

Chapter 295

S.B. No. 313

1 AN ACT
2 relating to the continuation and functions of the State Board of
3 Dental Examiners; imposing fees.

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

5 SECTION 1. Section 251.005, Occupations Code, is amended to
6 read as follows:

7 Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of
8 Dental Examiners is subject to Chapter 325, Government Code (Texas
9 Sunset Act). Unless continued in existence as provided by that
10 chapter, the board is abolished September 1, 2029 [~~2017~~].

11 SECTION 2. Section 252.001(a), Occupations Code, is amended
12 to read as follows:

13 (a) The State Board of Dental Examiners consists of 11 [~~15~~]
14 members appointed by the governor with the advice and consent of the
15 senate as follows:

16 (1) six [~~eight~~] reputable dentist members who reside
17 in this state and have been actively engaged in the practice of
18 dentistry for at least the five years preceding appointment;

19 (2) three [~~two~~] reputable dental hygienist members who
20 reside in this state and have been actively engaged in the practice
21 of dental hygiene for at least the five years preceding
22 appointment; and

23 (3) two [~~five~~] members who represent the public.

24 SECTION 3. Section 252.003, Occupations Code, is amended to

1 read as follows:

2 Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

3 (a) In this section, "Texas trade association" means a
4 ~~[nonprofit]~~ cooperative~~[r]~~ and voluntarily joined statewide
5 association of business or professional competitors in this state
6 designed to assist its members and its industry or profession in
7 dealing with mutual business or professional problems and in
8 promoting their common interest.

9 (b) A person may not be a member of the board and may not be a
10 board employee employed in a "bona fide executive, administrative,
11 or professional capacity," as that phrase is used for purposes of
12 establishing an exemption to the overtime provisions of the federal
13 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

14 (1) the person is an ~~[An]~~ officer, employee, or paid
15 consultant of a Texas trade association in the field of health care;
16 or

17 (2) the person's ~~[may not be a member or employee of~~
18 ~~the board who is exempt from the state's position classification~~
19 ~~plan or is compensated at or above the amount prescribed by the~~
20 ~~General Appropriations Act for B9 of the position classification~~
21 ~~salary schedule.~~

22 ~~[(c) A person who is the]~~ spouse is ~~[of]~~ an officer,
23 manager, or paid consultant of a Texas trade association in the
24 field of health care ~~[may not be a board member and may not be a~~
25 ~~board employee who is exempt from the state's position~~
26 ~~classification plan or is compensated at or above the amount~~
27 ~~prescribed by the General Appropriations Act for B9 of the position~~

1 ~~classification salary schedule].~~

2 (c) [~~(d)~~] A person may not serve as a member of the board or
3 act as the general counsel to the board if the person is required to
4 register as a lobbyist under Chapter 305, Government Code, because
5 of the person's activities for compensation on behalf of a
6 profession related to the operation of the board.

7 SECTION 4. Section 252.010, Occupations Code, is amended by
8 amending Subsection (b) and adding Subsection (d) to read as
9 follows:

10 (b) The training program must provide the person with
11 information regarding:

12 (1) the law governing board operations [~~this~~
13 ~~subtitle~~];

14 (2) the programs, [~~operated by the board,~~
15 [~~(3) the role and~~] functions, [~~of the board,~~
16 [~~(4) the~~] rules, and [~~of the board, with an emphasis on~~
17 ~~the rules that relate to disciplinary and investigatory authority,~~
18 [~~(5) the current~~] budget of [~~for~~] the board;

19 (3) the scope of and limitations on the rulemaking
20 authority of the board;

21 (4) the types of board rules, interpretations, and
22 enforcement actions that may implicate federal antitrust law by
23 limiting competition or impacting prices charged by persons engaged
24 in a profession or business the board regulates, including rules,
25 interpretations, and enforcement actions that:

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

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

3 (C) affect the price of goods or services
4 provided by persons in a profession or business the board
5 regulates; and

6 (D) restrict participation in a profession or
7 business the board regulates;

8 (5) [~~6~~] the results of the most recent formal audit
9 of the board;

10 (6) [~~7~~] the requirements of:

11 (A) laws relating to [~~the~~] open meetings [~~law~~],
12 [~~Chapter 551, Government Code,~~

13 [~~(B) the~~] public information [~~law~~], [~~Chapter~~
14 552, Government Code,

15 [~~(C) the~~] administrative procedure [~~law~~],
16 [~~Chapter 2001, Government Code,~~] and disclosure of conflicts

17 [~~(D) other laws relating to public officials,~~
18 ~~including conflict~~] of interest [~~laws~~]; and

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

21 (7) [~~8~~] any applicable ethics policies adopted by
22 the board or the Texas Ethics Commission.

23 (d) The executive director shall create a training manual
24 that includes the information required by Subsection (b). The
25 executive director shall distribute a copy of the training manual
26 annually to each board member. On receipt of the training manual,
27 each board member shall sign and submit to the executive director a

1 statement acknowledging receipt of the training manual.

2 SECTION 5. Chapter 254, Occupations Code, is amended by
3 adding Section 254.0065 to read as follows:

4 Sec. 254.0065. CONFIDENTIALITY OF CERTAIN INFORMATION
5 REGARDING APPLICANT OR LICENSE HOLDER. (a) In this section,
6 "license" has the meaning assigned by Section 263.0001.

7 (b) Except as provided by Subsection (c), all information,
8 records, and proceedings of the board or an authorized agent of the
9 board relating to the participation of an applicant for or holder of
10 a license in a peer assistance program or the evaluation of an
11 applicant or license holder under Section 263.0025 are confidential
12 and not subject to disclosure under Chapter 552, Government Code.

13 (c) The board may disclose a disciplinary action taken
14 against a license holder in the enforcement of Section
15 263.002(a)(1), (7), or (11). The board may not disclose the nature
16 of the impairment or condition that resulted in the board's action.

17 SECTION 6. Section 254.010(b), Occupations Code, is amended
18 to read as follows:

19 (b) Rules adopted under this section must include
20 procedures to:

21 (1) monitor for compliance a license holder who is
22 ordered by the board to perform a certain act; ~~and~~

23 (2) identify and monitor each license holder who
24 represents a risk to the public; and

25 (3) periodically review reports filed with the
26 National Practitioner Data Bank for any report of disciplinary
27 action taken against a license holder by another state that would

1 constitute grounds for disciplinary action under Section 263.002.

2 SECTION 7. Chapter 255, Occupations Code, is amended by
3 adding Section 255.0055 to read as follows:

4 Sec. 255.0055. REQUIREMENTS FOR CERTAIN COMPLAINTS.

5 (a) In this section:

6 (1) "Anonymous complaint" means a complaint that lacks
7 sufficient information to identify the source or the name of the
8 person who filed the complaint.

9 (2) "Insurance agent" means a person licensed under
10 Chapter 4054, Insurance Code.

11 (3) "Insurer" means an insurance company or other
12 entity authorized to engage in the business of insurance under
13 Subtitle C, Title 6, Insurance Code.

14 (4) "Third-party administrator" means a person
15 required to have a certificate of authority under Chapter 4151,
16 Insurance Code.

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

18 (c) Notwithstanding any confidentiality requirements under
19 Chapter 552, Government Code, or this subtitle, a complaint filed
20 with the board by an insurance agent, insurer, pharmaceutical
21 company, or third-party administrator against a license holder must
22 include the name and address of the insurance agent, insurer,
23 pharmaceutical company, or third-party administrator filing the
24 complaint. Not later than the 15th day after the date the complaint
25 is filed with the board, the board shall notify the license holder
26 who is the subject of the complaint of the name and address of the
27 insurance agent, insurer, pharmaceutical company, or third-party

1 administrator who filed the complaint, unless the notice would
2 jeopardize an investigation.

3 SECTION 8. Section 255.006(a), Occupations Code, is amended
4 to read as follows:

5 (a) A complaint received under this chapter must be filed
6 with and reviewed by the board to determine jurisdiction. If the
7 board has jurisdiction, the board shall complete a preliminary
8 investigation of the complaint not later than the 60th day after the
9 date of receiving the complaint. The board shall first determine
10 whether the person regulated under this subtitle who is the subject
11 of the complaint [~~license holder~~] constitutes a continuing threat
12 to the public welfare. On completion of the preliminary
13 investigation, the board shall determine whether to officially
14 proceed on the complaint. If the board fails to complete the
15 preliminary investigation in the time required by this subsection,
16 the board's official investigation of the complaint is considered
17 to commence on that date.

18 SECTION 9. Section 256.002(a), Occupations Code, is amended
19 to read as follows:

20 (a) An applicant for a license to practice dentistry must:

- 21 (1) be at least 21 years of age; and
22 (2) [~~be of good moral character, and~~
23 [~~3~~] present proof of:

24 (A) graduation from a dental school accredited by
25 the Commission on Dental Accreditation of the American Dental
26 Association; or

27 (B) graduation from a dental school that is not

1 accredited by the commission and successful completion of training
2 in an American Dental Association approved specialty in an
3 education program accredited by the commission that consists of at
4 least two years of training as specified by the Council on Dental
5 Education.

6 SECTION 10. Section 256.053, Occupations Code, is amended
7 to read as follows:

8 Sec. 256.053. ELIGIBILITY FOR LICENSE. (a) An applicant
9 for a license to practice dental hygiene in this state must be:

- 10 (1) at least 18 years of age;
- 11 (2) ~~[of good moral character,~~
- 12 ~~(3)]~~ a graduate of an accredited high school or hold a
13 certificate of high school equivalency; and
- 14 (3) ~~(4)]~~ a graduate of a recognized school of
15 dentistry or dental hygiene accredited by the Commission on Dental
16 Accreditation of the American Dental Association and approved by
17 the board or an alternative dental hygiene training program.

18 (b) A school of dentistry or dental hygiene described by
19 Subsection (a)(3) ~~[(a)(4)]~~ must include at least two full academic
20 years of instruction or its equivalent at the postsecondary level.

21 SECTION 11. The heading to Section 256.103, Occupations
22 Code, is amended to read as follows:

23 Sec. 256.103. DISPLAY OF ~~[ANNUAL]~~ REGISTRATION
24 CERTIFICATE.

25 SECTION 12. The heading to Section 257.001, Occupations
26 Code, is amended to read as follows:

27 Sec. 257.001. LICENSE EXPIRATION; TERM.

1 SECTION 13. Section 257.001, Occupations Code, is amended
2 by amending Subsections (a) and (c) and adding Subsection (a-1) to
3 read as follows:

4 (a) A license issued under this subtitle is valid for a term
5 of one or two years, as determined by board rule.

6 (a-1) The board by rule may adopt a system under which
7 licenses expire on various dates during the year.

8 (c) For the year in which the expiration date is changed,
9 license fees payable [~~on or before March 1~~] shall be prorated on a
10 monthly basis so that each license holder pays only that portion of
11 the fee that is allocable to the number of months during which the
12 license is valid. On renewal of the license on the new expiration
13 date, the total license fee is payable.

14 SECTION 14. Sections 257.002(a) and (f), Occupations Code,
15 are amended to read as follows:

16 (a) A person required to hold a license as a practitioner
17 under this subtitle who fails or refuses to apply for renewal of a
18 license and pay the required fee on or before the specified date [~~of~~
19 ~~each calendar year~~] is:

- 20 (1) suspended from practice; and
21 (2) subject to the penalties imposed by law on any
22 person unlawfully engaging in a practice regulated under this
23 subtitle.

24 (f) The requirements prescribed by this section relating to
25 the payment of [~~annual~~] license fees and penalties for the failure
26 to timely renew a license do not apply to license holders who are on
27 active duty with the armed forces of the United States and are not

1 engaged in private or civilian practice.

2 SECTION 15. Chapter 257, Occupations Code, is amended by
3 adding Section 257.003 to read as follows:

4 Sec. 257.003. REFUSAL FOR VIOLATION OF BOARD ORDER. The
5 board may refuse to renew a license issued under this subtitle if
6 the license holder is in violation of a board order.

7 SECTION 16. Section 257.004(c), Occupations Code, is
8 amended to read as follows:

9 (c) A dentist or dental hygienist licensed by the board who
10 resides in a country other than the United States on the renewal
11 date of the person's license and has not practiced dentistry or
12 dental hygiene in the United States during the license period
13 [~~year~~] preceding the renewal date is exempt from the requirements
14 of Subsection (a) if the person submits proof of foreign residence
15 with the person's renewal application.

16 SECTION 17. Section 257.005(a), Occupations Code, is
17 amended to read as follows:

18 (a) The board shall develop a mandatory continuing
19 education program for licensed dentists and dental hygienists. The
20 board by rule shall establish the minimum number of [~~require a~~
21 ~~license holder to complete at least 12~~] hours of continuing
22 education a license holder is required to complete for each
23 [~~annual~~] registration period to renew the license for a subsequent
24 registration [~~annual~~] period.

25 SECTION 18. Section 258.002(a), Occupations Code, is
26 amended to read as follows:

27 (a) A licensed dentist may delegate to a qualified and

1 trained dental assistant acting under the dentist's general or
2 direct supervision any dental act that a reasonable and prudent
3 dentist would find is within the scope of sound dental judgment to
4 delegate if:

5 (1) in the opinion of the delegating dentist, the act:

6 (A) can be properly and safely performed by the
7 person to whom the dental act is delegated; and

8 (B) is performed in a customary manner and is not
9 in violation of this subtitle or any other statute;

10 (2) the person to whom the dental act is delegated does
11 not represent to the public that the person is authorized to
12 practice dentistry; and

13 (3) the person to whom the dental act is delegated is
14 registered under Chapter 265 [~~holds the appropriate certificate~~],
15 if registration [~~a certificate~~] is required to perform the act.

16 SECTION 19. Section 258.0511, Occupations Code, is amended
17 by adding Subsection (a-1) to read as follows:

18 (a-1) The board by rule shall establish conditions under
19 which the board may temporarily or permanently appoint a person as
20 custodian of a dentist's billing or dental patient records. In
21 adopting rules under this subsection, the board shall consider the
22 death of a dentist, the mental or physical incapacitation of a
23 dentist, and the abandonment of billing or dental patient records
24 by a dentist as conditions for appointment of a custodian.

25 SECTION 20. Section 258.054(c), Occupations Code, is
26 amended to read as follows:

27 (c) A dentist may not authorize a dental assistant, other

1 than a dental assistant described by Section 265.001(d), to make a
2 dental x-ray unless the dental assistant is registered [~~holds an~~
3 ~~x-ray certificate issued~~] under Chapter 265 [~~Section 265.005~~].

4 SECTION 21. The heading to Subchapter D, Chapter 258,
5 Occupations Code, is amended to read as follows:

6 SUBCHAPTER D. [~~ENTERAL~~] ADMINISTRATION OF ANESTHESIA

7 SECTION 22. Section 258.151, Occupations Code, is amended
8 to read as follows:

9 Sec. 258.151. DEFINITIONS [~~DEFINITION~~]. In this
10 subchapter:

11 (1) "High-risk patient" means a patient who has a
12 level 3 or 4 classification according to the American Society of
13 Anesthesiologists Physical Status Classification System.

14 (2) "Pediatric patient" means a patient younger than
15 13 years of age[, "~~enteral" means any technique of administering~~
16 ~~anesthesia in which the anesthetic is absorbed through the~~
17 ~~gastrointestinal tract or oral mucosa. Examples of enterally~~
18 ~~administering anesthesia include administering an anesthetic~~
19 ~~orally, rectally, sublingually, or intranasally].~~

20 SECTION 23. Sections 258.153, 258.154, and 258.155,
21 Occupations Code, are amended to read as follows:

22 Sec. 258.153. RULES. (a) The board shall adopt rules to
23 administer this subchapter, including rules to establish [~~by rule~~]
24 the minimum standards for the [~~enteral~~] administration of
25 anesthesia by a dentist.

26 (b) The rules must be designed to protect the health,
27 safety, and welfare of the public and must include requirements

1 relating to:

2 (1) for each type of permit held, the methods that may
3 be used to [~~enterally~~] administer an anesthetic and the anesthetic
4 agents that may be used;

5 (2) dental patient evaluation, diagnosis, counseling,
6 and preparation;

7 (3) dental patient monitoring to be performed and
8 equipment to be used during a procedure and during postprocedure
9 monitoring;

10 (4) emergency procedures, drugs, and equipment,
11 including education, training, and certification of personnel, as
12 appropriate, and including protocols for transfers to a hospital;

13 (5) the documentation necessary to demonstrate
14 compliance with this subchapter; [~~and~~]

15 (6) the period in which protocols or procedures
16 covered by rules of the board shall be reviewed, updated, or
17 amended; and

18 (7) the minimum components required to be included in
19 a preoperative checklist to be used before administering anesthesia
20 to a patient and retained in the patient's dental record.

21 Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) A [~~On~~
22 ~~and after August 31, 2002, a~~] dentist who practices dentistry in
23 this state and who [~~enterally~~] administers anesthesia or performs a
24 procedure for which anesthesia is [~~enterally~~] administered shall
25 comply with the rules adopted under this subchapter.

26 (b) The board may require a dentist to submit and comply
27 with a corrective action plan to remedy or address any current or

1 potential deficiencies with the dentist's [~~enteral~~] administration
2 of anesthesia in accordance with this subtitle or rules of the
3 board.

4 Sec. 258.155. [~~ANNUAL~~] PERMIT REQUIRED. (a) The board
5 shall issue permits to administer anesthesia in the following
6 categories based on the extent to which the intended procedure will
7 alter the patient's mental status and the method of anesthetic
8 delivery:

- 9 (1) nitrous oxide;
10 (2) level 1: minimal sedation;
11 (3) level 2: moderate sedation (enteral
12 administration);
13 (4) level 3: moderate sedation (parenteral
14 administration); and
15 (5) level 4: deep sedation or general anesthesia.

16 (b) A [~~Not later than September 1, 2002, the board shall~~
17 ~~require each] dentist may not administer [~~who enterally~~
18 ~~administers]~~ anesthesia unless the dentist obtains the appropriate
19 [~~or performs a procedure for which anesthesia is enterally~~
20 ~~administered to annually obtain a]~~ permit issued under this section
21 [~~from the board by completing a form prescribed by the board].~~~~

22 (c) The board shall set and impose a fee for issuance of a
23 [~~the~~] permit in an amount designed to recover the costs of
24 regulating a permit holder under this subchapter.

25 (d) [~~(b)~~] The board shall coordinate the times at which a
26 permit must be renewed with the times at which a dentist's license
27 must be renewed under Chapter 257 so that the times of registration,

1 payment, notice, and imposition of penalties for late payment are
2 similar and provide a minimum of administrative burden to the board
3 and to dentists.

4 SECTION 24. Subchapter D, Chapter 258, Occupations Code, is
5 amended by adding Sections 258.1551 through 258.1557 to read as
6 follows:

7 Sec. 258.1551. PERMIT QUALIFICATIONS. (a) The board by
8 rule shall establish the qualifications to obtain each permit
9 described by Section 258.155, including the education and training
10 required to obtain the permit.

11 (b) The rules adopted under Subsection (a) must require an
12 applicant for a level 2, level 3, or level 4 permit to complete
13 training on:

14 (1) pre-procedural patient evaluation, including the
15 evaluation of a patient's airway and physical status as classified
16 by the American Society of Anesthesiologists;

17 (2) the continuous monitoring of a patient's level of
18 sedation during the administration of anesthesia; and

19 (3) the management of emergency situations.

20 Sec. 258.1552. JURISPRUDENCE EXAMINATION. (a) The board
21 shall develop and administer an online jurisprudence examination to
22 determine a permit holder's knowledge of this subchapter, board
23 rules, and other applicable laws of this state relating to the
24 administration of anesthesia.

25 (b) A permit holder must pass the online jurisprudence
26 examination developed by the board once every five years.

27 Sec. 258.1553. PORTABILITY OF ANESTHESIA SERVICES. The

1 board by rule shall require a dentist who applies for the issuance
2 or renewal of a permit under this subchapter to include in the
3 application a statement indicating whether the dentist provides or
4 will provide a permitted anesthesia service in more than one
5 location.

6 Sec. 258.1554. ADMINISTRATION OF ANESTHESIA TO CERTAIN
7 PATIENTS. (a) A permit holder under this subchapter may not
8 administer anesthesia under a level 2, level 3, or level 4 permit to
9 a pediatric or high-risk patient unless the permit holder has:

- 10 (1) demonstrated to the satisfaction of the board that
11 the permit holder has advanced didactic and clinical training; and
12 (2) obtained authorization from the board under this
13 section.

14 (b) The board by rule may establish limitations on the
15 administration of anesthesia by a permit holder to a pediatric or
16 high-risk patient.

17 Sec. 258.1555. CAPNOGRAPHY REQUIRED FOR CERTAIN ANESTHESIA
18 SERVICES. A permit holder who is administering anesthesia for
19 which a level 4 permit is required shall use capnography during the
20 administration of anesthesia.

21 Sec. 258.1556. MINIMUM EMERGENCY PREPAREDNESS STANDARDS.
22 (a) The board shall adopt rules to establish minimum emergency
23 preparedness standards and requirements for the administration of
24 anesthesia under a permit issued under this subchapter. The rules
25 must require a permit holder to:

- 26 (1) have available at any time the permit holder
27 administers anesthesia:

1 (A) an adequate and unexpired supply of drugs and
2 anesthetic agents necessary for the safe administration of
3 anesthesia; and

4 (B) an automated external defibrillator, as
5 defined by Section 779.001, Health and Safety Code;

6 (2) conduct periodic inspections of the permit
7 holder's equipment in the manner and on the schedule determined by
8 the board;

9 (3) maintain and make available to the board on
10 request an equipment readiness log; and

11 (4) develop and annually update written policies,
12 procedures, and training requirements, specific to the permit
13 holder's equipment and drugs, for responding to emergency
14 situations involving anesthesia.

15 (b) Rules adopted under Subsection (a)(4) must require a
16 holder of a level 2, level 3, or level 4 permit to develop policies
17 and procedures that include:

18 (1) advanced cardiac life support rescue protocols;

19 (2) advanced airway management techniques; and

20 (3) if the permit holder is authorized to administer
21 anesthesia to pediatric patients, pediatric advanced life support
22 rescue protocols.

23 Sec. 258.1557. EMERGENCY PREPAREDNESS PROTOCOLS. (a) A
24 permit holder shall develop emergency preparedness protocols,
25 specific to the permit holder's practice setting, that establish a
26 plan for the management of medical emergencies in each practice
27 setting in which the dentist administers anesthesia.

1 (b) The board shall adopt rules prescribing the content that
2 a permit holder must include in the emergency preparedness
3 protocols developed under Subsection (a). The rules must require a
4 permit holder to include in the permit holder's emergency
5 preparedness protocols the written policies, procedures, and
6 training requirements described by Section 258.1556(a)(4).

7 SECTION 25. Section 258.156, Occupations Code, is amended
8 to read as follows:

9 Sec. 258.156. INSPECTIONS. (a) Except as provided by
10 Subsection (h), the [The] board may conduct inspections of a
11 dentist who applies for or holds a permit issued under this
12 subchapter as necessary to enforce this subchapter, including
13 inspections of an office site, equipment, a facility, and any
14 document of the dentist [~~documents of a dentist's practice that~~
15 ~~relate to the enteral administration of anesthesia]~~. During an
16 inspection under this section, the board may evaluate a dentist's
17 competency in the administration of anesthesia.

18 (b) The board shall conduct an inspection with respect to a
19 dentist who holds a level 2, level 3, or level 4 permit not later
20 than the first anniversary of the date the permit is issued.

21 (c) The board by rule shall adopt a risk-based inspection
22 policy for conducting inspections under this section. The policy
23 must require the board to take into consideration any previous
24 disciplinary action taken against a permit holder for an
25 anesthesia-related violation when determining whether an
26 inspection is necessary.

27 (d) The board may contract with another state agency or

1 qualified person to conduct these inspections.

2 (e) The [~~(b) Unless it would jeopardize an ongoing~~
3 ~~investigation, the]~~ board is not required to give [~~shall provide at~~
4 ~~least five business days'~~] notice before conducting an [~~on-site~~
5 inspection under this section.

6 (f) The board shall maintain records of inspections
7 conducted under this section.

8 (g) The board by rule may establish education and training
9 requirements for inspectors who conduct inspections under this
10 section.

11 (h) The board may not conduct an inspection under this
12 section with respect to a dentist who administers anesthesia
13 exclusively in a state-licensed hospital or state-licensed
14 ambulatory surgical center. The board may by rule except from
15 inspection under this section a dentist who administers anesthesia
16 exclusively in any other facility that is subject to inspection by
17 the Department of State Health Services or an accrediting body
18 under state law. The board retains all other authority provided by
19 this subtitle over a dentist described by this subsection
20 [~~(c) This section does not require the board to make an on-site~~
21 ~~inspection of a dentist's office].~~

22 SECTION 26. Chapter 258, Occupations Code, is amended by
23 adding Subchapter E to read as follows:

24 SUBCHAPTER E. ADVISORY COMMITTEE ON DENTAL ANESTHESIA

25 Sec. 258.201. DEFINITION. In this subchapter, "health care
26 provider" means a person who provides services under a license,
27 certificate, registration, or other authority issued by this state

1 or another state to diagnose, prevent, alleviate, or cure a human
2 illness or injury.

3 Sec. 258.202. ADVISORY COMMITTEE. (a) The board shall
4 establish an advisory committee to analyze and report on data and
5 associated trends concerning anesthesia-related deaths or
6 incidents as provided by this subchapter. The advisory committee
7 consists of six members appointed by the board in the manner
8 provided by Section 258.203 and must include:

- 9 (1) a general dentist;
10 (2) a dentist anesthesiologist;
11 (3) an oral and maxillofacial surgeon;
12 (4) a pediatric dentist;
13 (5) a physician anesthesiologist; and
14 (6) a periodontist.

15 (b) In appointing members to the advisory committee, the
16 board shall maintain a balanced representation of general dentists
17 and specialists to ensure the advisory committee has expertise with
18 respect to each permit category.

19 (c) A board member may not serve as a member of the advisory
20 committee. A former board member may not be appointed to the
21 advisory committee until the second anniversary of the expiration
22 of the member's term on the board.

23 (d) Chapter 2110, Government Code, does not apply to the
24 size, composition, or duration of the advisory committee.

25 Sec. 258.203. APPLICATION PROCESS; APPOINTMENT OF
26 COMMITTEE MEMBERS. (a) The board by rule shall develop and
27 implement a process by which a person may apply to be appointed to

1 the advisory committee and shall post the application and
2 information regarding the application process on the board's
3 Internet website.

4 (b) The presiding officer of the board shall review each
5 application received and nominate for appointment to the advisory
6 committee persons who meet the requirements of Section 258.202. A
7 person nominated under this subsection may not be appointed to the
8 advisory committee except on the affirmative vote of at least seven
9 members of the board.

10 (c) The presiding officer of the board shall designate one
11 of the nominated members as presiding officer of the advisory
12 committee, subject to approval of the board.

13 Sec. 258.204. TERMS; VACANCIES. The board by rule shall
14 establish:

15 (1) the length of a term of a member of the advisory
16 committee and the staggering of the terms of the members; and

17 (2) the manner in which a vacancy occurring during a
18 member's term is filled.

19 Sec. 258.205. MEETINGS. The advisory committee is subject
20 to Chapter 551, Government Code, except that the advisory committee
21 may conduct a closed meeting to review confidential investigative
22 files provided by the board under Section 258.206.

23 Sec. 258.206. COMPILATION AND ANALYSIS OF INFORMATION.

24 (a) The board shall identify complaints resolved by the board that
25 involve anesthesia-related deaths or incidents and compile
26 confidential, de-identified information derived from the
27 investigative files on each complaint identified under this

1 subsection.

2 (b) The board shall provide information compiled under
3 Subsection (a) to the advisory committee. The advisory committee
4 shall analyze the information compiled under Subsection (a) to
5 identify any trends and submit a report to the board at least
6 annually on:

- 7 (1) the advisory committee's findings; and
8 (2) any recommendations for changes to board rules or
9 this subtitle based on the advisory committee's analysis.

10 (c) On request of the advisory committee, the board may
11 provide confidential, de-identified investigative files for review
12 by the advisory committee.

13 (d) The data provided to the advisory committee under this
14 section may not include identifying information of a patient or
15 health care provider, including:

- 16 (1) the name, address, or date of birth of the patient
17 or a member of the patient's family; or
18 (2) the name or specific location of a health care
19 provider that treated the patient.

20 (e) The board shall post on the board's Internet website any
21 recommendations or findings reported by the advisory committee.

22 Sec. 258.207. COUNSEL FOR ADVISORY COMMITTEE. The board
23 shall designate an attorney employed by the board to:

- 24 (1) act as counsel and provide legal advice to the
25 advisory committee; and
26 (2) be present during the advisory committee's
27 meetings and deliberations.

1 Sec. 258.208. CONFIDENTIALITY; PRIVILEGE. (a) Any
2 information pertaining to the investigation of an
3 anesthesia-related death or incident is confidential.

4 (b) Confidential information that is acquired by the board
5 and that includes identifying information of an individual or
6 health care provider is privileged and may not be disclosed to any
7 person. Information that may not be disclosed under this
8 subsection includes:

9 (1) the name and address of a patient or a member of
10 the patient's family; and

11 (2) the identity of a health care provider that
12 provided any services to the patient or a member of the patient's
13 family.

14 (c) Advisory committee work product or information obtained
15 or provided by the board under this subchapter is confidential.
16 This subsection does not prevent the advisory committee or board
17 from releasing information described by Subsection (d) or (e).

18 (d) Information is not confidential under this section if
19 the information is:

20 (1) general information that cannot be connected with
21 any specific individual, case, or health care provider; and

22 (2) presented as aggregate statistical information
23 that describes a single data point.

24 (e) The advisory committee may publish statistical studies
25 and research reports based on information that is confidential
26 under this section, provided that the information:

27 (1) is published in the aggregate;

1 (2) does not identify a patient or the patient's
2 family;

3 (3) does not include any information that could be
4 used to identify a patient or the patient's family; and

5 (4) does not identify a health care provider.

6 (f) The board shall adopt and implement practices and
7 procedures to ensure that information that is confidential under
8 this section is not disclosed in violation of this section.

9 (g) Information that is confidential under this section is
10 excepted from disclosure under Chapter 552, Government Code, as
11 provided by Section 552.101 of that chapter.

12 Sec. 258.209. SUBPOENA AND DISCOVERY. Advisory committee
13 work product or information that is confidential under Section
14 258.208 is privileged, is not subject to subpoena or discovery, and
15 may not be introduced into evidence in any administrative, civil,
16 or criminal proceeding against a patient, a member of the family of
17 a patient, or a health care provider.

18 Sec. 258.210. IMMUNITY. (a) A member of the advisory
19 committee or a person employed by the board or acting in an advisory
20 capacity to the advisory committee and who provides information,
21 counsel, or services to the advisory committee is not liable for
22 damages for an action taken within the scope of the functions of the
23 advisory committee.

24 (b) Subsection (a) does not apply if the person acts with
25 malice or without the reasonable belief that the action is
26 warranted by the facts known to the person.

27 (c) This section does not provide immunity to a person

1 described by Subsection (a) for a violation of a state or federal
2 law or rule relating to the privacy of health information or the
3 transmission of health information, including the Health Insurance
4 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
5 and rules adopted under that Act.

6 Sec. 258.211. FUNDING. The board may accept gifts and
7 grants from any source to fund the duties of the board and the
8 advisory committee under this subchapter.

9 SECTION 27. Chapter 263, Occupations Code, is amended by
10 adding Section 263.0001 to read as follows:

11 Sec. 263.0001. DEFINITION. In this chapter, "license"
12 means a license, certificate, registration, permit, or other
13 authorization that is issued under this subtitle.

14 SECTION 28. Section 263.001, Occupations Code, is amended
15 to read as follows:

16 Sec. 263.001. GROUNDS FOR REFUSAL TO ISSUE LICENSE;
17 APPLICATION OF OPEN MEETINGS LAW. (a) The board may refuse to
18 issue a license [~~by examination~~] to an [~~a dental or dental hygiene~~]
19 applicant under this subtitle if the person:

20 (1) presents to the board fraudulent or false evidence
21 of the person's qualification for examination or license;

22 (2) is guilty of any illegality, fraud, or deception
23 during the examination or the process to secure a license;

24 (3) is habitually intoxicated or is addicted to drugs;

25 (4) commits a dishonest or illegal practice in or
26 connected to dentistry or dental hygiene;

27 (5) is convicted of a felony under a federal law or law

1 of this state; or

2 (6) is found to have violated a law of this state
3 relating to the practice of dentistry within the 12 months
4 preceding the date the person filed an application for a license to
5 practice dentistry or dental hygiene.

6 (b) The board's deliberations with regard to an application
7 for a license under this subtitle are exempt from Chapter 551,
8 Government Code.

9 SECTION 29. Chapter 263, Occupations Code, is amended by
10 adding Section 263.0025 to read as follows:

11 Sec. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION.

12 (a) In enforcing Section 263.001(a)(3) or Section 263.002(a)(1),
13 (7), or (11), the board or an authorized agent of the board, on
14 probable cause, as determined by the board or agent, may request an
15 applicant for or holder of a license to submit to a mental or
16 physical evaluation by a physician or other health care
17 professional designated by the board.

18 (b) If the applicant or license holder refuses to submit to
19 the evaluation under Subsection (a), the board shall issue an order
20 requiring the applicant or license holder to show cause why the
21 applicant or license holder will not submit to the evaluation. The
22 board shall schedule a hearing on the order not later than the 30th
23 day after the date notice is served on the applicant or license
24 holder. The board shall notify the applicant or license holder of
25 the order and hearing by personal service or certified mail, return
26 receipt requested.

27 (c) At the hearing, the applicant or license holder and the

1 applicant's or license holder's attorney are entitled to present
2 testimony or other evidence to show why the applicant or license
3 holder should not be required to submit to the evaluation. The
4 applicant or license holder has the burden of proof to show why the
5 applicant or license holder should not be required to submit to the
6 evaluation.

7 (d) After the hearing, the board by order shall require the
8 applicant or license holder to submit to the evaluation not later
9 than the 60th day after the date of the order or withdraw the
10 request for an evaluation, as applicable.

11 SECTION 30. Section 263.003, Occupations Code, is amended
12 to read as follows:

13 Sec. 263.003. HEARING. A person is entitled to a hearing
14 under Chapter 2001, Government Code, if the board proposes to:

15 (1) refuse to issue a license [~~by examination~~] to the
16 person;

17 (2) reprimand or impose a fine on the person;

18 (3) place the person on probation after the person's
19 license has been suspended; or

20 (4) suspend or revoke the license of the person.

21 SECTION 31. Section 263.0065(c), Occupations Code, is
22 amended to read as follows:

23 (c) A complaint delegated under this section shall be
24 referred for informal proceedings under Section 263.007 [~~263.0075~~]
25 if:

26 (1) the committee of employees determines that the
27 complaint should not be dismissed or settled;

1 (2) the committee is unable to reach an agreed
2 settlement; or

3 (3) the affected license holder requests that the
4 complaint be referred for informal proceedings.

5 SECTION 32. Section 263.007, Occupations Code, is amended
6 by amending Subsection (b) and adding Subsections (c) through (k)
7 to read as follows:

8 (b) Rules adopted under this section must require that:

9 (1) not later than the 180th day after the date the
10 board's official investigation of a complaint is commenced, the
11 board schedule an informal settlement conference unless good cause
12 is shown by the board for not scheduling the conference by that
13 date;

14 (2) the board give notice to the license holder of the
15 time and place of the conference not later than the 45th day before
16 the date the conference is held;

17 (3) the complainant and the license holder be provided
18 an opportunity to be heard;

19 (4) the board's legal counsel or a representative of
20 the attorney general be present to advise the board or the board's
21 staff; and

22 (5) a member of the board's staff be at the conference
23 to present the facts the staff reasonably believes the board could
24 prove at a hearing by competent evidence or qualified witnesses
25 ~~[provide the complainant, if applicable and permitted by law, an~~
26 ~~opportunity to be heard,~~

27 ~~[(2) provide the license holder an opportunity to be~~

1 ~~heard, and~~

2 ~~[(3) require the presence of a member of the board's~~
3 ~~legal staff, if the board has a legal staff, or, if the board does~~
4 ~~not have a legal staff, an attorney from the attorney general's~~
5 ~~office to advise the board or the board's employees].~~

6 (c) The license holder is entitled at the conference to:

7 (1) reply to the staff's presentation; and

8 (2) present the facts the license holder reasonably
9 believes the license holder could prove at a hearing by competent
10 evidence or qualified witnesses.

11 (d) After ample time is given for the presentations, the
12 informal settlement conference panel shall recommend that the
13 investigation be closed or make a recommendation regarding the
14 disposition of the case in the absence of a hearing under applicable
15 law concerning contested cases.

16 (e) The board shall prioritize scheduling an informal
17 settlement conference in accordance with Subsection (b)(1) to
18 resolve a complaint against a license holder who has previously
19 been the subject of disciplinary action by the board.

20 (f) A notice under Subsection (b)(2) must be accompanied by
21 a written statement of the nature of the allegations and the
22 information the board intends to use at the informal settlement
23 conference. If the board does not provide the statement or
24 information at that time, the license holder may use that failure as
25 grounds for rescheduling the conference. If the complaint includes
26 an allegation that the license holder has violated the standard of
27 care in the practice of dentistry or dental hygiene, the notice must

1 include a copy of the report by the expert reviewer. The license
2 holder must provide to the board the license holder's rebuttal not
3 later than the 15th day before the date of the conference in order
4 for that information to be considered at the conference.

5 (g) The board by rule shall define circumstances
6 constituting good cause for purposes of Subsection (b)(1),
7 including:

8 (1) an expert reviewer's delinquency in reviewing and
9 submitting a report to the board under Section 255.0067;

10 (2) a temporary suspension of the license holder's
11 license under Section 263.004; or

12 (3) the filing of a contested case against the license
13 holder with the State Office of Administrative Hearings.

14 (h) The board by rule shall define circumstances
15 constituting good cause to grant a request by a license holder for a
16 continuance of the informal settlement conference.

17 (i) Information presented by the board or board staff in an
18 informal settlement conference is confidential and not subject to
19 disclosure under Chapter 552, Government Code.

20 (j) On request by the license holder under review, the board
21 shall make a recording of the informal settlement conference
22 proceeding. The recording is a part of the investigative file and
23 may not be released to a third party unless authorized under this
24 subtitle. The board may charge the license holder a fee to cover
25 the cost of recording the proceeding.

26 (k) The board shall provide a copy of the recording to the
27 license holder on the license holder's request.

1 SECTION 33. Chapter 263, Occupations Code, is amended by
2 adding Sections 263.0071, 263.0072, 263.0073, and 263.0074 to read
3 as follows:

4 Sec. 263.0071. DENTAL REVIEW COMMITTEE. (a) The dental
5 review committee consists of nine members appointed by the governor
6 as follows:

- 7 (1) six dentist members;
- 8 (2) two dental hygienist members; and
- 9 (3) one registered dental assistant member.

10 (b) Members of the committee serve staggered six-year
11 terms, with the terms of three members expiring on February 1 of
12 each odd-numbered year.

13 (c) If a vacancy occurs during a member's term, the governor
14 shall appoint a replacement to fill the unexpired term.

15 (d) A member of the committee is entitled to receive a per
16 diem for actual duty in the same manner provided for board members.

17 (e) A member of the committee is subject to law and the rules
18 of the board, including Sections 252.003, 252.007, and 252.010, as
19 if the committee member were a member of the board, except that a
20 committee member is not subject to Chapter 572, Government Code.
21 The training program a committee member must complete under Section
22 252.010 must be an abbreviated version of the program under that
23 section that is limited to training relevant to serving on a
24 committee.

25 Sec. 263.0072. INFORMAL SETTLEMENT CONFERENCE PANEL.
26 (a) The board shall appoint members of the board and the dental
27 review committee to serve, on a rotating basis, as panelists on an

1 informal settlement conference panel for purposes of this section.

2 (b) In an informal settlement conference under Section
3 263.007, the board shall appoint at least two panelists to
4 determine whether an informal disposition is appropriate. At least
5 one of the panelists must be a dentist.

6 (c) The board by rule shall require that at least one
7 panelist be physically present at the informal settlement
8 conference and may authorize another panelist to appear by video
9 conference.

10 (d) Notwithstanding Subsection (b), an informal settlement
11 conference may be conducted by one panelist if the license holder
12 who is the subject of the complaint waives the requirement that at
13 least two panelists conduct the conference. If the license holder
14 waives that requirement, the panelist may be a dentist, a dental
15 hygienist, or a member who represents the public.

16 (e) Notwithstanding Subsections (b) and (d), an informal
17 settlement conference conducted under Section 263.007 to show
18 compliance with an order or remedial plan of the board may be
19 conducted by one panelist.

20 Sec. 263.0073. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
21 IN INFORMAL SETTLEMENT CONFERENCE. (a) At an informal settlement
22 conference under Section 263.007, the panel shall make
23 recommendations for the disposition of the complaint or allegation.
24 The panel may request the assistance of a board employee at any
25 time.

26 (b) Board employees shall present a summary of the
27 allegations against the license holder and of the facts pertaining

1 to the allegation that the employees reasonably believe may be
2 proven by competent evidence at a formal hearing.

3 (c) An attorney for the board shall act as counsel to the
4 panel and shall be present during the informal settlement
5 conference and the panel's deliberations to advise the panel on
6 legal issues that arise during the proceeding. The attorney may ask
7 questions of participants in the conference to clarify any
8 statement made by the participant. The attorney shall provide to
9 the panel a historical perspective on comparable cases that have
10 appeared before the board, keep the proceedings focused on the case
11 being discussed, and ensure that the board's employees and the
12 license holder have an opportunity to present information related
13 to the case. During the panel's deliberations, the attorney may be
14 present only to advise the panel on legal issues and to provide
15 information on comparable cases that have appeared before the
16 board.

17 (d) The panel and board employees shall provide an
18 opportunity for the license holder and the license holder's
19 authorized representative to reply to the board employees'
20 presentation and to present oral and written statements and facts
21 that the license holder and representative reasonably believe could
22 be proven by competent evidence at a formal hearing.

23 (e) An employee of the board who participated in the
24 presentation of the allegation or information gathered in the
25 investigation of the complaint, the license holder, the license
26 holder's authorized representative, the complainant, the
27 witnesses, and members of the public may not be present during the

1 deliberations of the panel. Only the members of the panel and the
2 attorney serving as counsel to the panel may be present during the
3 deliberations.

4 (f) During the deliberations, the panel may not reconsider
5 an expert panel's determinations that are included in a final
6 written report issued under Section 255.0067.

7 (g) The panel shall recommend the dismissal of the complaint
8 or allegations or, if the panel determines that the license holder
9 has violated a statute or board rule, may recommend board action and
10 terms for an informal settlement of the case.

11 (h) The panel's recommendations under Subsection (g) must
12 be made in writing and presented to the license holder and the
13 license holder's authorized representative. The license holder may
14 accept the proposed settlement within the time established by the
15 panel at the informal settlement conference. If the license holder
16 rejects the proposed settlement or does not act within the required
17 time, the board may proceed with the filing of a formal complaint
18 with the State Office of Administrative Hearings.

19 Sec. 263.0074. DISMISSAL OF BASELESS COMPLAINT. If, during
20 the 180-day period prescribed by Section 263.007(b)(1), the board
21 determines that the complaint is a baseless or unfounded complaint,
22 the board shall dismiss the complaint and include a statement in the
23 records of the complaint that the reason for the dismissal is
24 because the complaint was baseless or unfounded. The board shall
25 adopt rules that establish criteria for determining that a
26 complaint is baseless or unfounded.

27 SECTION 34. Section 263.0076, Occupations Code, is amended

1 to read as follows:

2 Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE
3 REGARDING CERTAIN COMPLAINTS. [~~(a)~~] If an informal settlement
4 conference is not scheduled for a complaint before the 180-day
5 period prescribed by Section 263.007(b)(1), the board shall provide
6 notice to all parties to the complaint. The notice must include an
7 explanation of the reason why the informal settlement conference
8 has not been scheduled. The notice under this section is not
9 required if the notice would jeopardize an investigation [~~will be~~
10 ~~held under Section 263.0075, notice of the time and place of the~~
11 ~~conference must be given to the license holder not later than the~~
12 ~~45th day before the date the conference is held)].~~

13 ~~[(b) The notice required by Subsection (a) must be~~
14 ~~accompanied by a written statement of the specific allegations~~
15 ~~against the license holder and the information the board intends to~~
16 ~~use at the informal settlement conference. If the board does not~~
17 ~~provide the statement or information when the notice is provided,~~
18 ~~the license holder may use that failure as grounds for rescheduling~~
19 ~~the conference.~~

20 ~~[(c) The license holder must provide to the board the~~
21 ~~license holder's rebuttal not later than the 15th day before the~~
22 ~~date of the conference in order for that information to be~~
23 ~~considered at the conference.~~

24 ~~[(d) On request by a license holder under review, the board~~
25 ~~shall make a recording of the informal settlement conference. The~~
26 ~~recording is a part of the investigative file and may not be~~
27 ~~released to a third party unless authorized under this subtitle.~~

1 ~~The board may charge the license holder a fee to cover the cost of~~
2 ~~recording the conference. The board shall provide a copy of the~~
3 ~~recording to the license holder on the license holder's request.]~~

4 SECTION 35. Section 263.008, Occupations Code, is amended
5 by amending Subsection (a) and adding Subsections (a-1), (a-2), and
6 (d) to read as follows:

7 (a) The board may issue a subpoena or a subpoena duces tecum
8 to [request and, if necessary,] compel [by subpoena] the attendance
9 of a witness [witnesses] for examination under oath and the
10 production, for examination and copying, of books, accounts,
11 records, documents, and other evidence relevant to the
12 investigation of an alleged violation of this chapter or another
13 state law relating to the practice of dentistry. The board may
14 administer oaths and take testimony regarding any matter within the
15 board's jurisdiction.

16 (a-1) The board may delegate the authority granted under
17 Subsection (a) to the executive director or the secretary of the
18 board.

19 (a-2) A subpoena issued at the request of board staff may be
20 served by certified mail or personally by the board's
21 investigators.

22 (d) The board shall pay, for photocopies subpoenaed at the
23 request of the board's staff, a reasonable fee in an amount not to
24 exceed the amount the board may charge for copies of the board's
25 records.

26 SECTION 36. Section 264.011, Occupations Code, is amended
27 to read as follows:

1 Sec. 264.011. INFORMAL ASSESSMENT OF ADMINISTRATIVE
2 PENALTY. This subchapter does not prevent the board from assessing
3 an administrative penalty using an informal proceeding under
4 Section 263.007 [~~263.003~~].

5 SECTION 37. Section 265.001, Occupations Code, is amended
6 to read as follows:

7 Sec. 265.001. REGISTRATION REQUIRED FOR CERTAIN DENTAL
8 ACTS. (a) Unless the dental assistant is registered under this
9 chapter, a dental assistant may not:

10 (1) make a dental x-ray; or

11 (2) monitor the administration of nitrous oxide.

12 (b) The board may adopt and enforce rules requiring a dental
13 assistant to register with the board to perform other dental acts
14 [~~the registration of dental assistants~~] as necessary to protect the
15 public health and safety.

16 (c) The board shall maximize the efficient administration
17 of this chapter by:

18 (1) developing a system to track the number of
19 registrations held by a dental assistant under this chapter; and

20 (2) coordinating the times at which a dental
21 assistant's registrations must be renewed so that the times of
22 registration, payment, notice, and imposition of penalties for late
23 payment are similar and the administrative burden to the board and
24 to the dental assistant is reduced.

25 (d) Notwithstanding Subsection (a)(1), a dental assistant
26 who is hired as a dental assistant for the first time and who has not
27 previously been issued a registration to make dental x-rays may

1 make dental x-rays without complying with this chapter until the
2 first anniversary of the date the dental assistant is hired.

3 SECTION 38. Chapter 265, Occupations Code, is amended by
4 adding Sections 265.0015, 265.0016, and 265.0017 to read as
5 follows:

6 Sec. 265.0015. ELIGIBILITY REQUIREMENTS FOR REGISTRATION.

7 (a) The board by rule shall establish the requirements for each
8 type of registration issued under this chapter, including requiring
9 a dental assistant to:

10 (1) hold a high school diploma or its equivalent;

11 (2) complete an educational program approved by the
12 board that provides instruction on:

13 (A) a dental act that requires a registration
14 under this chapter;

15 (B) basic life support;

16 (C) infection control; and

17 (D) jurisprudence;

18 (3) pass an examination approved or administered by
19 the board; and

20 (4) meet any additional qualifications established by
21 the board.

22 (b) The board may approve courses of instruction and
23 examinations that are provided by private entities for the purposes
24 of this section.

25 Sec. 265.0016. FEES. The board shall set and collect fees
26 in amounts that are reasonable and necessary to cover the costs of
27 administering this chapter, including registration and renewal

1 fees.

2 Sec. 265.0017. REGISTRATION EXPIRATION AND RENEWAL. (a) A
3 registration under this chapter is valid for two years.

4 (b) A dental assistant may renew a registration by paying
5 the required renewal fee and complying with any other renewal
6 requirements established by the board.

7 (c) A dental assistant whose registration has expired may
8 not engage in an activity that requires registration until the
9 registration has been renewed.

10 (d) The board by rule may adopt a system under which
11 registrations expire on various dates during the year. For the year
12 in which the expiration date is changed, the board shall prorate
13 registration fees on a monthly basis so that each registration
14 holder pays only that portion of the registration fee that is
15 allocable to the number of months during which the registration is
16 valid. On renewal of the registration on the new expiration date,
17 the total renewal fee is payable.

18 SECTION 39. Section 265.003, Occupations Code, is amended
19 by amending Subsections (a) and (a-1) and adding Subsections (c)
20 and (d) to read as follows:

21 (a) A dental assistant who is not registered under this
22 chapter [~~professionally licensed~~] may be employed by and work in
23 the office of a licensed and practicing dentist and perform one or
24 more delegated dental acts under:

25 (1) the direct supervision, direction, and
26 responsibility of the dentist, including[+]

27 [~~(A) the application of a pit and fissure~~]

1 sealant,

2 [~~(B)~~ coronal polishing, if the dental assistant
3 holds a certificate under Section 265.006, and

4 [~~(C)~~] the application of fluoride varnish; or

5 (2) the general supervision, direction, and
6 responsibility of the dentist, limited to:

7 (A) the making of dental x-rays in compliance
8 with Section 265.001(d) [~~Section 265.005~~]; and

9 (B) the provision of interim treatment of a minor
10 emergency dental condition to an existing patient of the treating
11 dentist.

12 (a-1) A treating dentist who delegates the provision of
13 interim treatment of a minor emergency dental condition to a dental
14 assistant under Subsection (a)(2) [~~(a)(2)(B)~~] shall:

15 (1) delegate the procedure orally or in writing before
16 the dental assistant performs the procedure;

17 (2) retain responsibility for the procedure; and

18 (3) schedule a follow-up appointment with the patient
19 within a reasonable time.

20 (c) A delegating dentist remains responsible for the dental
21 acts of a registered or nonregistered dental assistant performing
22 the delegated dental acts.

23 (d) A dental assistant to whom a delegation is made may not
24 represent to the public that the dental assistant is authorized to
25 practice dentistry or dental hygiene.

26 SECTION 40. Section 265.005, Occupations Code, is amended
27 by adding Subsection (p) to read as follows:

1 (p) This section expires September 1, 2018.

2 SECTION 41. Section 265.007, Occupations Code, is amended
3 by adding Subsection (d) to read as follows:

4 (d) This section expires September 1, 2018.

5 SECTION 42. Chapter 265, Occupations Code, is amended by
6 adding Section 265.008 to read as follows:

7 Sec. 265.008. CONTINUING EDUCATION REQUIRED FOR
8 REGISTRATION RENEWAL. The board by rule shall establish continuing
9 education requirements for dental assistants registered under this
10 chapter, including a minimum number of hours of continuing
11 education required to renew a registration.

12 SECTION 43. The heading to Subchapter C, Chapter 266,
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER C. BOARD POWERS AND DUTIES [~~OF COUNCIL AND BOARD~~]

15 SECTION 44. Section 266.152(d), Occupations Code, is
16 amended to read as follows:

17 (d) The owner of a dental laboratory registered with the
18 board on September 1, 1987, is exempt from Subsection (a) if:

19 (1) the registration of the laboratory has been timely
20 renewed [~~each year~~] since that date, and all registration fees have
21 been paid;

22 (2) the beneficial ownership of at least 51 percent of
23 the laboratory has not been transferred; and

24 (3) the owner is employed on the laboratory's premises
25 for not less than 30 hours each week.

26 SECTION 45. The heading to Section 266.153, Occupations
27 Code, is amended to read as follows:

1 Sec. 266.153. APPLICATION FOR REGISTRATION; TERM.

2 SECTION 46. Section 266.153, Occupations Code, is amended
3 by amending Subsection (a) and adding Subsection (d) to read as
4 follows:

5 (a) An owner or manager of a dental laboratory shall
6 ~~annually~~:

7 (1) apply to the board for the registration of each
8 dental laboratory doing business in this state to which the owner or
9 manager is connected or in which the owner or manager has an
10 interest; and

11 (2) pay the application fee set by the board.

12 (d) A dental laboratory registration issued under this
13 chapter is valid for a term of one or two years, as determined by
14 board rule.

15 SECTION 47. Sections 266.154(a) and (c), Occupations Code,
16 are amended to read as follows:

17 (a) An applicant for renewal of a dental laboratory
18 registration must provide evidence satisfactory to the board that
19 at least one employee who works on the dental laboratory's
20 premises:

21 (1) has completed the minimum number of ~~[at least 12]~~
22 hours of continuing education during the previous registration
23 period as required by board rule; or

24 (2) is certified as required by Section 266.152(a), if
25 applicable.

26 (c) If the owner or manager of a dental laboratory fails to
27 renew the dental laboratory's registration and pay the ~~annual~~

1 renewal fee before the date the registration expires, the board
2 shall suspend the registration certificate of the laboratory.

3 SECTION 48. The following provisions of the Occupations
4 Code are repealed:

- 5 (1) Sections 256.0531(h), (i), and (j);
- 6 (2) Section 262.001(1);
- 7 (3) Subchapter B, Chapter 262;
- 8 (4) Section 262.102(c);
- 9 (5) Section 262.1025;
- 10 (6) Section 262.103;
- 11 (7) Section 263.0075;
- 12 (8) Section 265.003(b);
- 13 (9) Section 265.004;
- 14 (10) Section 265.006;
- 15 (11) Section 266.001(1);
- 16 (12) Subchapter B, Chapter 266;
- 17 (13) Section 266.101; and
- 18 (14) Sections 266.102(a) and (d).

19 SECTION 49. Not later than March 1, 2018, the State Board of
20 Dental Examiners shall:

- 21 (1) adopt rules and fees necessary to implement
22 Chapters 258 and 265, Occupations Code, as amended by this Act; and
- 23 (2) adopt rules necessary to implement Chapter 263,
24 Occupations Code, as amended by this Act.

25 SECTION 50. (a) The term of a member of the State Board of
26 Dental Examiners serving on September 1, 2017, expires on that
27 date.

1 (b) Not later than December 1, 2017, the governor shall
2 appoint 11 members to the State Board of Dental Examiners in
3 accordance with Section 252.001(a), Occupations Code, as amended by
4 this Act. The governor shall appoint:

5 (1) two dentist members and one dental hygienist
6 member to terms expiring February 1, 2019;

7 (2) two dentist members, one dental hygienist member,
8 and one public member to terms expiring February 1, 2021; and

9 (3) two dentist members, one dental hygienist member,
10 and one public member to terms expiring February 1, 2023.

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

16 (d) The governor may appoint to the board under Subsection
17 (b) of this section a member whose term expires under Subsection (a)
18 of this section. The expired term of a member described by this
19 subsection does not constitute a full term for purposes of Section
20 252.004(b), Occupations Code.

21 SECTION 51. Not later than December 1, 2017, the State Board
22 of Dental Examiners shall appoint the members of the advisory
23 committee established under Subchapter E, Chapter 258, Occupations
24 Code, as added by this Act, in the manner provided by that
25 subchapter.

26 SECTION 52. Not later than December 1, 2017, the governor
27 shall appoint the members of the dental review committee in

1 accordance with Section 263.0071, Occupations Code, as added by
2 this Act. In making the appointments, the governor shall appoint:

- 3 (1) three members to terms expiring February 1, 2019;
4 (2) three members to terms expiring February 1, 2021;
5 and
6 (3) three members to terms expiring February 1, 2023.

7 SECTION 53. (a) Except as provided by Subsection (b) of
8 this section, Section 252.010, Occupations Code, as amended by this
9 Act, applies to a member of the State Board of Dental Examiners
10 appointed before, on, or after the effective date of this Act.

11 (b) A member of the board appointed after the effective date
12 of this Act who, before the effective date of this Act, completed
13 the training program required by Section 252.010, Occupations Code,
14 as that law existed before the effective date of this Act, is
15 required to complete additional training only on the subjects added
16 by this Act to the training program as required by Section 252.010,
17 Occupations Code. A board member described by this subsection may
18 not vote, deliberate, or be counted as a member in attendance at a
19 meeting of the board held on or after December 1, 2017, until the
20 member completes the additional training.

21 SECTION 54. Not later than September 1, 2022, the State
22 Board of Dental Examiners shall conduct an inspection under Section
23 258.156, Occupations Code, as amended by this Act, with respect to a
24 dentist who holds a level 2, level 3, or level 4 permit issued under
25 Section 258.155, Occupations Code, before the effective date of
26 this Act.

27 SECTION 55. (a) On the effective date of this Act, a

1 certificate issued under former Section 265.004 or 265.006,
2 Occupations Code, expires.

3 (b) The repeal of a law by this Act does not entitle a person
4 to a refund of an application, licensing, or other fee paid by the
5 person before the effective date of this Act.

6 SECTION 56. (a) On and after September 1, 2018, the State
7 Board of Dental Examiners shall issue a dental x-ray registration
8 under Section 265.001, Occupations Code, as amended by this Act, to
9 a dental assistant who renews an unexpired certificate of
10 registration issued under former Section 265.005, Occupations
11 Code, and who meets the continuing education requirements
12 established by the board under Section 265.008, Occupations Code,
13 as added by this Act. A dental assistant described by this
14 subsection is not required to meet the eligibility requirements of
15 Section 265.0015, Occupations Code, as added by this Act, to obtain
16 or renew a registration issued under this subsection.

17 (b) On and after September 1, 2018, the State Board of
18 Dental Examiners shall issue a nitrous oxide monitoring
19 registration under Section 265.001, Occupations Code, as amended by
20 this Act, to a dental assistant who holds a current nitrous oxide
21 monitoring certificate issued by the State Board of Dental
22 Examiners before that date and who meets the continuing education
23 requirements established by the board under Section 265.008,
24 Occupations Code, as added by this Act. A dental assistant
25 described by this subsection is not required to meet the
26 eligibility requirements of Section 265.0015, Occupations Code, as
27 added by this Act, to obtain or renew a registration issued under

1 this subsection.

2 SECTION 57. Section 265.008, Occupations Code, as added by
3 this Act, applies only to the renewal of a registration on or after
4 September 1, 2018.

5 SECTION 58. On September 1, 2019, a certificate of
6 registration issued under former Section 265.005, Occupations
7 Code, or a nitrous oxide monitoring certificate issued by the State
8 Board of Dental Examiners, expires.

9 SECTION 59. (a) Chapter 263, Occupations Code, as amended
10 by this Act, applies only to the investigation or disposition of a
11 complaint filed with the State Board of Dental Examiners on or after
12 March 1, 2018. A complaint filed before that date is governed by
13 the law in effect on the date the complaint was filed, and the
14 former law is continued in effect for that purpose.

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

19 SECTION 60. (a) A violation of a law that is repealed by
20 this Act is governed by the law in effect on the date the violation
21 was committed, and the former law is continued in effect for that
22 purpose.

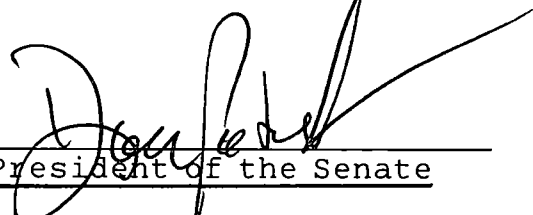
23 (b) For purposes of this section, a violation was committed
24 before the effective date of this Act if any element of the
25 violation occurred before that date.

26 SECTION 61. (a) Except as provided by Subsections (b) and
27 (c) of this section, this Act takes effect September 1, 2017.

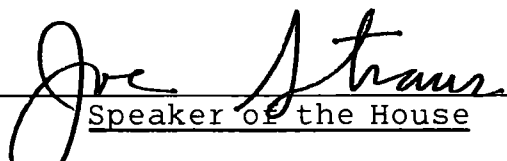
S.B. No. 313

1 (b) Sections 258.155 and 258.156, Occupations Code, as
2 amended by this Act, and Section 258.1554, Occupations Code, as
3 added by this Act, take effect March 1, 2018.

4 (c) Sections 258.002, 258.054, and 265.001, Occupations
5 Code, as amended by this Act, take effect September 1, 2018. _____

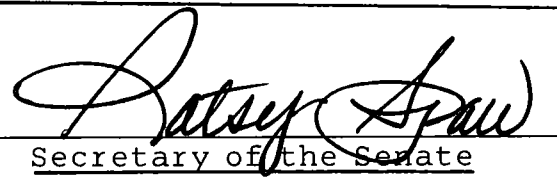


President of the Senate



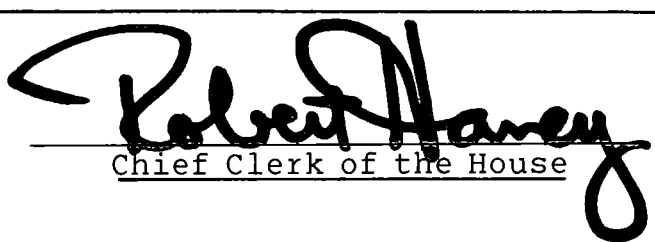
Speaker of the House

I hereby certify that S.B. No. 313 passed the Senate on April 11, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 22, 2017, by the following vote: Yeas 31, Nays 0. _____



Secretary of the Senate

I hereby certify that S.B. No. 313 passed the House, with amendment, on May 18, 2017, by the following vote: Yeas 144, Nays 0, two present not voting. _____

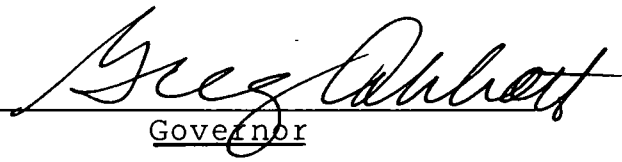


Chief Clerk of the House

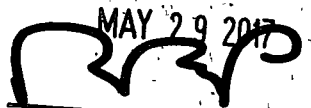
Approved:

5 - 29 - 2017

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:00 PM O'CLOCK
MAY 29 2017


Secretary of State

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 19, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB313 by Schwertner (Relating to the continuation and functions of the State Board of Dental Examiners, imposing fees), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB313, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2019. It is assumed that the provisions of the bill relating to deregulation and registration of certain dental assistants could result in an impact to revenue in the General Revenue Fund beginning in fiscal year 2018; however, because the number of dental assistants that would qualify for the registrations and the amount of the fee is unknown, an overall estimate on revenue cannot be determined

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$436,807)	\$436,807	4 0
2019	(\$287,915)	\$287,915	4 0
2020	(\$287,915)	\$287,915	4 0
2021	(\$287,915)	\$287,915	4 0
2022	(\$287,915)	\$287,915	4 0

Fiscal Analysis

The bill would amend the Occupations Code relating to the continuation and functions of the State Board of Dental Examiners (TSBDE), imposing a fee. The bill would continue the TSBDE for twelve years until September 1, 2029

The bill would reduce the number of board members from 15 to 11.

The bill would require TSBDE to periodically review a national practitioner database to determine whether another state has taken any disciplinary action against a license holder

The bill would require the TSBDE to inspect a dentist who holds certain anesthesia permits and modify the current structure of anesthesia-related permits. This provision would require TSBDE to inspect all dentists who hold certain anesthesia permits as of 9/1/2017 within five years and conduct inspections within one year of a certain permits being issued effective March 1, 2018. The bill would require the board to adopt rules to establish minimum emergency preparedness standards and would require the board to develop and administer an online jurisprudence exam to administer to certain permit holders. The bill would permit TSBDE to require a statement of application indicating whether a dentist provides anesthesia service in more than one location

The bill would require the TSBDE to schedule an informal settlement conference with at least two panelists. The bill would establish the Dental Review Committee to serve as panelists on the informal settlement conference panel and authorize certain members to attend informal settlement conferences by video. Under the provisions of the bill, the Dental Review Committee members would be entitled to receive a per diem for actual duty in the same manner provided for board members. The bill would establish the Advisory Committee on Dental Anesthesia

The bill would permit the TSBDE to issue a subpoena duces tecum and administer oaths. Under the provisions of the bill, the board would be required to pay a fee for photocopies that are subpoenaed at the request of TSBDE staff.

The bill would eliminate four dental assistant certificates and replace two certifications with new registrations for X-ray and nitrous oxide and provides exceptions. The bill would require the agency to develop a system to track the number of dental assistant registrants and coordinate renewals of registrants so that the administrative burden to the board is reduced. The bill would permit the board to approve instruction courses and examinations and set a collect a fee reasonable to cover the costs of administering the registrations. The bill would deregulate coronal polishing and pit and fissure assistants on September 1, 2017 and require the new registrations effective September 1, 2018. The bill would require a dental assistant registration or license to be valid for two years

The bill would permit TSBDE to set, by rule, dental license, anesthesia permits, and lab permits to be valid for one or two years.

Under the provisions of the bill, the following sections of the Occupations Code would be repealed: 265.004 and 265.003(b) (pit and fissure dental assistant certificate and requirements), 265.006 (coronal polishing certificate), 265.0531(h), (i), and (j) (hygiene program), 262.001(1) (definition of hygiene advisory committee), Subchapter B, Chapter 626 (provisions relating to dental hygienists), 262 102(c) (relating to board rule), 262 1025 (rule-making authority), 262.103 (meeting notice), 263 0075 (informal settlement requirements), 266.001(1) (definition of Dental Laboratory Certification Council), Subchapter B, Chapter 266 (Dental Laboratory Certification

Council), 266.101 (powers of the council), and 266.102(a) and (d) (rulemaking authority).

Except as otherwise specified, the bill would take effect on September 1, 2017

Methodology

The provisions of the bill would result in a net cost of \$436,807 in General Revenue in fiscal year 2018 and a net cost of \$287,915 in General Revenue in fiscal year 2019 and following fiscal years. Based on the Legislative Budget Board analysis of the TSBDE, an additional four Full-Time Equivalents (FTEs) would be needed to implement the inspections of licensees, resulting in a cost of \$290,247 in salaries, benefits, and travel costs in General Revenue in fiscal year 2018 and each year thereafter. The additional FTEs include three Inspectors and one Administrative Assistant. Additionally, it is assumed there would be a one-time start up cost of \$17,892 in General Revenue for additional FTEs and for the new Dental Review Committee members including desktop computer, software and other operating costs.

According to TSBDE, travel costs for the Advisory Committee on Dental Anesthesia would total \$12,000 in General Revenue in fiscal year 2018 and \$6,000 in General Revenue in future fiscal years, assuming \$500 per member per day. This analysis assumes that the committee would meet for two two-day meetings in fiscal year 2018 and two one-day meetings each year thereafter.

Based on the information provided by the Sunset Advisory Commission (SAC) and TSBDE, it is assumed that 65,000 applicants would require a national databank query annually. This analysis assumes applicants would pay costs associated with the national databank query directly to the third party vendor, resulting in no cost to TSBDE

TSBDE estimates information technology costs to be \$50,000 in General Revenue in fiscal year 2018 to enhance a database to track inspections of dentists administering anesthesia and \$75,000 in General Revenue in fiscal year 2018 for additions to a tracking database to implement a biennial registration and license renewals

According to information provided by SAC, the reduction of the board from 15 to 11 members would result in \$8,332 in General Revenue savings in travel costs in each fiscal year beginning in 2018.

This analysis assumes that costs for informal settlement conferences will remain the same as current costs, as the bill increases members who attend a conference but also provides that one member may attend conference by video.

This analysis assumes that any increased cost or savings to TSBDE, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase or decrease in fee-generated revenue of an equal value.

The Comptroller of Public Accounts estimates that the adoption of a biennial license renewal schedule would affect the timing of revenue collection, but would not affect the amount of revenue collected for the biennium for the state

According to SAC, the elimination of the anesthesia portability permit would result in an estimated revenue loss of \$2,880 in General Revenue per fiscal year beginning in fiscal year 2018

According to TSBDE, the elimination of the pit and fissure and coronal polishing certificates would result in a revenue loss of \$60,295 in General Revenue per fiscal year. Due to the unavailability of data, an estimate on revenue gain associated with the creation of the new registrations under the provisions of the bill cannot be determined because the number of dental assistants that would qualify and the amount of the registration fee that would be set by TSBDE is unknown under the bill provisions

This analysis omits any estimate of revenue changes in the table above due to various provisions of the bill providing for revenue decreases that may be offset by unknown revenue gains; therefore, estimates on changes to revenue to the General Revenue Fund are excluded as the overall fiscal impact cannot be determined

The State Office of Administrative Hearings and Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources

Technology

According to TBDE, IT costs total \$140,819 in General Revenue in fiscal year 2018, including \$17,892 in start up IT costs for additional FTEs and Dental Review Committee members, \$50,000 in database upgrades for inspecting licensees administering anesthesia, and \$75,000 in database modifications for the new dental assistant requirements under the provisions of the bill

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 504 Texas State Board of Dental Examiners, 302 Office of the Attorney General, 313 Department of Information Resources, 360 State Office of Administrative Hearings, 515 Board of Pharmacy

LBB Staff: UP, KCA, EH, EK, TG, JSm, LCO

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 29, 2017

TO: Honorable Four Price, Chair, House Committee on Public Health

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB313 by Schwertner (Relating to the continuation and functions of the State Board of Dental Examiners; imposing fees.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB313, As Engrossed: an impact of \$0 through the biennium ending August 31, 2019. It is assumed that the provisions of the bill relating to deregulation and registration of certain dental assistants could result in an impact to revenue in the General Revenue Fund beginning in fiscal year 2018; however, because the number of dental assistants that would qualify for the registrations and the amount of the fee is unknown, an overall estimate on revenue cannot be determined.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$566,807)	\$566,807	4.0
2019	(\$417,915)	\$417,915	4.0
2020	(\$417,915)	\$417,915	4.0
2021	(\$417,915)	\$417,915	4.0
2022	(\$417,915)	\$417,915	4.0

Fiscal Analysis

The bill would amend the Occupations Code relating to the continuation and functions of the State Board of Dental Examiners (TSBDE); imposing a fee. The bill would continue the TSBDE for twelve years until September 1, 2029.

The bill would reduce the number of board members from 15 to 11.

The bill would require TSBDE to periodically review a national practitioner database to determine whether another state has taken any disciplinary action against a license holder.

The bill would require the TSBDE to inspect a dentist who holds certain anesthesia permits and modify the current structure of anesthesia-related permits. This provision would require TSBDE to inspect all dentists who hold certain anesthesia permits as of 9/1/2017 within five years and conduct inspections within one year of a certain permits being issued effective March 1, 2018. The bill would require the board to adopt rules to establish minimum emergency preparedness standards and would require the board to develop and administer an online jurisprudence exam to administer to certain permit holders. The bill would permit TSBDE to require a statement of application indicating whether a dentist provides anesthesia service in more than one location.

The bill would require the TSBDE to schedule an informal settlement conference with at least two panelists. The bill would establish the Dental Review Committee to serve as panelists on the informal settlement conference panel and authorize certain members to attend informal settlement conferences by video. Under the provisions of the bill, the Dental Review Committee members would be entitled to receive a per diem for actual duty in the same manner provided for board members. The bill would establish the Advisory Committee on Dental Anesthesia.

The bill would permit the TSBDE to issue a subpoena duces tecum and administer oaths. Under the provisions of the bill, the board would be required to pay a fee for photocopies that are subpoenaed at the request of TSBDE staff.

The bill would eliminate four dental assistant certificates and replace two certifications with new registrations for X-ray and nitrous oxide and provides exceptions. The bill would require the agency to develop a system to track the number of dental assistant registrants and coordinate renewals of registrants so that the administrative burden to the board is reduced. The bill would permit the board to approve instruction courses and examinations and set a collect a fee reasonable to cover the costs of administering the registrations. The bill would deregulate coronal polishing and pit and fissure assistants on September 1, 2017 and require the new registrations effective September 1, 2018. The bill would require a dental assistant registration or license to be valid for two years.

The bill would permit TSBDE to set, by rule, dental license, anesthesia permits, and lab permits to be valid for one or two years.

Under the provisions of the bill, the following sections of the Occupations Code would be repealed: 265.004 and 265.003(b) (pit and fissure dental assistant certificate and requirements), 265.006 (coronal polishing certificate), 265.0531(h), (i), and (j) (hygiene program), 262.001(1) (definition of hygiene advisory committee), Subchapter B, Chapter 626 (provisions relating to dental hygienists), 262.102(c) (relating to board rule), 262.1025 (rule-making authority), 262.103 (meeting notice), 263.0075 (informal settlement requirements), 266.001(1) (definition of Dental Laboratory Certification Council), Subchapter B, Chapter 266 (Dental Laboratory Certification

Council), 266.101 (powers of the council), and 266.102(a) and (d) (rulemaking authority).

Except as otherwise specified, the bill would take effect on September 1, 2017.

Methodology

The provisions of the bill would result in a net cost of \$566,807 in General Revenue in fiscal year 2018 and a net cost of \$417,915 in General Revenue in fiscal year 2019 and following fiscal years. Based on the Legislative Budget Board analysis of the TSBDE, an additional four Full-Time Equivalents (FTEs) would be needed to implement the inspections of licensees, resulting in a cost of \$290,247 in salaries, benefits, and travel costs in General Revenue in fiscal year 2018 and each year thereafter. The additional FTEs include three Inspectors and one Administrative Assistant. Additionally, it is assumed there would be a one-time start up cost of \$17,892 in General Revenue for additional FTEs and for the new Dental Review Committee members including desktop computer, software and other operating costs.

According to TSBDE, travel costs for the Advisory Committee on Dental Anesthesia would total \$12,000 in General Revenue in fiscal year 2018 and \$6,000 in General Revenue in future fiscal years, assuming \$500 per member per day. This analysis assumes that the committee would meet for two two-day meetings in fiscal year 2018 and two one-day meetings each year thereafter.

Based on the information provided by the Sunset Advisory Commission (SAC) and TSBDE, it is assumed that 65,000 applicants would require a national databank query annually. This analysis assumes a review of a national practitioner databank would be completed upon license application or renewal. SAC reports that the national practitioner databank charges \$2.00 per query. This would result in an annual cost of \$130,000 to General Revenue.

TSBDE estimates information technology costs to be \$50,000 in General Revenue in fiscal year 2018 to enhance a database to track inspections of dentists administering anesthesia and \$75,000 in General Revenue in fiscal year 2018 for additions to a tracking database to implement a biennial registration and license renewals.

According to information provided by SAC, the reduction of the board from 15 to 11 members would result in \$8,332 in General Revenue savings in travel costs in each fiscal year beginning in 2018.

This analysis assumes that costs for informal settlement conferences will remain the same as current costs, as the bill increases members who attend a conference but also provides that one member may attend conference by video.

This analysis assumes that any increased cost or savings to TSBDE, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase or decrease in fee-generated revenue of an equal value.

The Comptroller of Public Accounts estimates that the adoption of a biennial license renewal schedule would affect the timing of revenue collection, but would not affect the amount of revenue collected for the biennium for the state.

According to SAC, the elimination of the anesthesia portability permit would result in an

estimated revenue loss of \$2,880 in General Revenue per fiscal year beginning in fiscal year 2018. According to TSBDE, the elimination of the pit and fissure and coronal polishing certificates would result in a revenue loss of \$60,295 in General Revenue per fiscal year. Due to the unavailability of data, an estimate on revenue gain associated with the creation of the new registrations under the provisions of the bill cannot be determined because the number of dental assistants that would qualify and the amount of the registration fee that would be set by TSBDE is unknown under the bill provisions.

This analysis omits any estimate of revenue changes in the table above due to various provisions of the bill providing for revenue decreases that may be offset by unknown revenue gains; therefore, estimates on changes to revenue to the General Revenue Fund are excluded as the overall fiscal impact cannot be determined.

The State Office of Administrative Hearings and Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Technology

According to TBDE, IT costs total \$140,819 in General Revenue in fiscal year 2018, including \$17,892 in start up IT costs for additional FTEs and Dental Review Committee members, \$50,000 in database upgrades for inspecting licensees administering anesthesia, and \$75,000 in database modifications for the new dental assistant requirements under the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 504 Texas State Board of Dental Examiners, 302 Office of the Attorney General, 313 Department of Information Resources, 360 State Office of Administrative Hearings, 515 Board of Pharmacy

LBB Staff: UP, KCA, EH, EK, TG, JSm, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 2, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB313 by Schwertner (Relating to the continuation and functions of the State Board of Dental Examiners; imposing fees.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB313, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2019. It is assumed that the provisions of the bill relating to deregulation and registration of certain dental assistants could result in an impact to revenue in the General Revenue Fund beginning in fiscal year 2018; however, because the number of dental assistants that would qualify for the registrations and the amount of the fee is unknown, an overall estimate on revenue cannot be determined.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$566,807)	\$566,807	4 0
2019	(\$417,915)	\$417,915	4 0
2020	(\$417,915)	\$417,915	4 0
2021	(\$417,915)	\$417,915	4 0
2022	(\$417,915)	\$417,915	4.0

Fiscal Analysis

The bill would amend the Occupations Code relating to the continuation and functions of the State Board of Dental Examiners (TSBDE); imposing a fee. The bill would continue the TSBDE for twelve years until September 1, 2029.

The bill would reduce the number of board members from 15 to 11.

The bill would require TSBDE to periodically review a national practitioner database to determine whether another state has taken any disciplinary action against a license holder. The bill would require the TSBDE to periodically check prescribing information submitted by licensees to the Texas State Board of Pharmacy (TSBP) in the Prescription Monitoring Program to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices. The bill requires TSBDE, in coordination with TSBP, to determine conduct that constitutes such patterns or practices. The bill permits TSBDE, if it suspects that a licensee is engaging in such patterns or practices, to notify the licensee and to initiate a complaint against the licensee.

The bill would require the TSBDE to inspect a dentist who holds certain anesthesia permits and modify the current structure of anesthesia-related permits. This provision would require TSBDE to inspect all dentists who hold certain anesthesia permits as of 9/1/2017 within five years and conduct inspections within one year of a certain permits being issued effective March 1, 2018. The bill would require the board to adopt rules to establish minimum emergency preparedness standards and would require the board to develop and administer an online jurisprudence exam to administer to certain permit holders. The bill would permit TSBDE to require a statement of application indicating whether a dentist provides anesthesia service in more than one location.

The bill would require the TSBDE to schedule an informal settlement conference with at least two panelists. The bill would establish the Dental Review Committee to serve as panelists on the informal settlement conference panel and authorize certain members to attend informal settlement conferences by video. Under the provisions of the bill, the Dental Review Committee members would be entitled to receive a per diem for actual duty in the same manner provided for board members. The bill would establish the Advisory Committee on Dental Anesthesia.

The bill would eliminate four dental assistant certificates and replace two certifications with new registrations for X-ray and nitrous oxide and provides exceptions. The bill would require the agency to develop a system to track the number of dental assistant registrants and coordinate renewals of registrants so that the administrative burden to the board is reduced. The bill would permit the board to approve instruction courses and examinations and set a collect a fee reasonable to cover the costs of administering the registrations. The bill would deregulate coronal polishing and pit and fissure assistants on September 1, 2017 and require the new registrations effective September 1, 2018. The bill would require a dental assistant registration or license to be valid for two years.

The bill would permit TSBDE to set, by rule, dental license, anesthesia permits, and lab permits to be valid for one or two years.

Under the provisions of the bill, the following sections of the Occupations Code would be repealed: 265.004 and 265.003(b) (pit and fissure dental assistant certificate and requirements), 265.006 (coronal polishing certificate), 265.0531(h), (i), and (j) (hygiene program), 262.001(1) (definition of hygiene advisory committee), Subchapter B, Chapter 626 (provisions relating to dental hygienists), 262.102(c) (relating to board rule), 262.1025 (rule-making authority), 262.103

(meeting notice), 263.0075 (informal settlement requirements), 266.001(1) (definition of Dental Laboratory Certification Council), Subchapter B, Chapter 266 (Dental Laboratory Certification Council), 266.101 (powers of the council), and 266.102(a) and (d) (rulemaking authority).

Except as otherwise specified, the bill would take effect on September 1, 2017.

Methodology

The provisions of the bill would result in a net cost of \$566,807 in General Revenue in fiscal year 2018 and a net cost of \$417,915 in General Revenue in fiscal year 2019 and following fiscal years. Based on the Legislative Budget Board analysis of the TSBDE, an additional four Full-Time Equivalents (FTEs) would be needed to implement the inspections of licensees, resulting in a cost of \$290,247 in salaries, benefits, and travel costs in General Revenue in fiscal year 2018 and each year thereafter. The additional FTEs include three Inspectors and one Administrative Assistant. Additionally, it is assumed there would be a one-time start up cost of \$17,892 in General Revenue for additional FTEs and for the new Dental Review Committee members including desktop computer, software and other operating costs.

According to TSBDE, travel costs for the Advisory Committee on Dental Anesthesia would total \$12,000 in General Revenue in fiscal year 2018 and \$6,000 in General Revenue in future fiscal years, assuming \$500 per member per day. This analysis assumes that the committee would meet for two two-day meetings in fiscal year 2018 and two one-day meetings each year thereafter.

Based on the information provided by the Sunset Advisory Commission (SAC) and TSBDE, it is assumed that 65,000 applicants would require a national databank query annually. This analysis assumes a review of a national practitioner databank would be completed upon license application or renewal. SAC reports that the national practitioner databank charges \$2.00 per query. This would result in an annual cost of \$130,000 to General Revenue.

TSBDE estimates information technology costs to be \$50,000 in General Revenue in fiscal year 2018 to enhance a database to track inspections of dentists administering anesthesia and \$75,000 in General Revenue in fiscal year 2018 for additions to a tracking database to implement a biennial registration and license renewals.

According to information provided by SAC, the reduction of the board from 15 to 11 members would result in \$8,332 in General Revenue savings in travel costs in each fiscal year beginning in 2018.

This analysis assumes that costs for informal settlement conferences will remain the same as current costs, as the bill increases members who attend a conference but also provides that one member may attend conference by video.

This analysis assumes that any increased cost or savings to TSBDE, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase or decrease in fee-generated revenue of an equal value.

The Comptroller of Public Accounts estimates that the adoption of a biennial license renewal schedule would affect the timing of revenue collection, but would not affect the amount of revenue collected for the biennium for the state.

According to SAC, the elimination of the anesthesia portability permit would result in an

estimated revenue loss of \$2,880 in General Revenue per fiscal year beginning in fiscal year 2018. According to TSBDE, the elimination of the pit and fissure and coronal polishing certificates would result in a revenue loss of \$60,295 in General Revenue per fiscal year. Due to the unavailability of data, an estimate on revenue gain associated with the creation of the new registrations under the provisions of the bill cannot be determined because the number of dental assistants that would qualify and the amount of the registration fee that would be set by TSBDE is unknown under the bill provisions.

This analysis omits any estimate of revenue changes in the table above due to various provisions of the bill providing for revenue decreases that may be offset by unknown revenue gains; therefore, estimates on changes to revenue to the General Revenue Fund are excluded as the overall fiscal impact cannot be determined.

Based on information provided by the TSBP, it is assumed the periodic check of prescribing information to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices must be conducted by the administrator of the program at TSBP. Based on LBB analysis of TSBP, duties and responsibilities associated with implementing the provisions of this bill could be accomplished by utilizing existing resources.

The State Office of Administrative Hearings and Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Technology

According to TBDE, IT costs total \$140,819 in General Revenue in fiscal year 2018, including \$17,892 in start up IT costs for additional FTEs and Dental Review Committee members, \$50,000 in database upgrades for inspecting licensees administering anesthesia, and \$75,000 in database modifications for the new dental assistant requirements under the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 504 Texas State Board of Dental Examiners, 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 313 Department of Information Resources, 360 State Office of Administrative Hearings, 515 Board of Pharmacy

LBB Staff: UP, KCA, EH, EK, TG, JSm, LCO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 19, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB313 by Schwertner (Relating to the continuation and functions of the State Board of Dental Examiners; imposing fees.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB313, As Introduced: an impact of \$0 through the biennium ending August 31, 2019. Under provisions of the bill, it is assumed that the licensure of dental assistants under one registration could result in an impact to revenue in the General Revenue Fund beginning in fiscal year 2019; however, because the number of dental assistants that would qualify for this registration and the amount of the registration fee is unknown, an estimate on revenue cannot be determined.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2017
2018	(\$577,607)	\$577,607	4.0
2019	(\$420,915)	\$420,915	4.0
2020	(\$420,915)	\$420,915	4.0
2021	(\$420,915)	\$420,915	4.0
2022	(\$420,915)	\$420,915	4.0

Fiscal Analysis

The bill would amend the Occupations Code relating to the continuation and functions of the State Board of Dental Examiners (TSBDE); imposing a fee. The bill would continue the TSBDE for twelve years until September 1, 2029.

The bill would reduce the number of board members from 15 to 11.

The bill would require TSBDE to periodically review a national practitioner database to determine whether another state has taken any disciplinary action against a license holder. The bill would require the TSBDE to periodically check prescribing information submitted by licensees to the Texas State Board of Pharmacy (TSBP) in the Prescription Monitoring Program to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices. The bill requires TSBDE, in coordination with TSBP, to determine conduct that constitutes such patterns or practices. The bill permits TSBDE, if it suspects that a licensee is engaging in such patterns or practices, to notify the licensee and to initiate a complaint against the licensee.

The bill would require the TSBDE to inspect a dentist who holds certain anesthesia permits and modify the current structure of anesthesia-related permits. The bill would require the TSBDE to schedule an informal settlement conference with at least two panelists. The bill would establish the Dental Review Committee to serve as panelists on the informal settlement conference panel and authorize certain members to attend informal settlement conferences by video. Under the provisions of the bill, the Dental Review Committee members would be entitled to receive a per diem for actual duty in the same manner provided for board members. The bill would establish the Advisory Committee on Dental Anesthesia.

The bill eliminates the four dental assistant certificates and replaces the certifications with one registration. The bill would repeal current dental assistant certifications on September 1, 2018. The bill would require a dental registration to be valid for two years.

Under the provisions of the bill, the following sections of the Occupations Code would be repealed: 265.004 (pit and fissure dental assistant certificate), 265.005 X-Ray dental assistant certificate), 265.006 (coronal polishing certificate), 265.007 (continuing education requirements), 265.0531(h), (i), and (j) (hygiene program), 262.001(1) (definition of hygiene advisory committee), Subchapter B, Chapter 626 (provisions relating to dental hygienists), 262.102(c) (relating to board rule), 262.1025 (rule-making authority), 262.103 (meeting notice), 263.0075 (informal settlement requirements), 263.0076 (notice requirements), 266.001(1) (definition of Dental Laboratory Certification Council), Subchapter B, Chapter 266 (Dental Laboratory Certification Council), 266.101 (powers of the council), and 266.102(a) and (b) (rulemaking authority).

Except as otherwise specified, the bill would take effect on September 1, 2017.

Methodology

The provisions of the bill would result in a net cost of \$577,607 in General Revenue in fiscal year 2018 and a net cost of \$420,915 in General Revenue in fiscal year 2019 and following fiscal years. Based on the Legislative Budget Board analysis of the TSBDE, an additional four Full-Time Equivalents (FTEs) would be needed to implement the inspections of licensees who administer parenteral anesthesia, resulting in a cost of \$290,247 in salaries, benefits, and travel costs in General Revenue in fiscal year 2018 and each year thereafter. The additional FTEs include three Inspectors and one Administrative Assistant. Additionally, it is assumed there would be a one-time

start up cost of \$22,692 in General Revenue for additional FTEs and for the new Dental Review Committee members including desktop computer, software and other operating costs.

According to TSBDE, travel costs for the Advisory Committee on Dental Anesthesia would total \$18,000 in General Revenue in fiscal year 2018 and \$9,000 in General Revenue in future fiscal years, assuming \$500 per member per day. This analysis assumes that the committee would meet for two two-day meetings in fiscal year 2018 and two one-day meetings each year thereafter.

Based on the information provided by the Sunset Advisory Commission (SAC) and TSBDE, it is assumed that 65,000 applicants would require a national databank query annually. This analysis assumes a review of a national practitioner databank would be completed upon license application or renewal. SAC reports that the national practitioner databank charges \$2.00 per query. This would result in an annual cost of \$130,000 to General Revenue.

TSBDE estimates information technology costs to be \$50,000 in General Revenue in fiscal year 2018 to enhance a database to track inspections of dentists administering anesthesia and \$75,000 in General Revenue in fiscal year 2018 for additions to a tracking database to implement a biennial license renewal.

According to information provided by SAC, the reduction of the board from 15 to 11 members would result in \$8,332 in General Revenue savings in travel costs in each fiscal year beginning in 2018.

This analysis assumes that costs for informal settlement conferences will remain the same as current costs, as the bill increases members who attend a conference but also provides that one member may attend conference by video.

This analysis assumes that any increased cost or savings to TSBDE, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase or decrease in fee-generated revenue of an equal value.

Under the provisions of the bill, the current four dental assistant certificates would be eliminated and the board would be required to establish fees for the new registration. The bill would repeal the current dental assistant certifications on September 1, 2018. Due to the unavailability of data, an estimate on revenue cannot be determined because the number of dental assistants that would qualify and the amount of the registration fee that would be set by TSBDE is unknown under the bill provisions.

Based on information provided by the TSBP, it is assumed the periodic check of prescribing information to determine whether a licensee is engaging in potentially harmful prescribing patterns or practices must be conducted by the administrator of the program at TSBP. Based on LBB analysis of TSBP, duties and responsibilities associated with implementing the provisions of this bill could be accomplished by utilizing existing resources.

The State Office of Administrative Hearings and Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Technology

According to TBDE, IT costs total \$147,692 in General Revenue in fiscal year 2018, including start up IT costs for additional FTEs and Dental Review Committee members, \$50,000 in database upgrades for inspecting licensees administering anesthesia, and \$75,000 in database modifications for the new dental assistant certificate under the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 313 Department of Information Resources, 360 State Office of Administrative Hearings, 504 Texas State Board of Dental Examiners, 515 Board of Pharmacy

LBB Staff: UP, KCA, EH, EK, TG, JSm, LCO