

By: Jackson

S.B. No. 407

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the State Board of
Veterinary Medical Examiners.

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

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

Sec. 801.003. APPLICATION OF SUNSET ACT. The State Board of
Veterinary Medical Examiners is subject to Chapter 325, Government
Code (Texas Sunset Act). Unless continued in existence as provided
by that chapter, the board is abolished and this chapter expires
September 1, 2017 [~~2005~~].

SECTION 2. Section 801.053, Occupations Code, is amended to
read as follows:

Sec. 801.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
In this section, "Texas trade association" means a [~~nonprofit,~~
cooperative~~]~~ and voluntarily joined statewide association of
business or professional competitors in this state designed to
assist its members and its industry or profession in dealing with
mutual business or professional problems and in promoting their
common interest.

(b) A person may not be a member of the board and may not be
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

1 provisions of the federal Fair Labor Standards Act of 1938 (29
2 U.S.C. Section 201 et seq.), if:

3 (1) the person is an officer, employee, or paid
4 consultant of a Texas trade association in the field of health care;
5 or

6 (2) the person's spouse is an officer, manager, or paid
7 consultant of a Texas trade association in the field of health care.

8 ~~[An officer, employee, or paid consultant of a Texas trade~~
9 ~~association in the field of health care may not be a member or~~
10 ~~employee of the board who is exempt from the state's position~~
11 ~~classification plan or is compensated at or above the amount~~
12 ~~prescribed by the General Appropriations Act for step 1, salary~~
13 ~~group A17, of the position classification salary schedule.~~

14 ~~[(c) A person who is the spouse of an officer, manager, or~~
15 ~~paid consultant of a Texas trade association in the field of health~~
16 ~~care may not be a member of the board and may not be an employee of~~
17 ~~the board who is exempt from the state's position classification~~
18 ~~plan or is compensated at or above the amount prescribed by the~~
19 ~~General Appropriations Act for step 1, salary group A17, of the~~
20 ~~position classification salary schedule.]~~

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

26 SECTION 3. Section 801.055, Occupations Code, is amended to
27 read as follows:

1 Sec. 801.055. OFFICERS. (a) The governor shall designate a
2 member of the board as the presiding officer of the board to serve
3 in that capacity at the pleasure of the governor.

4 (b) At the first meeting of the board each year, the board
5 shall elect from its members [~~a president and~~] any other officer the
6 board considers necessary or convenient.

7 SECTION 4. Section 801.056, Occupations Code, is amended to
8 read as follows:

9 Sec. 801.056. GROUNDS FOR REMOVAL. (a) It is a ground for
10 removal from the board that a member:

11 (1) does not have at the time of taking office
12 [~~appointment~~] the qualifications required by Section 801.052;

13 (2) does not maintain during service on the board the
14 qualifications required by Section 801.052;

15 (3) is ineligible for membership under Section 801.052
16 or [~~violates a prohibition established by Section~~] 801.053;

17 (4) cannot, because of illness or disability,
18 discharge the member's duties for a substantial part of the member's
19 term; or

20 (5) is absent from more than half of the regularly
21 scheduled board meetings that the member is eligible to attend
22 during a calendar year without an excuse approved [~~, unless the~~
23 ~~absence is excused~~] by a majority vote of the board.

24 (b) The validity of an action of the board is not affected by
25 the fact that it is taken when a ground for removal of a board member
26 exists.

27 (c) If the executive director has knowledge that a potential

ground for removal exists, the executive director shall notify the presiding officer of the board ~~[president]~~ of the potential ground. The presiding officer ~~[president]~~ shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Section 801.057, Occupations Code, is amended to read as follows:

Sec. 801.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a ~~[Before a board member may assume the member's duties, the member must complete at least one course of the]~~ training program that complies with ~~[established by the board under]~~ this section. ~~[Before the member may be confirmed by the senate, the member must pass an examination given in conjunction with the attorney general on the subjects described by Subsections (b)(7), (8), and (9).]~~

(b) The training program must ~~[shall]~~ provide the person with information regarding:

(1) the legislation that created the board and the board's programs, functions, rules, and budget ~~[this chapter]~~;

(2) ~~[the programs operated by the board,~~

~~(3) the role and functions of the board,~~

~~(4) the rules of the board, with an emphasis on the~~

1 ~~rules that relate to disciplinary and investigatory authority,~~

2 ~~[(5) the current budget for the board,~~

3 ~~[(6)] the results of the most recent formal audit of~~
4 ~~the board;~~

5 ~~(3) [(7)] the requirements of laws relating to open~~
6 ~~meetings, public information, administrative procedure, and~~
7 ~~conflicts of interest [Chapters 551, 552, 2001, and 2002,~~
8 ~~Government Code,~~

9 ~~[(8) the requirements of the conflict of interest laws~~
10 ~~and other laws relating to public officials]; and~~

11 ~~(4) [(9)] any applicable ethics policies adopted by~~
12 ~~the board or the Texas Ethics Commission.~~

13 ~~(c) A person appointed to the board is entitled to~~
14 ~~reimbursement, as provided by the General Appropriations Act, for~~
15 ~~the travel expenses incurred in attending the training program~~
16 ~~regardless of whether the attendance at the program occurs before~~
17 ~~or after the person qualifies for office. [In developing the~~
18 ~~training program, the board shall consult with the governor, the~~
19 ~~attorney general, and the Texas Ethics Commission.~~

20 ~~[(d) If another state agency or entity is given the~~
21 ~~authority to establish the training requirements for board members,~~
22 ~~the board shall allow that training instead of developing its own~~
23 ~~program.]~~

24 SECTION 6. Section 801.104, Occupations Code, is amended to
25 read as follows:

26 Sec. 801.104. DIVISION OF RESPONSIBILITIES. The board
27 shall develop and implement policies that clearly separate ~~[define]~~

1 the policymaking [~~respective~~] responsibilities of the board and the
2 management responsibilities of the executive director and the staff
3 of the board.

4 SECTION 7. Subchapter D, Chapter 801, Occupations Code, is
5 amended by adding Sections 801.161 and 801.162 to read as follows:

6 Sec. 801.161. USE OF TECHNOLOGY. The board shall implement
7 a policy requiring the board to use appropriate technological
8 solutions to improve the board's ability to perform its functions.
9 The policy must ensure that the public is able to interact with the
10 board on the Internet.

11 Sec. 801.162. ALTERNATIVE RULEMAKING AND DISPUTE
12 RESOLUTION PROCEDURES. (a) The board shall develop and implement a
13 policy to encourage the use of:

14 (1) negotiated rulemaking procedures under Chapter
15 2008, Government Code, for the adoption of board rules; and

16 (2) appropriate alternative dispute resolution
17 procedures under Chapter 2009, Government Code, to assist in the
18 resolution of internal and external disputes under the board's
19 jurisdiction.

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

24 (c) The board shall designate a trained person to:

25 (1) coordinate the implementation of the policy
26 adopted under Subsection (a);

27 (2) serve as a resource for any training needed to

1 implement the procedures for negotiated rulemaking or alternative
2 dispute resolution; and

3 (3) collect data concerning the effectiveness of those
4 procedures, as implemented by the board.

5 SECTION 8. Section 801.204, Occupations Code, is amended to
6 read as follows:

7 Sec. 801.204. RECORDS OF COMPLAINTS. (a) The board shall
8 maintain a system to promptly and efficiently act on complaints
9 ~~[keep an information file about each complaint]~~ filed with the
10 board. The board shall maintain [The] information about parties to
11 the complaint, the subject matter of the complaint, a summary of the
12 results of the review or investigation of the complaint, and its
13 disposition ~~[file must be kept current and contain a record for each~~
14 ~~complaint of.~~

15 ~~[(1) each person contacted in relation to the~~
16 ~~complaint,~~

17 ~~[(2) a summary of findings made at each step of the~~
18 ~~complaint process,~~

19 ~~[(3) an explanation of the legal basis and reason for a~~
20 ~~complaint that is dismissed,~~

21 ~~[(4) the schedule established for the complaint under~~
22 ~~Section 801.206(a) and a notation of any change in the schedule; and~~

23 ~~[(5) other relevant information].~~

24 (b) The board shall make information available describing
25 its procedures for complaint investigation and resolution ~~[If a~~
26 ~~written complaint is filed with the board that the board has~~
27 ~~authority to resolve, the board, at least quarterly and until final~~

1 ~~disposition of the complaint, shall notify the parties to the~~
2 ~~complaint of the status of the complaint unless the notice would~~
3 ~~jeopardize an undercover investigation].~~

4 (c) The board shall periodically notify the complaint
5 parties of the status of the complaint until final disposition.

6 SECTION 9. Subchapter E, Chapter 801, Occupations Code, is
7 amended by adding Sections 801.2051, 801.2055, and 801.2056 to read
8 as follows:

9 Sec. 801.2051. PRIORITY OF COMPLAINTS. The board shall
10 prioritize complaints to resolve the more serious complaints first.

11 Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a)
12 A complaint that requires medical expertise to review must be
13 reviewed by two or more veterinarian board members. The board
14 members shall determine whether to dismiss the complaint or refer
15 it to an informal proceeding under Section 801.408.

16 (b) If the veterinarian members do not agree to dismiss or
17 refer the complaint to an informal proceeding, the complaint is
18 referred to an informal proceeding under Section 801.408.

19 Sec. 801.2056. COMPLAINTS NOT REQUIRING MEDICAL EXPERTISE.
20 (a) Board staff may review a complaint that does not involve
21 medical expertise.

22 (b) After reviewing the complaint, the staff shall
23 recommend dismissal of the complaint or refer the complaint to an
24 informal proceeding under Section 801.408.

25 (c) The board must review and approve at a public meeting
26 all staff decisions made under this section.

27 SECTION 10. Section 801.254(b), Occupations Code, is

amended to read as follows:

(b) The board may conduct a licensing examination ~~[orally,~~ in writing, by a practical demonstration of the applicant's skill, or by a combination of those methods. The board shall arrange for the written portion of the examination, if any, to be validated by an independent testing professional.

SECTION 11. Section 801.257(a), Occupations Code, is amended to read as follows:

(a) The board may grant a provisional license to an applicant who presents proof that the applicant:

(1) is licensed in good standing as a veterinarian in another state that:

(A) has licensing requirements substantially equivalent to the requirements of this chapter; and

(B) maintains professional standards the board considers equivalent to the professional standards of this chapter; and

(2) has passed a national or other examination recognized by the board relating to veterinary medicine~~[- and~~

~~[(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice veterinary medicine].~~

SECTION 12. Subchapter F, Chapter 801, Occupations Code, is amended by adding Section 801.2555 to read as follows:

Sec. 801.2555. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's

1 inability to take the examination; or

2 (2) is unable to take the examination because of an
3 emergency.

4 (b) The board shall adopt rules that establish the required
5 notification period and the emergency situations that warrant a
6 refund.

7 SECTION 13. Section 801.303, Occupations Code, is amended
8 to read as follows:

9 Sec. 801.303. PROCEDURE FOR RENEWAL. (a) A person who is
10 otherwise eligible to renew a license may renew an unexpired
11 license by paying the required renewal fee to the board before the
12 expiration date of the license. A person whose license has expired
13 may not engage in activities that require a license until the
14 license has been renewed.

15 (b) A person whose license has been expired for 90 days or
16 less may renew the license by paying to the board a ~~[the required]~~
17 renewal fee ~~[and a fee]~~ that is equal to the sum of 1-1/2 times the
18 renewal ~~[one-half of the amount of the examination]~~ fee set by the
19 board under Section 801.154(a) and the additional fee required by
20 Section 801.154(b) ~~[for the license]~~.

21 (c) A person whose ~~[If a]~~ license has been expired for more
22 than 90 days but less than one year~~[, the person]~~ may renew the
23 license by paying to the board ~~[all unpaid renewal fees and]~~ a
24 renewal fee that is equal to the sum of two times the renewal
25 ~~[amount of the examination]~~ fee set by the board under Section
26 801.154(a) and the additional fee required by Section 801.154(b)
27 ~~[for the license]~~.

(d) ~~[(c)]~~ A person whose license has been expired for one year or more may not renew the [a] license ~~[that has been expired for one year or more]~~. The person may obtain a new license by ~~[submitting to reexamination and]~~ complying with the requirements and procedures, including the examination requirements, for obtaining an original license ~~[under this chapter]~~.

SECTION 14. Section 801.305, Occupations Code, is amended to read as follows:

Sec. 801.305. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A ~~[The board may renew without reexamination an expired license of 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 may obtain a new license without reexamination.

(b) The person must 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 ~~[amount of the examination]~~ additional fee required by Section 801.154(b) ~~[for the license]~~.

SECTION 15. Section 801.307, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board may 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. 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. Subchapter G, Chapter 801, Occupations Code, is amended by adding Section 801.308 to read as follows:

1 Sec. 801.308. CONTINUING EDUCATION AUDITS. (a) The board
2 shall monitor compliance with continuing education requirements by
3 conducting random audits of license holders seeking renewal. The
4 board staff may conduct an audit at any time. The board may perform
5 additional compliance monitoring by other means.

6 (b) A license holder who is audited shall provide proof of
7 course completion to the board, including certificates of
8 completion.

9 (c) A list of completed continuing education courses from
10 the license holder on one presigned form does not establish
11 compliance.

12 SECTION 17. Sections 801.401(a) and (d), Occupations Code,
13 are amended to read as follows:

14 (a) If an applicant or license holder is subject to denial
15 of a license or to disciplinary action under Section 801.402, the
16 board may:

17 (1) refuse to examine an applicant or to issue or renew
18 a license;

19 (2) revoke or suspend a license;

20 (3) place on probation a license holder or person
21 whose license has been suspended;

22 (4) reprimand a license holder; or

23 (5) impose an administrative [~~a civil~~] penalty.

24 (d) In addition to other disciplinary actions authorized by
25 this subchapter, the board may require a license holder who
26 violates this chapter to participate in a continuing education
27 program. The board shall specify the continuing education programs

1 that the license holder may attend and the number of hours that the
2 license holder must complete. A continuing education program
3 specified by the board must be relevant to the violation committed
4 by the license holder. ~~[The hours required by the board under this~~
5 ~~subsection are not in addition to the hours required to renew a~~
6 ~~license under this chapter.]~~

7 SECTION 18. Section 801.406(a), Occupations Code, is
8 amended to read as follows:

9 (a) On conviction of a license holder of a felony under
10 Section 485.033, Health and Safety Code, or Chapter 481 or 483 of
11 that code, the board shall, after conducting an administrative
12 hearing in which the fact of conviction is determined, impose a
13 penalty as provided by Section 801.401. The board shall set the
14 amount of the penalty to match the seriousness of the conviction
15 ~~[suspend the person's license]~~.

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

18 (a) A person is entitled to a hearing before the State
19 Office of Administrative Hearings if the board:

- 20 (1) refuses to examine the person;
21 (2) denies the person's application for a license;
22 (3) revokes or suspends the person's license;
23 (4) places the person on probation;
24 (5) reprimands the person; or
25 (6) assesses an administrative ~~[a civil]~~ penalty
26 against the person.

27 SECTION 20. Section 801.408, Occupations Code, is amended

1 by adding Subsections (c), (d), (e), and (f) to read as follows:

2 (c) A committee of two or more veterinarian board members
3 and one or more public board members must be present at an informal
4 proceeding for a complaint that requires medical expertise. The
5 committee shall recommend enforcement action at the informal
6 proceeding.

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

11 (e) At an informal proceeding under this section, and on
12 agreement with the license holder, the board may order the license
13 holder to refund an amount not to exceed the amount a client paid to
14 the license holder instead of or in addition to imposing an
15 administrative penalty under this chapter. The board may not
16 require payment of other damages or estimate harm under this
17 subsection.

18 (f) Before an informal disposition is effective, the board
19 must review and approve at a public meeting an informal disposition
20 of the complaint recommended by board members or board staff.

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

23 (a) The amount of an administrative penalty may not exceed~~+~~
24 ~~[(1) \$2,500 for each violation not related to a~~
25 ~~controlled substance, and~~
26 ~~[(2)] \$5,000 for each violation~~ per day ~~[related to a~~
27 ~~controlled substance]~~.

1 (c) A committee described by Section 801.408(c) or (d)
2 ~~[board subcommittee with at least one public member of the board]~~
3 shall recommend the amount of the administrative penalty based on a
4 standardized penalty schedule. The board by rule shall develop the
5 standardized penalty schedule based on the criteria listed in
6 Subsection (b).

7 SECTION 22. Section 801.453, Occupations Code, is amended
8 to read as follows:

9 Sec. 801.453. COMMITTEE ~~[SUBCOMMITTEE]~~ RECOMMENDATIONS.

10 (a) On a determination by a committee ~~[the board subcommittee]~~
11 described by Section 801.408(c) or (d) ~~[801.452(c)]~~ that a
12 violation of this chapter or a rule adopted or order issued under
13 this chapter occurred, the committee ~~[subcommittee]~~ may issue a
14 report to the board stating:

15 (1) the facts on which the determination is based; and

16 (2) the committee's ~~[subcommittee's]~~ recommendation
17 on the imposition of an administrative penalty, including a
18 recommendation on the amount of the penalty.

19 (b) Not later than the 14th day after the date the report is
20 issued, the executive director shall give written notice of the
21 committee's ~~[subcommittee's]~~ report to the person on whom the
22 penalty may be imposed. The notice may be given by certified mail.

23 (c) The notice given under this section must:

24 (1) include a notice of each alleged violation;

25 (2) state the amount of any ~~[the]~~ recommended penalty;
26 and

27 (3) inform the person of the person's right to a

1 hearing on the occurrence of the violation, the amount of the
2 penalty, or both.

3 SECTION 23. Section 801.454, Occupations Code, is amended
4 to read as follows:

5 Sec. 801.454. PENALTY TO BE PAID OR HEARING REQUESTED ON
6 COMMITTEE'S RECOMMENDATIONS. (a) Not later than the 20th day after
7 the date a person receives the notice, the person may in writing:

8 (1) accept the committee's [~~subcommittee's~~]
9 determination and recommended administrative penalty; or

10 (2) request a hearing on the occurrence of the
11 violation, the amount of the penalty, or both.

12 (b) If the person accepts the committee's [~~subcommittee's~~]
13 determination and recommended penalty, the board by order may:

14 (1) [~~shall~~] approve the determination and impose the
15 recommended penalty;

16 (2) modify the determination or recommended penalty;
17 or

18 (3) reject the determination or recommended penalty.

19 SECTION 24. The heading to Section 801.455, Occupations
20 Code, is amended to read as follows:

21 Sec. 801.455. HEARING ON COMMITTEE'S [~~SUBCOMMITTEE'S~~]
22 RECOMMENDATIONS.

23 SECTION 25. Subchapter K, Chapter 801, Occupations Code, is
24 amended by adding Sections 801.508 and 801.509 to read as follows:

25 Sec. 801.508. CEASE AND DESIST ORDER. (a) If it appears to
26 the board that a person is engaging in an act or practice that
27 constitutes the practice of veterinary medicine without a license

1 under this chapter, the board, after notice and opportunity for a
2 hearing, may issue a cease and desist order prohibiting the person
3 from engaging in the activity.

4 (b) A violation of an order under this section constitutes
5 grounds for imposing an administrative penalty under Subchapter J.

6 Sec. 801.509. ENFORCEMENT POLICY. The board shall adopt a
7 formal policy to focus enforcement efforts toward investigating
8 complaints.

9 SECTION 26. The following are repealed:

10 (1) Section 801.257(b), Occupations Code; and

11 (2) Section 801.406(b), Occupations Code.

12 SECTION 27. (a) Not later than January 1, 2006, the State
13 Board of Veterinary Medical Examiners shall adopt the formal policy
14 required by Section 801.509, Occupations Code, as added by this
15 Act.

16 (b) Not later than January 1, 2006, the State Board of
17 Veterinary Medical Examiners shall adopt rules as required by
18 Section 801.2555, as added by this Act.

19 SECTION 28. (a) The changes in law made by this Act in the
20 prohibitions or qualifications applying to members of the State
21 Board of Veterinary Medical Examiners do not affect the entitlement
22 of a member serving on the board immediately before September 1,
23 2005, to continue to serve and function as a member of the board for
24 the remainder of the member's term. Those changes in law apply only
25 to a member appointed on or after September 1, 2005.

26 (b) Sections 801.2051, 801.2055, and 801.2056, Occupations
27 Code, as added by this Act, and Sections 801.408, 801.452, 801.453,

1 801.454, and 801.455, Occupations Code, as amended by this Act,
2 apply only to a complaint filed with the State Board of Veterinary
3 Medical Examiners on or after the effective date of this Act. A
4 complaint filed before the effective date of this Act is governed by
5 the law in effect on the date the complaint was filed, and the
6 former law is continued in effect for that purpose.

7 (c) Sections 801.303 and 801.305, Occupations Code, as
8 amended by this Act, apply to fees for renewal of a license granted
9 by the State Board of Veterinary Medical Examiners that become due
10 on or after the effective date of this Act. Fees for renewal of a
11 license that became due before the effective date of this Act are
12 governed by the law in effect on the date the membership fees became
13 due, and the former law is continued in effect for that purpose.

14 SECTION 29. This Act takes effect September 1, 2005.