

By: Watson, et al.

S.B. No. 319

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the State Board of
3 Veterinary Medical Examiners; authorizing a reduction in fees;
4 providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 801.003, Occupations Code, is amended to
7 read as follows:

8 Sec. 801.003. APPLICATION OF SUNSET ACT. The State Board of
9 Veterinary Medical Examiners is subject to Chapter 325, Government
10 Code (Texas Sunset Act). Unless continued in existence as provided
11 by that chapter, the board is abolished and this chapter expires
12 September 1, 2021 [~~2017~~].

13 SECTION 2. Section 801.051(a), Occupations Code, is amended
14 to read as follows:

15 (a) The State Board of Veterinary Medical Examiners
16 consists of nine members appointed by the governor with the advice
17 and consent of the senate as follows:

18 (1) five [~~six~~] veterinarian members, including:

19 (A) one veterinarian member who is associated
20 with an animal shelter; and

21 (B) one veterinarian member who has at least
22 three years of experience practicing veterinary medicine in this
23 state on horses, livestock, or other large animals; [~~and~~]

24 (2) one licensed veterinary technician member; and

1 (3) three members who represent the public.

2 SECTION 3. Section 801.057, Occupations Code, is amended by
3 amending Subsection (b) and adding Subsection (d) to read as
4 follows:

5 (b) The training program must provide the person with
6 information regarding:

7 (1) the law governing board operations;

8 (2) the [legislation that created the board and the
9 board's] programs, functions, rules, and budget of the board;

10 (3) the scope of and limitations on the rulemaking
11 authority of the board;

12 (4) the types of board rules, interpretations, and
13 enforcement actions that may implicate federal antitrust law by
14 limiting competition or impacting prices charged by persons engaged
15 in a profession or business the board regulates, including rules,
16 interpretations, and enforcement actions that:

17 (A) regulate the scope of practice of persons in
18 a profession or business the board regulates;

19 (B) restrict advertising by persons in a
20 profession or business the board regulates;

21 (C) affect the price of goods or services
22 provided by persons in a profession or business the board
23 regulates; or

24 (D) restrict participation in a profession or
25 business the board regulates;

26 (5) [~~2~~] the results of the most recent formal audit
27 of the board;

1 (6) [~~(3)~~] the requirements of:

2 (A) laws relating to open meetings, public
3 information, administrative procedure, and disclosing conflicts of
4 interest; and

5 (B) other laws applicable to members of the board
6 in performing their duties; and

7 (7) [~~(4)~~] any applicable ethics policies adopted by
8 the board or the Texas Ethics Commission.

9 (d) The executive director of the board shall create a
10 training manual that includes the information required by
11 Subsection (b). The executive director shall distribute a copy of
12 the training manual annually to each board member. On receipt of
13 the training manual, each board member shall sign and submit to the
14 executive director a statement acknowledging receipt of the
15 training manual.

16 SECTION 4. Section 801.154, Occupations Code, is amended to
17 read as follows:

18 Sec. 801.154. FEES. [~~(a)~~] The board by rule shall set fees
19 in amounts that are reasonable and necessary so that the fees, in
20 the aggregate, cover the costs of administering this chapter. [~~The~~
21 ~~board may not set a fee that existed on September 1, 1993, in an~~
22 ~~amount that is less than the fee on that date.~~]

23 SECTION 5. Subchapter D, Chapter 801, Occupations Code, is
24 amended by adding Section 801.164 to read as follows:

25 Sec. 801.164. RISK-BASED INSPECTIONS RELATED TO CONTROLLED
26 SUBSTANCES PRACTICES. The board may conduct a risk-based
27 inspection of a veterinarian's practice based on information

1 obtained from the veterinarian or another source concerning the
2 veterinarian's use, handling, prescribing, dispensing, or delivery
3 of controlled substances.

4 SECTION 6. Section 801.205, Occupations Code, is amended to
5 read as follows:

6 Sec. 801.205. GENERAL RULES REGARDING COMPLAINT
7 INVESTIGATION AND DISPOSITION. The board shall adopt rules
8 relating to the investigation of complaints filed with the board.
9 The rules must:

- 10 (1) distinguish between categories of complaints;
- 11 (2) ensure that complaints are not dismissed without
12 appropriate consideration;
- 13 (3) require that the board be advised of a complaint
14 that is dismissed [~~and that a written explanation be given to the~~
15 ~~person who filed the complaint explaining the action taken on the~~
16 ~~dismissed complaint~~];
- 17 (4) ensure that the person who filed the complaint has
18 the opportunity to explain the allegations made in the complaint;
19 and
- 20 (5) prescribe guidelines concerning the categories of
21 complaints that require the use of a private investigator and the
22 procedures for the board to obtain the services of a private
23 investigator.

24 SECTION 7. Section 801.2055, Occupations Code, is amended
25 to read as follows:

26 Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE.
27 (a) A complaint that requires medical expertise to review must be

1 reviewed by one [~~two~~] or more veterinarians designated by the
2 [veterinarian] board [members]. The veterinarian reviewers [~~board~~
3 ~~members~~] shall determine whether to dismiss the complaint or refer
4 it to an informal proceeding under Section 801.408.

5 (b) If the veterinarian reviewers determine to:

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

8 (2) refer the complaint to an informal proceeding, the
9 complaint is referred to an informal proceeding under Section
10 801.408.

11 (c) If the board designates more than one veterinarian
12 reviewer and the reviewers [~~members~~] do not agree to dismiss or
13 refer the complaint to an informal proceeding, the complaint is
14 referred to an informal proceeding under Section 801.408.

15 (d) A veterinarian board member who reviews a complaint
16 under this section may not participate in any subsequent
17 disciplinary proceeding related to the complaint.

18 SECTION 8. Section 801.207, Occupations Code, is amended by
19 amending Subsection (b) and adding Subsections (c), (d), and (e) to
20 read as follows:

21 (b) Each complaint, investigation file and record, and
22 other investigation report and all other investigative information
23 in the possession of or received or gathered by the board or the
24 board's employees or agents relating to a license holder, an
25 application for license, or a criminal investigation or proceeding
26 is privileged and confidential and is not subject to discovery,
27 subpoena, or other means of legal compulsion for release to anyone

1 other than the board or the board's employees or agents involved in
2 discipline of a license holder [~~An investigation record of the~~
3 ~~board, including a record relating to a complaint that is found to~~
4 ~~be groundless, is confidential~~].

5 (c) The board shall protect the identity of a complainant to
6 the extent possible.

7 (d) Not later than the 30th day after the date of receipt of
8 a written request from a license holder who is the subject of a
9 formal complaint initiated and filed under this subchapter or from
10 the license holder's counsel of record, and subject to any other
11 privilege or restriction set forth by rule, statute, or legal
12 precedent, and unless good cause is shown for delay, the board shall
13 provide the license holder with access to all information in its
14 possession that the board intends to offer into evidence in
15 presenting its case in chief at the contested hearing on the
16 complaint. The board is not required to provide:

- 17 (1) a board investigative report or memorandum;
18 (2) the identity of a nontestifying complainant; or
19 (3) attorney-client communications, attorney work
20 product, or other materials covered by a privilege recognized by
21 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

22 (e) Furnishing information under Subsection (d) does not
23 constitute a waiver of privilege or confidentiality under this
24 chapter or other applicable law.

25 SECTION 9. Subchapter E, Chapter 801, Occupations Code, is
26 amended by adding Section 801.208 to read as follows:

27 Sec. 801.208. NOTIFICATION TO COMPLAINANT REGARDING

1 COMPLAINT DISPOSITION. (a) The board shall promptly notify a
2 complainant of the final disposition of the complaint, including
3 notice:

4 (1) that the complaint was dismissed;

5 (2) that a penalty, disciplinary action, or other
6 sanction was imposed; or

7 (3) that the complaint was disposed of in another
8 manner and the nature of that disposition.

9 (b) The board shall include with the notification a copy of
10 any public sanction imposed by the board.

11 (c) The board shall include in the notification an
12 explanation of each reason for the disposition, including, as
13 applicable, in plain, easily understandable language, each reason
14 the conduct alleged in the complaint did or did not constitute
15 grounds for the imposition of a penalty, disciplinary action, or
16 other sanction.

17 (d) The notification may not include information that is
18 confidential under Section [801.207\(b\)](#).

19 SECTION 10. Subchapter E, Chapter [801](#), Occupations Code, is
20 amended by adding Section 801.209 to read as follows:

21 Sec. 801.209. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In
22 this section:

23 (1) "Anonymous complaint" means a complaint that lacks
24 sufficient information to identify the source or the name of the
25 person who filed the complaint.

26 (2) "Insurance professional" means a person licensed
27 under Title 13, Insurance Code.

1 (3) "Insurer" means an insurance company or other
2 entity authorized to engage in the business of insurance under
3 Title 6, Insurance Code.

4 (b) The board may not accept anonymous complaints.

5 (c) Notwithstanding any confidentiality requirements under
6 Chapter 552, Government Code, or this chapter, a complaint filed
7 with the board against a license holder by a pharmaceutical company
8 or by an insurance professional or insurer relating to insurance
9 covering veterinary services must include the name and address of
10 the pharmaceutical company, insurance professional, or insurer
11 filing the complaint. Not later than the 15th day after the date
12 the complaint is filed with the board, the board shall notify the
13 license holder who is the subject of the complaint of the name and
14 address of the pharmaceutical company, insurance professional, or
15 insurer who filed the complaint, unless the notice would jeopardize
16 an investigation.

17 SECTION 11. Subchapter F, Chapter 801, Occupations Code, is
18 amended by adding Section 801.267 to read as follows:

19 Sec. 801.267. CRIMINAL HISTORY RECORD INFORMATION FOR
20 LICENSE ISSUANCE. (a) The board shall require that an applicant
21 for a license submit a complete and legible set of fingerprints, on
22 a form prescribed by the board, to the board or to the Department of
23 Public Safety for the purpose of obtaining criminal history record
24 information from the Department of Public Safety and the Federal
25 Bureau of Investigation.

26 (b) The board may not issue a license to a person who does
27 not comply with the requirement of Subsection (a).

1 (c) The board shall conduct a criminal history record
2 information check of each applicant for a license using
3 information:

4 (1) provided by the individual under this section; and
5 (2) made available to the board by the Department of
6 Public Safety, the Federal Bureau of Investigation, and any other
7 criminal justice agency under Chapter 411, Government Code.

8 (d) The board may:

9 (1) enter into an agreement with the Department of
10 Public Safety to administer a criminal history record information
11 check required under this section; and

12 (2) authorize the Department of Public Safety to
13 collect from each applicant the costs incurred by the Department of
14 Public Safety in conducting the criminal history record information
15 check.

16 SECTION 12. Section 801.301, Occupations Code, is amended
17 to read as follows:

18 Sec. 801.301. LICENSE TERM AND ~~[ANNUAL]~~ RENEWAL ~~[REQUIRED]~~.

19 (a) The board shall provide:

20 (1) that each type of license under this chapter is
21 valid for a term of one year or two years; and

22 (2) for the ~~[annual]~~ renewal of a license.

23 (b) The board by rule may adopt a system under which
24 licenses expire on various dates during the year.

25 (c) For a year in which the license expiration date is
26 changed, the board shall prorate license fees ~~[payable on March 1~~
27 ~~shall be prorated]~~ on a monthly basis so that each license holder

1 pays only that portion of the fee that is allocable to the number of
2 months during which the license is valid. On renewal of the license
3 on the new expiration date, the total license renewal fee is
4 payable.

5 SECTION 13. Section 801.306, Occupations Code, is amended
6 to read as follows:

7 Sec. 801.306. INACTIVE STATUS. The board by rule may
8 provide for the placement of a license holder on inactive status.
9 ~~[The rules adopted under this section must include a limit on the~~
10 ~~time a license holder may remain on inactive status.]~~

11 SECTION 14. Sections 801.307(b) and (c), Occupations Code,
12 are amended to read as follows:

13 (b) The board may:

14 (1) establish general categories of continuing
15 education that meet the needs of license holders; ~~and~~

16 (2) require a license holder to successfully complete
17 continuing education courses; and

18 (3) for a license valid for two years, provide a one
19 year or two year period for the completion of continuing education.

20 (c) The board may require a license holder who does not
21 complete the required number of hours of continuing education in a
22 period ~~[year]~~ to make up the missed hours in a later period ~~[years]~~.
23 Hours required to be made up in a later period ~~[year]~~ are in
24 addition to the hours normally required to be completed in that
25 period ~~[year]~~.

26 SECTION 15. Subchapter G, Chapter 801, Occupations Code, is
27 amended by adding Section 801.309 to read as follows:

1 Sec. 801.309. CRIMINAL HISTORY RECORD INFORMATION
2 REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a
3 license issued under this chapter shall submit a complete and
4 legible set of fingerprints for purposes of performing a criminal
5 history record information check of the applicant as provided by
6 Section 801.267.

7 (b) The board may administratively suspend or refuse to
8 renew the license of a person who does not comply with the
9 requirement of Subsection (a).

10 (c) A license holder is not required to submit fingerprints
11 under this section for the renewal of the license if the license
12 holder has previously submitted fingerprints under:

13 (1) Section 801.267 for the initial issuance of the
14 license; or

15 (2) this section as part of a prior license renewal.

16 SECTION 16. The heading to Section 801.407, Occupations
17 Code, is amended to read as follows:

18 Sec. 801.407. RIGHT TO HEARING[~~, SCHEDULE OF SANCTIONS~~].

19 SECTION 17. Section 801.407(c), Occupations Code, is
20 amended to read as follows:

21 (c) The State Office of Administrative Hearings shall use
22 the schedule of sanctions under Section 801.411 [~~adopted by board~~
23 ~~rule~~] for any sanction imposed as the result of a hearing conducted
24 by that office.

25 SECTION 18. Subchapter I, Chapter 801, Occupations Code, is
26 amended by adding Section 801.411 to read as follows:

27 Sec. 801.411. SCHEDULE OF SANCTIONS. (a) The board by

1 rule shall adopt a schedule of penalties, disciplinary actions, and
2 other sanctions that the board may impose under this chapter.

3 (b) In adopting the schedule of sanctions under Subsection
4 (a), the board shall ensure that the severity of the sanction
5 imposed is appropriate to the type of violation or conduct that is
6 the basis for disciplinary action. The schedule must provide that
7 the type of disciplinary action or other sanction and the amount of
8 a penalty imposed under this chapter must be based on:

9 (1) the seriousness of the violation, including:

10 (A) the nature, circumstances, extent, and
11 gravity of any prohibited act; and

12 (B) the hazard or potential hazard created to the
13 health, safety, or economic welfare of the public;

14 (2) the economic harm to property or the environment
15 caused by the violation;

16 (3) the history of previous violations;

17 (4) the amount of penalty or type of disciplinary
18 action or sanction necessary to deter a future violation;

19 (5) efforts to correct the violation; and

20 (6) any other matter that justice may require.

21 SECTION 19. Sections 801.452(b) and (c), Occupations Code,
22 are amended to read as follows:

23 (b) The amount of the penalty shall be based on the schedule
24 of sanctions adopted under Section 801.411[+]

25 ~~[(1) the seriousness of the violation, including:~~

26 ~~[(A) the nature, circumstances, extent, and~~
27 ~~gravity of any prohibited act; and~~

1 ~~[(B) the hazard or potential hazard created to~~
2 ~~the health, safety, or economic welfare of the public;~~
3 ~~[(2) the economic harm to property or the environment~~
4 ~~caused by the violation;~~
5 ~~[(3) the history of previous violations;~~
6 ~~[(4) the amount necessary to deter a future violation;~~
7 ~~[(5) efforts to correct the violation; and~~
8 ~~[(6) any other matter that justice may require].~~

9 (c) A committee described by Section 801.408(c) or (d) shall
10 recommend the amount of the administrative penalty based on the
11 schedule of sanctions adopted under Section 801.411 ~~[a standardized~~
12 ~~penalty schedule. The board by rule shall develop the standardized~~
13 ~~penalty schedule based on the criteria listed in Subsection (b)].~~

14 SECTION 20. Subchapter K, Chapter 801, Occupations Code, is
15 amended by adding Section 801.5011 to read as follows:

16 Sec. 801.5011. MONITORING HARMFUL PRESCRIBING AND
17 DISPENSING PATTERNS. (a) The board shall periodically check the
18 prescribing and dispensing information submitted to the Texas State
19 Board of Pharmacy as authorized by Section 481.076(a)(1), Health
20 and Safety Code, to determine whether a veterinarian is engaging in
21 potentially harmful prescribing or dispensing patterns or
22 practices.

23 (b) The board, in coordination with the Texas State Board of
24 Pharmacy, shall determine the conduct that constitutes a
25 potentially harmful prescribing or dispensing pattern or practice
26 for purposes of Subsection (a). In determining the conduct that
27 constitutes a potentially harmful prescribing or dispensing

1 pattern or practice, the board, at a minimum, shall consider:

2 (1) the number of times a veterinarian prescribes or
3 dispenses:

4 (A) opioids;

5 (B) benzodiazepines;

6 (C) barbiturates; or

7 (D) carisoprodol; and

8 (2) for prescriptions and dispensations described by
9 Subdivision (1), patterns of prescribing or dispensing
10 combinations of those drugs and other dangerous combinations of
11 drugs identified by the board.

12 (c) If the board suspects that a veterinarian may be
13 engaging in potentially harmful prescribing or dispensing patterns
14 or practices, the board may notify the veterinarian of the
15 potentially harmful prescribing or dispensing pattern or practice.

16 (d) The board may initiate a complaint against a
17 veterinarian based on information obtained under this section.

18 SECTION 21. (a) For purposes of Section 801.003,
19 Occupations Code, as amended by this Act, the Sunset Advisory
20 Commission shall conduct a special-purpose review of the State
21 Board of Veterinary Medical Examiners for the 87th Legislature.

22 (b) In conducting the special-purpose review under this
23 section:

24 (1) the Sunset Advisory Commission staff evaluation
25 and report must be limited to reviewing the effectiveness of
26 recommendations made by the Sunset Advisory Commission to the 85th
27 Legislature; and

1 (2) the Sunset Advisory Commission's recommendations
2 to the 87th Legislature may include any recommendation the
3 commission considers appropriate based on the special-purpose
4 review.

5 SECTION 22. (a) The changes in law made by this Act to
6 Section 801.051(a), Occupations Code, do not affect the entitlement
7 of a member serving on the State Board of Veterinary Medical
8 Examiners immediately before the effective date of this Act to
9 continue to serve for the remainder of the member's term. As the
10 terms of board members expire, the governor shall appoint or
11 reappoint members who have the qualifications required for members
12 under Section 801.051, Occupations Code, as amended by this Act.

13 (b) In making appointments under Section 801.051(a),
14 Occupations Code, as amended by this Act, the governor may not
15 appoint a veterinarian member who is not described by Section
16 801.051(a)(1)(A) or (B) unless one member described by Section
17 801.051(a)(1)(A), one member described by Section
18 801.051(a)(1)(B), and one member described by Section
19 801.051(a)(2) have been appointed to or are serving on the State
20 Board of Veterinary Medical Examiners. This subsection does not
21 apply after the first date on which one member described by Section
22 801.051(a)(1)(A), one member described by Section
23 801.051(a)(1)(B), and one member described by Section
24 801.051(a)(2) are serving on the board.

25 SECTION 23. (a) Except as provided by Subsection (b) of
26 this section, Section 801.057, Occupations Code, as amended by this
27 Act, applies to a member of the State Board of Veterinary Medical

1 Examiners appointed before, on, or after the effective date of this
2 Act.

3 (b) A member of the State Board of Veterinary Medical
4 Examiners who, before the effective date of this Act, completed the
5 training program required by Section 801.057, Occupations Code, as
6 that law existed before the effective date of this Act, is only
7 required to complete additional training on the subjects added by
8 this Act to the training program required by Section 801.057,
9 Occupations Code. A board member described by this subsection may
10 not vote, deliberate, or be counted as a member in attendance at a
11 meeting of the board held on or after December 1, 2017, until the
12 member completes the additional training.

13 SECTION 24. (a) The following changes in law apply only to
14 a complaint filed with the State Board of Veterinary Medical
15 Examiners on or after the effective date of this Act:

16 (1) Section 801.205, Occupations Code, as amended by
17 this Act;

18 (2) Section 801.2055, Occupations Code, as amended by
19 this Act;

20 (3) Section 801.207(b), Occupations Code, as amended
21 by this Act, and Sections 801.207(c), (d), and (e), Occupations
22 Code, as added by this Act;

23 (4) Section 801.208, Occupations Code, as added by
24 this Act; and

25 (5) Section 801.209, Occupations Code, as added by
26 this Act.

27 (b) A complaint filed before the effective date of this Act

1 is governed by the law in effect on the date the complaint was
2 filed, and the former law is continued in effect for that purpose.

3 SECTION 25. Sections 801.267 and 801.309, Occupations Code,
4 as added by this Act, apply only to an application for the issuance
5 or renewal of a license submitted to the State Board of Veterinary
6 Medical Examiners on or after the effective date of this Act. An
7 application submitted before the effective date of this Act is
8 governed by the law in effect on the date the application was
9 submitted, and the former law is continued in effect for that
10 purpose.

11 SECTION 26. Sections 801.407(c) and 801.452(b) and (c),
12 Occupations Code, as amended by this Act, and Section 801.411,
13 Occupations Code, as added by this Act, apply only to conduct that
14 occurs on or after the date that rules under Section 801.411 become
15 effective. Conduct that occurs before that date is governed by the
16 law in effect immediately before the effective date of this Act, and
17 the former law is continued in effect for that purpose.

18 SECTION 27. This Act takes effect September 1, 2017.