

1-1 By: Jackson S.B. No. 407
1-2 (In the Senate - Filed February 11, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Government
1-4 Organization; March 17, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 March 17, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 407 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the State Board of
1-11 Veterinary Medical Examiners; providing an administrative penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 801.003, Occupations Code, is amended to
1-14 read as follows:

1-15 Sec. 801.003. APPLICATION OF SUNSET ACT. The State Board of
1-16 Veterinary Medical Examiners is subject to Chapter 325, Government
1-17 Code (Texas Sunset Act). Unless continued in existence as provided
1-18 by that chapter, the board is abolished and this chapter expires
1-19 September 1, 2017 [2005].

1-20 SECTION 2. Section 801.052, Occupations Code, is amended by
1-21 amending Subsection (b) and adding Subsection (c) to read as
1-22 follows:

1-23 (b) A person is not eligible for appointment as a public
1-24 member of the board if the person ~~[or the person's spouse]~~:

1-25 (1) is licensed by an occupational regulatory agency
1-26 in the field of health care;

1-27 (2) is employed by or participates in the management
1-28 of a business entity or other organization that:

1-29 (A) provides health care services;

1-30 (B) sells, manufactures, or distributes health
1-31 care supplies or equipment; or

1-32 (C) is regulated by or receives funds from the
1-33 board;

1-34 (3) owns or controls, directly or indirectly, more
1-35 than a 10 percent interest in a business entity or other
1-36 organization that:

1-37 (A) provides health care services;

1-38 (B) sells, manufactures, or distributes health
1-39 care supplies or equipment; or

1-40 (C) is regulated by or receives funds from the
1-41 board; or

1-42 (4) uses or receives a substantial amount of tangible
1-43 goods, services, or funds from the board, other than compensation
1-44 or reimbursement authorized by law for board membership,
1-45 attendance, or expenses.

1-46 (c) A person is not eligible for appointment as a public
1-47 member of the board if the person's spouse:

1-48 (1) is licensed by an occupational regulatory agency
1-49 in the field of veterinary medicine;

1-50 (2) is employed by or participates in the management
1-51 of a business entity or other organization that:

1-52 (A) provides veterinary health care services;

1-53 (B) sells, manufactures, or distributes
1-54 veterinary health care supplies or equipment; or

1-55 (C) is regulated by or receives funds from the
1-56 board;

1-57 (3) owns or controls, directly or indirectly, more
1-58 than a 10 percent interest in a business entity or other
1-59 organization that:

1-60 (A) provides veterinary health care services;

1-61 (B) sells, manufactures, or distributes
1-62 veterinary health care supplies or equipment; or

1-63 (C) is regulated by or receives funds from the

board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

SECTION 3. 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 provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

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

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

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

SECTION 4. Section 801.055, Occupations Code, is amended to read as follows:

Sec. 801.055. OFFICERS. (a) The governor shall 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) At the first meeting of the board each year, the board shall elect from its members ~~[a president and]~~ any other officer the board considers necessary or convenient.

SECTION 5. Subsections (a) and (c), Section 801.056, Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

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

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

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

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

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

(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 6. 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 rules that relate to disciplinary and investigatory authority;~~

[~~(5) the current budget for the board;~~

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

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

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

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

(c) A person appointed to the board is entitled 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. [~~In developing the training program, the board shall consult with the governor, the attorney general, and the Texas Ethics Commission.~~

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

SECTION 7. Section 801.104, Occupations Code, is amended to read as follows:

Sec. 801.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 8. Subchapter D, Chapter 801, Occupations Code, is amended by adding Sections 801.161 and 801.162 to read as follows:

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

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

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

(2) appropriate alternative dispute resolution

procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

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

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

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

SECTION 9. Section 801.204, Occupations Code, is amended to read as follows:

Sec. 801.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints ~~[keep an information file about each complaint]~~ filed with the board. The board shall 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 ~~[file must be kept current and contain a record for each complaint of:]~~

~~[(1) each person contacted in relation to the complaint;~~

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

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

~~[(4) the schedule established for the complaint under Section 801.206(a) and a notation of any change in the schedule; and~~
~~[(5) other relevant information].~~

(b) The board shall make information available describing its procedures for complaint investigation and resolution ~~[If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation].~~

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

SECTION 10. Subchapter E, Chapter 801, Occupations Code, is amended by adding Sections 801.2051, 801.2055, and 801.2056 to read as follows:

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

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

(b) 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) The board may delegate to a committee of board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not require medical expertise. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 801.408 if:

(1) the committee determines that the complaint should not be dismissed or settled;

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

(3) the veterinarian who is the subject of the

complaint requests that the complaint be referred for informal proceedings.

SECTION 11. Subsection (b), Section 801.254, 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 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 inability to take the examination; or

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

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

SECTION 13. Subsection (a), Section 801.257, 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 14. Section 801.303, Occupations Code, is amended to read as follows:

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

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

(c) A person whose ~~[if a]~~ license has been expired for more than 90 days but less than one year~~[, the person]~~ may renew the license by paying to the board ~~[all unpaid renewal fees and]~~ a renewal fee that is equal to the sum of two times the renewal ~~[amount of the examination]~~ fee set by the board under Section 801.154(a) and the additional fee required by Section 801.154(b) ~~[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 15. 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 additional ~~[amount of the examination]~~ fee required by Section 801.154(b) ~~[for the license]~~.

SECTION 16. 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 17. Subchapter G, Chapter 801, Occupations Code, is amended by adding Section 801.308 to read as follows:

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

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

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

SECTION 18. Subsections (a) and (d), Section 801.401, Occupations Code, are amended to read as follows:

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

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

(2) revoke or suspend a license;

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

(4) reprimand a license holder; or

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

(d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete. A continuing education program specified by the board must be relevant to the violation committed by the license holder. ~~[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 19. Subsection (a), Section 801.406, Occupations Code, is amended to read as follows:

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

SECTION 20. Subsection (a), Section 801.407, Occupations Code, is amended to read as follows:

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

(1) refuses to examine the person;

(2) denies the person's application for a license;

(3) revokes or suspends the person's license;

(4) places the person on probation;

(5) reprimands the person; or

(6) assesses an administrative ~~[a civil]~~ penalty against the person.

SECTION 21. Section 801.408, Occupations Code, is amended

by amending Subsection (b) and adding Subsections (c) through (f) to read as follows:

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of the board's general counsel or a representative of the attorney general during an informal proceeding to advise the board or the board's employees.

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

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

(e) At an informal proceeding under this section, and on agreement with the license holder, the board may 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. The board may not require payment of other damages or estimate harm under this subsection.

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

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

(a) The amount of an administrative penalty may not exceed ~~[\$2,500 for each violation not related to a controlled substance; and~~

~~[(2)]~~ \$5,000 for each violation per day ~~[related to a controlled substance].~~

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

SECTION 23. Section 801.453, Occupations Code, is amended to read as follows:

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

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

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

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

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

(c) The notice given under this section must:

(1) include a notice of each alleged violation;

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

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 24. Section 801.454, Occupations Code, is amended to read as follows:

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

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

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

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

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

(2) modify the determination or recommended penalty;

or

(3) reject the determination or recommended penalty.

SECTION 25. The heading to Section 801.455, Occupations Code, is amended to read as follows:

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

SECTION 26. Subchapter K, Chapter 801, Occupations Code, is amended by adding Sections 801.508 and 801.509 to read as follows:

Sec. 801.508. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

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

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

SECTION 27. The following are repealed:

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

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

SECTION 28. (a) Not later than January 1, 2006, the State Board of Veterinary Medical Examiners shall adopt the formal policy required by Section 801.509, Occupations Code, as added by this Act.

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

SECTION 29. (a) The changes in law made by this Act in the prohibitions or qualifications applying to members of the State Board of Veterinary Medical Examiners do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2005.

(b) Sections 801.2051, 801.2055, and 801.2056, Occupations Code, as added by this Act, and Sections 801.408, 801.452, 801.453, 801.454, and 801.455, Occupations Code, as amended by this Act, apply only to a complaint filed with the State Board of Veterinary Medical Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

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

SECTION 30. This Act takes effect September 1, 2005.

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