

By: Aycock

H.B. No. 1562

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of investigation records of the State Board of Veterinary Medical Examiners and clarification of the regulatory authority of the board.

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

SECTION 1. Section 801.004, Occupations Code, is amended to read as follows:

Sec. 801.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;

(2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:

(A) castrating a male animal raised for human consumption;

(B) docking or earmarking an animal raised for human consumption;

(C) dehorning cattle;

(D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;

(E) treating an animal for disease prevention with a nonprescription medicine or vaccine;

(F) branding or identifying an animal in any manner;

(G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

(H) shoeing a horse;

(3) the performance of a cosmetic or production technique to reduce injury in poultry intended for human consumption;

(4) the performance of a duty by a veterinarian's employee if:

(A) the duty involves food production animals;

(B) the duty does not involve diagnosis, prescription, or surgery;

(C) the employee is under the direction and general supervision of the veterinarian; and

(D) the veterinarian is responsible for the employee's performance;

(5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine, ~~[or is a foreign graduate of a board-approved equivalent competency program for foreign veterinary graduates and who is participating in a board-approved extern or preceptor program]~~ if the act is performed under the direct supervision of a veterinarian employing the person;

(6) the performance of an act by a person who is a full-time student in a veterinary program of an accredited college

1 of veterinary medicine, if the act is performed under the direct
2 supervision of a veterinarian licensed in this state;

3 (7) an animal shelter employee who performs euthanasia
4 in the course and scope of the person's employment if the person has
5 successfully completed training in accordance with Chapter 829,
6 Health and Safety Code;

7 (8) ~~[(7)]~~ a person who is engaged in a recognized
8 state-federal cooperative disease eradication or control program
9 or an external parasite control program while the person is
10 performing official duties required by the program;

11 (9) ~~[(8)]~~ a person who, without expectation of
12 compensation, provides emergency care in an emergency or disaster;
13 or

14 (10) ~~[(9)]~~ a consultation given to a veterinarian in
15 this state by a person who:

16 (A) resides in another state; and

17 (B) is lawfully qualified to practice veterinary
18 medicine under the laws of that state.

19 SECTION 2. Section 801.207, Occupations Code, is amended to
20 read as follows:

21 Sec. 801.207. CONFIDENTIALITY OF INVESTIGATION FILES
22 [PUBLIC RECORD, EXCEPTION]. (a) The board's investigation files
23 are confidential, privileged, and not subject to discovery,
24 subpoena, or any other means of legal compulsion for release other
25 than to the board or an employee or agent of the board. [Except as
26 provided by Subsection (b), a board record is a public record and is
27 available for public inspection during normal business hours.]

1 (b) The board shall share information in investigation
2 files with another state or federal regulatory agency or with a
3 local, state, or federal law enforcement agency regardless of
4 whether the investigation has been completed. The board is not
5 required to disclose under this subsection information that is an
6 attorney-client communication, an attorney work product, or other
7 information protected by a privilege recognized by the Texas Rules
8 of Civil Procedure or the Texas Rules of Evidence.

9 (c) On completion of the investigation and before a
10 contested case hearing, the board shall provide to the license
11 holder, subject to any other privilege or restriction established
12 by rule, statute, or legal precedent, access to all information in
13 the board's possession that the board intends to offer into
14 evidence in presenting its case in chief at the contested case
15 hearing under Chapter 2001, Government Code, on the complaint. The
16 board is not required to provide:

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

22 (d) Notwithstanding Subsection (a), the board may:

23 (1) disclose a complaint to the affected license
24 holder;

25 (2) provide to a complainant the license holder's
26 response to the complaint, if providing the response is considered
27 by the board to be necessary to investigate the complaint; and

1 (3) disclose information regarding a complaint and an
2 investigation to:

3 (A) a person involved with the board in a
4 disciplinary action against a license holder;

5 (B) a veterinary licensing or disciplinary board
6 in another jurisdiction; or

7 (C) a peer assistance program approved by the
8 board.

9 (e) This section does not prohibit the board or another
10 party in a disciplinary action from offering into evidence in a
11 contested case under Chapter 2001, Government Code, a record,
12 document, or other information obtained or created during an
13 investigation.

14 (f) The board's filing of formal charges against a license
15 holder, the nature of the charges, and the board's final
16 disciplinary actions, including warnings and reprimands, are not
17 confidential and are subject to disclosure in accordance with
18 Chapter 552, Government Code. The furnishing of information under
19 this section does not constitute a waiver of any other privilege or
20 confidentiality provision established under this section or any
21 other law. [An investigation record of the board, including a
22 record relating to a complaint that is found to be groundless, is
23 confidential.]

24 SECTION 3. Sections 801.401(a) and (c), Occupations Code,
25 are amended to read as follows:

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

1 board may:

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

4 (2) revoke or suspend a license;

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

7 (4) reprimand a license holder; and ~~or~~

8 (5) impose an administrative penalty.

9 (c) The board may require a license holder whose license
10 suspension is probated to:

11 (1) report regularly to the board on matters that are
12 the basis of the probation;

13 (2) limit practice to the areas prescribed by the
14 board; and ~~or~~

15 (3) continue or review continuing professional
16 education until the license holder attains a degree of skill
17 satisfactory to the board in those areas that are the basis of the
18 probation.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2009.