

BILL ANALYSIS

Senate Research Center
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S.B. 407
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Veterinary Medical Examiners (board) was created in 1911 to ensure that safe and quality veterinary services are provided to the citizens of Texas and their animals. The board has three primary functions: licensing qualified individuals to practice veterinary medicine in Texas; setting standards relating to the practice of veterinary medicine; and enforcing the Veterinary Licensing Act, including investigating and resolving complaints. The board currently licenses more than 6,700 veterinarians, with a staff of 11 employees and an annual budget of \$613,145.

The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The Sunset review found that the licensing and regulation of veterinarians is needed and that the board is successful in its mission, but some of the board's processes could be improved to make them fairer and more efficient for both licensees and the public.

S.B. 407 strengthens the board's continuing education program to ensure that licensees comply with continuing education requirements by requiring the board to conduct random audits of licensees through the license renewal process to ensure compliance with continuing education provisions and authorizing the board to order a veterinarian who is being disciplined by the board to take additional continuing education hours, in addition to the standard number needed to renew a license.

S.B. 407 also requires at least two veterinarian members of the board to review all complaints that require medical expertise and determine whether to dismiss the complaint or refer it to an information hearing. The bill strengthens the board's enforcement program; requires the board to focus enforcement efforts on investigating and resolving complaints; and increases the maximum administrative penalty from \$2,500 to \$5,000 per day; and continues the board for 12 more years.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Veterinary Medical Examiners in SECTION 12 (Section 801.2555, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 801.003, Occupations Code, to extend the Sunset date for the State Board of Veterinary Medical Examiners (board) from September 1, 2005, to September 1, 2017.

SECTION 2. Amends Section 801.053, Occupations Code, as follows:

Sec. 801.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Redefines "Texas trade association."

(b) Prohibits a person from being a member of the board and from being an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person meets certain criteria. Deletes

existing subsections prohibiting certain persons from serving as a member or employee of the board.

- (c) Redesignated from Subsection (d). Makes a nonsubstantive change.

SECTION 3. Amends Section 801.055, Occupations Code, as follows:

Sec. 801.055. OFFICERS. (a) Requires the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

- (b) Creates subsection from existing text and deletes text requiring the board to elect a president at its first meeting each year.

SECTION 4. Amends Section 801.056, Occupations Code, as follows:

Sec. 801.056. GROUNDS FOR REMOVAL. (a) Sets forth certain grounds for removal of a member of the board.

- (b) Makes no changes.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board, rather than the president, of the ground. Makes a conforming change. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Amends Section 801.057, Occupations Code, as follows:

Sec. 801.057. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section. Deletes text relating to requiring a board member to complete a course established by the board. Deletes text requiring a member of the board to pass a certain examination before being confirmed by the senate as a board member.

- (b) Requires the training program to provide the person with certain information regarding the board. Deletes text requiring the inclusion of certain information to be provided to the person.

(c) Entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes text requiring the board to consult with certain offices in developing the training program. Deletes subsection relating to the ability of another state agency to develop training requirements for board members.

SECTION 6. Amends Section 801.104, Occupations Code, as follows:

Sec. 801.104. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate, rather than define, the policymaking, rather than respective, responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Amends Subchapter D, Chapter 801, Occupations Code, by adding Sections 801.161 and 801.162, as follows:

Sec. 801.161. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 801.162. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) Requires the board to develop and implement a policy to encourage the use of certain procedures.

(b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to perform certain managerial duties.

SECTION 8. Amends Section 801.204, Occupations Code, as follows:

Sec. 801.204. RECORDS OF COMPLAINTS. (a) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Deletes text requiring the board to keep an information file about each complaint. Requires the board to maintain the information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes text requiring the information file to be kept current and contain certain information.

(b) Requires the board to make information available describing its procedures for complaint investigation and resolution. Deletes text relating to certain procedural guidelines regarding the filing of complaints.

(c) Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 9. Amends Subchapter E, Chapter 801, Occupations Code, by adding Sections 801.2051, 801.2055, and 801.2056, as follows:

Sec. 801.2051. PRIORITY OF COMPLAINTS. Requires the board to prioritize complaints to resolve the more serious complaints first.

Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) Requires a complaint that requires medical expertise to review to be reviewed by two or more veterinarian board members. Requires the board members to determine whether to dismiss the complaint or refer it to an informal proceeding under Section 801.408 (Informal Proceedings).

(b) Provides that if the veterinarian members do not agree to dismiss or refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408.

Sec. 801.2056. COMPLAINTS NOT REQUIRING MEDICAL EXPERTISE. (a) Authorizes board staff to review a complaint that does not involve medical expertise.

(b) Requires the staff, after reviewing the complaint, to recommend dismissal of the complaint or refer the complaint to an informal proceeding under Section 801.408.

(c) Requires the board to review and approve at a public meeting all staff decisions made under this section.

SECTION 10. Amends Section 801.254(b), Occupations Code, to delete text authorizing the board to conduct an oral licensing examination.

SECTION 11. Amends Section 801.257(a), Occupations Code, to delete text requiring an applicant to provide certain information to earn a provisional license from the board.

SECTION 12. Amends Subchapter F, Chapter 801, Occupations Code, by adding Section 801.2555, as follows:

Sec. 801.2555. EXAMINATION FEE REFUND. (a) Requires the board to refund the examination fee paid by an applicant for certain reasons.

(b) Requires the board to adopt rules that establish the required notification period and the emergency situations that warrant a refund.

SECTION 13. Amends Section 801.303, Occupations Code, as follows:

Sec. 801.303. PROCEDURE FOR RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(b) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b). Deletes text relating to the amount of the renewal fee.

(c) Creates subsection from existing text and redesignates headings accordingly. Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying to the board a renewal fee that is equal to the sum of two times the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b). Makes nonsubstantive changes and deletes text relating to the specified amount of the renewal fee.

(d) Prohibits a person whose license has been expired for one year or more from renewing the license. Deletes text specifying that the license has been expired for one year. Authorizes the person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. Deletes text requiring a person submitting to reexamination in order to obtain new license. Makes a conforming change.

SECTION 14. Amends Section 801.305, Occupations Code, as follows:

Sec. 801.305. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new license without reexamination. Deletes text relating to authorizing the board to renew without reexamination an expired license of a certain person.

(b) Requires the person to pay to the board a fee that is equal to the amount of the renewal fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b). Deletes text relating to the amount of a fee a person must pay to the board and makes a nonsubstantive change.

SECTION 15. Amends Section 801.307, Occupations Code, by adding Subsection (c), to authorize the board to require a license holder who does not complete the required number of hours of continuing education in a year to make up the missed hours in later years. Provides that

hours required to be made up in a later year are in addition to the hours normally required to be completed in that year.

SECTION 16. Amends Subchapter G, Chapter 801, Occupations Code, by adding Section 801.308, as follows:

Sec. 801.308. CONTINUING EDUCATION AUDITS. (a) Requires the board to monitor compliance with continuing education requirements by conducting random audits of license holders seeking renewal. Authorizes the board staff to conduct an audit at any time. Authorizes the board to perform additional compliance monitoring by other means.

(b) Requires a license holder who is audited to provide proof of course completion to the board, including certificates of completion.

(c) Provides that a list of completed continuing education courses from the license holder on one presigned form does not establish compliance.

SECTION 17. Amends Sections 801.401(a) and (d), Occupations Code, as follows:

(a) Authorizes the board to impose an administrative, rather than civil, penalty if an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402. Makes a conforming change.

(d) Deletes text providing that the hours required by the board under this subsection are not in addition to the hours required to renew a license under this chapter.

SECTION 18. Amends Section 801.406(a), Occupations Code, to require the board to impose a penalty as provided by Section 801.401 on a license holder convicted of certain felony offenses. Requires the board to set the amount of the penalty to match the seriousness of the conviction. Deletes text relating to suspending the person's license.

SECTION 19. Amends Section 801.407(a), Occupations Code, to make a conforming change.

SECTION 20. Amends Section 801.408, Occupations Code, by adding Subsections (c), (d), (e), and (f):

(c) Requires a committee of two or more veterinarian board members and one or more public board members to be present at an informal proceeding for a complaint that requires medical expertise. Requires the committee to recommend enforcement action at the informal proceeding.

(d) Authorizes a committee of board staff to recommend enforcement action at an informal proceeding for a complaint that does not require medical expertise or refer the complaint to the committee of board members under Subsection (c).

(e) Authorizes the board, at an informal proceeding under this section, and on agreement with the license holder, to order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty under this chapter. Prohibits the board from requiring payment of other damages or estimate harm under this subsection.

(f) Requires the board, before an informal disposition is effective, to review and approve at a public meeting an informal disposition of the complaint recommended by board members or board staff.

SECTION 21. Amends Sections 801.452(a) and (c), Occupations Code, as follows:

(a) Prohibits the amount of an administrative penalty from exceeding \$5,000 for each violation per day, rather than for each violation related to a controlled substance. Deletes

text providing another amount which the amount of an administrative penalty is prohibited from exceeding.

(c) Requires a committee described by Section 801.408(c) or (d), rather than a board subcommittee with at least one public member of the board, to recommend the amount of the administrative penalty based on a standardized penalty schedule. Makes a conforming change.

SECTION 22. Amends Section 801.453, Occupations Code, as follows:

Sec. 801.453. New heading: COMMITTEE RECOMMENDATIONS. (a) Makes conforming changes.

(b) Makes a conforming change and a nonsubstantive change.

SECTION 23. Amends Section 801.454, Occupations Code, as follows:

Sec. 801.454. New heading: PENALTY TO BE PAID OR HEARING REQUESTED ON COMMITTEE'S RECOMMENDATIONS. (a) Makes a conforming change.

(b) Authorizes, rather than requires, the board, by order, to take certain actions if the person accepts the committee's determination and recommended penalty. Makes a conforming change.

SECTION 24. Amends the heading to Section 801.455, Occupations Code, to read as follows:

Sec. 801.455. HEARING ON COMMITTEE'S RECOMMENDATIONS.

SECTION 25. Amends Subchapter K, Chapter 801, Occupations Code, by adding Sections 801.508 and 801.509, as follows:

Sec. 801.508. CEASE AND DESIST ORDER. (a) Authorizes the board, after notice and opportunity for a hearing, if it appears to the board that a person is engaging in an act or practice that constitutes the practice of veterinary medicine without a license under this chapter, to issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J.

Sec. 801.509. ENFORCEMENT POLICY. Requires the board to adopt a formal policy to focus enforcement efforts toward investigating complaints.

SECTION 26. Repealers: Section 801.257(b) (Provisional License), Occupations Code.

Section 801.406(b) (Required Disciplinary Action for Certain Felony Convictions), Occupations Code.

SECTION 27. (a) Requires the board, not later than January 1, 2006, to adopt formal policy required by Section 801.509, Occupations Code, as added by this Act.

(b) Requires the board, not later than January 1, 2006, to adopt rules as required by Section 801.2555, as added by this Act.

SECTION 28. Makes application of this Act prospective.

SECTION 29. Effective date: September 1, 2005.