 22. Amends Sections 801.452(b) and (c), Occupations Code, as follows:

(b) Requires that the amount of the penalty 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 23. 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 the Texas State Board of Pharmacy (TSBP) as authorized by Section 481.076(a)(1) (relating to an investigator for certain entities having access to certain information), 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 24. (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 25. (a) Provides that the changes in law made by this Act to Section 801.051(a), Occupations Code, do not affect the entitlement of a member serving on TBVME immediately before the effective date of this Act to continue to serve for the remainder of the member's term. Requires the governor, as the terms of TBVME members expire, to appoint or reappoint members who have the qualifications required for members under Section 801.051, Occupations Code, as amended by this Act.

(b) Sets forth certain prohibitions relating to the governor's appointments to TBVME. Provides that this subsection does not apply after the first date on which certain members are serving on TBVME.

SECTION 26. (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 27. (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 28. Makes application of Sections 801.267 and 801.309, Occupations Code, as added by this Act, prospective.

SECTION 29. Makes application of Sections 801.407(c), 801.452(b), and 801.452(c), Occupations Code, as amended by this Act, and Section 801.411, Occupations Code, as added by this Act, prospective to the date rules under Section 401.411 become effective.

SECTION 30. Effective date: September 1, 2017.