

By: Kleinschmidt

H.B. No. 1802

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the registration and regulation of equine dental
3 technicians, advertising by veterinarians and equine dental
4 technicians, and the confidentiality of investigation files
5 maintained by the State Board of Veterinary Medical Examiners;
6 providing penalties.

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

8 SECTION 1. Section 801.002, Occupations Code, is amended by
9 adding Subdivisions (1-a), (2-a), and (4-a) to read as follows:

10 (1-a) "Certified equine dental technician" means a
11 person who holds an equine dental technician certificate issued
12 under this chapter.

13 (2-a) "Dentistry" means any surgical procedure
14 performed on the head or oral cavity. The term includes:

15 (A) any procedure that invades the tissues of the
16 oral cavity, including a procedure to:

- 17 (i) remove sharp enamel projections;
18 (ii) treat malocclusions of the teeth;
19 (iii) reshape teeth; and
20 (iv) extract one or more teeth;

21 (B) the treatment and extraction of damaged or
22 diseased teeth;

23 (C) the treatment of diseased teeth through
24 restoration and endodontic procedures;

1 (D) periodontal treatments, including:

2 (i) the removal of calculus, soft deposits,
3 plaque, and stains above the gum line; and

4 (ii) the smoothing, filing, and polishing
5 of tooth surfaces above the gum line; and

6 (E) dental radiography.

7 (4-a) "Immediate supervision" means supervision of a
8 person by a responsible veterinarian who is within audible and
9 visual range of both the animal and the person under supervision.

10 SECTION 2. Section 801.151, Occupations Code, is amended by
11 amending Subsection (c) and adding Subsections (e) and (f) to read
12 as follows:

13 (c) The board shall adopt rules to:

14 (1) protect the public; ~~and~~

15 (2) ensure that alternate therapies, including
16 ultrasound diagnosis and therapy, magnetic field therapy, holistic
17 medicine, homeopathy, chiropractic treatment, acupuncture, and
18 laser therapy, are performed only by a veterinarian or under the
19 supervision of a veterinarian; and

20 (3) ensure that equine dentistry is performed only by
21 a veterinarian or by a certified equine dental technician under the
22 appropriate level of supervision of a veterinarian.

23 (e) The board shall adopt rules to implement a jurisprudence
24 examination for certified equine dental technicians, including
25 rules relating to the development and administration of the
26 examination, examination fees, guidelines for reexamination,
27 examination grading, and provision of notice of examination

1 results.

2 (f) The board by rule shall establish standards to ensure
3 the health, safety, and welfare of animals treated by certified
4 equine dental technicians.

5 SECTION 3. Section 801.153(b), Occupations Code, is amended
6 to read as follows:

7 (b) In its rules to prohibit a false, misleading, or
8 deceptive practice, the board may not include a rule that:

9 (1) restricts the person's use of any advertising
10 medium;

11 (2) restricts the person's personal appearance or the
12 use of the person's voice in an advertisement; or

13 (3) relates to the size or duration of an
14 advertisement by the person[~~, or~~

15 [~~(4) restricts the person's advertisement under a~~
16 ~~trade name].~~

17 SECTION 4. Section 801.156, Occupations Code, is amended to
18 read as follows:

19 Sec. 801.156. REGISTRY. (a) The board shall maintain a
20 record of each license or certificate holder's [~~veterinarian's~~]:

21 (1) name;

22 (2) residence address; and

23 (3) business address.

24 (b) A license or certificate holder [~~veterinarian~~] shall
25 notify the board of a change of business address or employer not
26 later than the 60th day after the date the change takes effect.

27 SECTION 5. Section 801.203(b), Occupations Code, is amended

1 to read as follows:

2 (b) The board shall list with its regular telephone number
3 any toll-free telephone number established under other state law
4 for presenting a complaint about a license or certificate holder
5 ~~[veterinarian]~~.

6 SECTION 6. Section 801.2056(b), Occupations Code, is
7 amended to read as follows:

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

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

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

14 (3) the license or certificate holder ~~[veterinarian]~~
15 who is the subject of the complaint requests that the complaint be
16 referred for informal proceedings.

17 SECTION 7. Section 801.207, Occupations Code, is amended to
18 read as follows:

19 Sec. 801.207. CONFIDENTIALITY OF INVESTIGATION FILES
20 ~~[PUBLIC RECORD, EXCEPTION]~~. (a) ~~[Except as provided by Subsection~~
21 ~~(b), a board record is a public record and is available for public~~
22 ~~inspection during normal business hours.~~

23 ~~[(b)]~~ An investigation record of the board, including a
24 record relating to a complaint that is found to be groundless, is
25 confidential and not subject to discovery, subpoena, or any other
26 means of legal compulsion for release other than to the board or an
27 employee or agent of the board.

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.

5 SECTION 8. The heading to Subchapter F, Chapter 801,
6 Occupations Code, is amended to read as follows:

7 SUBCHAPTER F. LICENSE AND CERTIFICATION REQUIREMENTS

8 SECTION 9. Subchapter F, Chapter 801, Occupations Code, is
9 amended by adding Sections 801.260 through 801.264 to read as
10 follows:

11 Sec. 801.260. LICENSE OR CERTIFICATE REQUIRED FOR EQUINE
12 DENTISTRY. A person may not perform equine dentistry or offer or
13 attempt to act as an equine dental technician unless the person is:

14 (1) a veterinarian; or

15 (2) a certified equine dental technician performing
16 under the supervision of a veterinarian.

17 Sec. 801.261. CERTIFIED EQUINE DENTAL TECHNICIAN:
18 APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall
19 adopt rules to establish qualifications for certified equine dental
20 technicians. The qualifications at a minimum must provide that a
21 person is qualified if the person:

22 (1) passes a jurisprudence examination conducted by
23 the board in accordance with Section 801.264; and

24 (2) is not disqualified under this chapter or board
25 rule.

26 (b) An applicant for an equine dental technician
27 certificate must submit to the board:

1 (1) an application on the form prescribed by the
2 board;

3 (2) information to enable the board to conduct a
4 criminal background check as required by the board;

5 (3) recommendations from two veterinarians; and

6 (4) any other information required by the board.

7 Sec. 801.262. CERTIFIED EQUINE DENTAL TECHNICIAN
8 SUPERVISION. (a) A certified equine dental technician may not
9 perform equine dentistry unless the technician is under the
10 supervision of a veterinarian as required by this section.

11 (b) A certified equine dental technician must be under the
12 direct supervision of a veterinarian to:

13 (1) extract wolf teeth, premolars, caps, or deciduous
14 teeth; or

15 (2) smooth or file teeth by floating.

16 (c) A certified equine dental technician must be under the
17 immediate supervision of a veterinarian to extract incisors,
18 canines, or molars.

19 (d) Subsection (b) may not be construed to prohibit an
20 employee of a veterinarian who is not a certified equine dental
21 technician from smoothing or filing teeth by floating if the
22 employee is under the direct supervision of a veterinarian.

23 (e) Notwithstanding any other law, a certified equine
24 dental technician may not under any circumstances administer any
25 sedative, tranquilizer, analgesic, prescription medication, or
26 other drug.

27 Sec. 801.263. CERTIFIED EQUINE DENTAL TECHNICIAN

1 RESPONSIBILITY. A certified equine dental technician shall be held
2 to the same standard of care as a veterinarian when the technician
3 smoothes teeth by floating or performs any other dental procedure
4 described in Section 801.262.

5 Sec. 801.264. JURISPRUDENCE EXAMINATION. The board shall
6 develop and administer a jurisprudence examination for certified
7 equine dental technicians to determine an applicant's knowledge of
8 this chapter, board rules, and any other applicable laws of this
9 state affecting the applicant's equine dentistry practice.

10 SECTION 10. The heading to Subchapter G, Chapter 801,
11 Occupations Code, is amended to read as follows:

12 SUBCHAPTER G. LICENSE AND CERTIFICATE EXPIRATION AND RENEWAL

13 SECTION 11. Sections 801.301, 801.302, and 801.303,
14 Occupations Code, are amended to read as follows:

15 Sec. 801.301. ANNUAL RENEWAL REQUIRED. (a) The board shall
16 provide for the annual renewal of a license or certificate.

17 (b) The board by rule may adopt a system under which
18 licenses or certificates expire on various dates during the year.

19 (c) For a year in which the license or certificate
20 expiration date is changed, license or certificate fees payable on
21 March 1 shall be prorated on a monthly basis so that each license or
22 certificate holder pays only that portion of the fee that is
23 allocable to the number of months during which the license or
24 certificate is valid. On renewal of the license or certificate on
25 the new expiration date, the total license or certificate renewal
26 fee is payable.

27 Sec. 801.302. NOTICE OF LICENSE OR CERTIFICATE EXPIRATION.

1 Not later than the 30th day before the expiration date of a person's
2 license or certificate, the board shall send written notice of the
3 impending license or certificate expiration to the person at the
4 person's last known address according to the board's records.

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

12 (b) A person whose license or certificate has been expired
13 for 90 days or less may renew the license or certificate by paying
14 to the board a renewal fee that is equal to the sum of 1-1/2 times
15 the renewal fee set by the board under Section 801.154(a) and the
16 additional fee required by Section 801.154(b), if applicable.

17 (c) A person whose license or certificate has been expired
18 for more than 90 days but less than one year may renew the license or
19 certificate by paying to the board a renewal fee that is equal to
20 the sum of two times the renewal fee set by the board under Section
21 801.154(a) and the additional fee required by Section 801.154(b),
22 if applicable.

23 (d) A person whose license or certificate has been expired
24 for one year or more may not renew the license or certificate. The
25 person may obtain a new license or certificate by complying with the
26 requirements and procedures, including the examination
27 requirements, for obtaining an original license or certificate.

1 SECTION 12. Section 801.306, Occupations Code, is amended
2 to read as follows:

3 Sec. 801.306. INACTIVE STATUS. The board by rule may
4 provide for the placement of a license or certificate holder
5 [~~veterinarian~~] on inactive status. The rules adopted under this
6 section must include a limit on the time a license or certificate
7 holder [~~veterinarian~~] may remain on inactive status.

8 SECTION 13. Section 801.307, Occupations Code, is amended
9 to read as follows:

10 Sec. 801.307. CONTINUING EDUCATION. (a) The board by rule
11 shall establish a minimum number of hours of continuing education
12 required to renew a license or certificate.

13 (b) The board may:

14 (1) establish general categories of continuing
15 education that meet the needs of veterinarians or certified equine
16 dental technicians; and

17 (2) require a veterinarian or certified equine dental
18 technician to successfully complete continuing education courses.

19 (c) The board may require a license or certificate holder
20 who does not complete the required number of hours of continuing
21 education in a year to make up the missed hours in later years.
22 Hours required to be made up in a later year are in addition to the
23 hours normally required to be completed in that year.

24 SECTION 14. The heading to Subchapter I, Chapter 801,
25 Occupations Code, is amended to read as follows:

26 SUBCHAPTER I. LICENSE OR CERTIFICATE DENIAL AND DISCIPLINARY

27 PROCEDURES

1 SECTION 15. Sections 801.401(a), (c), and (d), Occupations
2 Code, are amended to read as follows:

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

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

8 (2) revoke or suspend a license or certificate;

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

11 (4) reprimand a license or certificate holder; or

12 (5) impose an administrative penalty.

13 (c) The board may require a license or certificate holder
14 whose license or certificate suspension is probated to:

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

17 (2) limit practice to the areas prescribed by the
18 board; or

19 (3) continue or review continuing professional
20 education until the license or certificate holder attains a degree
21 of skill satisfactory to the board in those areas that are the basis
22 of the probation.

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

1 attend and the number of hours that the license or certificate
2 holder must complete. A continuing education program specified by
3 the board must be relevant to the violation committed by the license
4 or certificate holder.

5 SECTION 16. Section 801.402, Occupations Code, is amended
6 to read as follows:

7 Sec. 801.402. GENERAL GROUNDS FOR LICENSE OR CERTIFICATE
8 DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a
9 license or certificate or to disciplinary action under Section
10 801.401 if the person:

11 (1) presents to the board dishonest or fraudulent
12 evidence of the person's qualifications;

13 (2) commits fraud or deception in the examination
14 process or to obtain a license or certificate;

15 (3) is chronically or habitually intoxicated,
16 chemically dependent, or addicted to drugs;

17 (4) engages in dishonest or illegal practices in, or
18 connected with, the practice of veterinary medicine or the practice
19 of equine dentistry;

20 (5) is convicted of a felony under the laws of this
21 state, another state, or the United States;

22 (6) engages in practices or conduct that violates the
23 board's rules of professional conduct;

24 (7) permits another to use the person's license to
25 practice veterinary medicine or certificate to practice equine
26 dentistry in this state;

27 (8) fraudulently issues a health certificate,

1 vaccination certificate, test chart, or other form used in the
2 practice of veterinary medicine or the practice of equine dentistry
3 that relates to the presence or absence of animal disease;

4 (9) issues a false certificate relating to the sale
5 for human consumption of inedible animal products;

6 (10) commits fraud in connection with the application
7 or reporting of a test of animal disease;

8 (11) pays or receives a kickback, rebate, bonus, or
9 other remuneration for treating an animal or for referring a client
10 to another provider of veterinary or equine dental services or
11 goods;

12 (12) performs or prescribes unnecessary or
13 unauthorized treatment;

14 (13) orders a prescription drug or controlled
15 substance for the treatment of an animal without first establishing
16 a veterinarian-client-patient relationship;

17 (14) refuses to admit a board representative to
18 inspect the person's client and patient records and business
19 premises during regular business hours;

20 (15) fails to keep the person's equipment and business
21 premises in a sanitary condition;

22 (16) commits gross malpractice or a pattern of acts
23 that indicate consistent malpractice, negligence, or incompetence
24 in the practice of veterinary medicine or the practice of equine
25 dentistry; or

26 (17) is subject to disciplinary action in another
27 jurisdiction, including the suspension, probation, or revocation

1 of a license to practice veterinary medicine or a certificate to
2 practice equine dentistry issued by another jurisdiction.

3 SECTION 17. Sections 801.405 and 801.406, Occupations Code,
4 are amended to read as follows:

5 Sec. 801.405. MENTAL INCOMPETENCE. (a) The board may
6 suspend or revoke a license or certificate if a court finds that the
7 license or certificate holder is mentally incompetent.

8 (b) If a court determines that a person whose license or
9 certificate is suspended or revoked under this section is mentally
10 competent, the board may reinstate the person's license or
11 certificate.

12 Sec. 801.406. REQUIRED DISCIPLINARY ACTION FOR CERTAIN
13 FELONY CONVICTIONS. (a) On conviction of a license or certificate
14 holder of a felony under Section 485.033, Health and Safety Code, or
15 Chapter 481 or 483 of that code, the board shall, after conducting
16 an administrative hearing in which the fact of conviction is
17 determined, impose a penalty as provided by Section 801.401. The
18 board shall set the amount of the penalty to match the seriousness
19 of the conviction.

20 (c) The board may reinstate or reissue a license or
21 certificate suspended or revoked under this section only on an
22 express determination based on substantial evidence contained in an
23 investigative report indicating that reinstatement or reissuance
24 of the license or certificate is in the best interests of:

- 25 (1) the public; and
26 (2) the person whose license or certificate has been
27 suspended or revoked.

1 SECTION 18. Sections 801.407(a) and (d), Occupations Code,
2 are amended to read as follows:

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

5 (1) refuses to examine the person;

6 (2) denies the person's application for a license or
7 certificate;

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

10 (4) places the person on probation;

11 (5) reprimands the person; or

12 (6) assesses an administrative penalty against the
13 person.

14 (d) The board may conduct deliberations relating to a
15 disciplinary action during executive session. At the conclusion of
16 those deliberations, the board shall vote and announce its decision
17 to the license or certificate holder in open session.

18 SECTION 19. Sections 801.408(b) and (e), Occupations Code,
19 are amended to read as follows:

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

21 (1) provide the complainant and the license or
22 certificate holder an opportunity to be heard; and

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

26 (e) At an informal proceeding under this section, and on
27 agreement with the license or certificate holder, the board may

1 order the license or certificate holder to refund an amount not to
2 exceed the amount a client paid to the license or certificate holder
3 instead of or in addition to imposing an administrative penalty
4 under this chapter. The board may not require payment of other
5 damages or estimate harm under this subsection.

6 SECTION 20. Section 801.409, Occupations Code, is amended
7 to read as follows:

8 Sec. 801.409. TEMPORARY LICENSE OR CERTIFICATE SUSPENSION.

9 (a) An executive committee of the board consisting of the president
10 and two other board members appointed by the president may
11 temporarily suspend the license or certificate of a license or
12 certificate holder if the executive committee determines from the
13 evidence or information presented to the committee that continued
14 practice by the license or certificate holder constitutes a
15 continuing or imminent threat to the public welfare. A temporary
16 suspension may also be ordered on a majority vote of the board.

17 (b) The board by rule shall adopt procedures for the
18 temporary suspension of a license or certificate under this
19 section.

20 (c) A license or certificate temporarily suspended under
21 this section may be suspended without notice or hearing if, at the
22 time the suspension is ordered, a hearing on whether disciplinary
23 proceedings under this chapter should be initiated against the
24 license or certificate holder is scheduled to be held not later than
25 the 14th day after the date of the suspension.

26 (d) A second hearing on the suspended license or certificate
27 shall be held not later than the 60th day after the date the

1 suspension is ordered. If the second hearing is not held in the
2 time required by this subsection, the suspended license or
3 certificate is automatically reinstated.

4 SECTION 21. Section 801.501, Occupations Code, is amended
5 to read as follows:

6 Sec. 801.501. MONITORING LICENSE OR CERTIFICATE HOLDER.
7 The board by rule shall develop a system for monitoring a license or
8 certificate holder's compliance with the requirements of this
9 chapter. The rules must include procedures to:

- 10 (1) monitor for compliance a license or certificate
11 holder who is ordered by the board to perform certain acts; and
12 (2) identify and monitor a license or certificate
13 holder who represents a risk to the public.

14 SECTION 22. Section 801.502(a), Occupations Code, is
15 amended to read as follows:

16 (a) The board, through the attorney general or a district or
17 county attorney, may bring an action for an injunction, or a
18 proceeding incident to an injunction, to:

- 19 (1) enforce this chapter; or
20 (2) enjoin a person, including a corporation,
21 organization, business trust, estate, trust, partnership,
22 association, or other legal entity, from practicing veterinary
23 medicine or equine dentistry in violation of this chapter.

24 SECTION 23. The heading to Section 801.503, Occupations
25 Code, is amended to read as follows:

26 Sec. 801.503. ASSESSMENT OF CIVIL PENALTY AGAINST PERSON
27 NOT LICENSED OR CERTIFIED.

1 SECTION 24. Section 801.503(a), Occupations Code, is
2 amended to read as follows:

3 (a) A person not licensed or certified under this chapter,
4 including a corporation, organization, business trust, estate,
5 trust, partnership, association, or other legal entity, who
6 violates this chapter or a rule adopted by the board under this
7 chapter is subject to a civil penalty of \$1,000 for each day of
8 violation.

9 SECTION 25. Section 801.505, Occupations Code, is amended
10 to read as follows:

11 Sec. 801.505. BOARD MEMBER OR EMPLOYEE; FINE. A board
12 member or employee shall pay a fine of not less than \$1,000 or more
13 than \$5,000 if the member or employee:

14 (1) issues a license or certificate other than as
15 provided by this chapter; or

16 (2) provides to an applicant for examination a list of
17 questions to be propounded at the examination.

18 SECTION 26. Section 801.508(a), Occupations Code, is
19 amended to read as follows:

20 (a) If it appears to the board that a person is engaging in
21 an act or practice that constitutes the practice of veterinary
22 medicine without a license or the practice of equine dentistry
23 without a license or certificate under this chapter, the board,
24 after notice and opportunity for a hearing, may issue a cease and
25 desist order prohibiting the person from engaging in the activity.

26 SECTION 27. Subchapter F, Chapter 411, Government Code, is
27 amended by adding Section 411.0995 to read as follows:

1 Sec. 411.0995. ACCESS TO CRIMINAL HISTORY RECORD
2 INFORMATION: STATE BOARD OF VETERINARY MEDICAL EXAMINERS. The
3 State Board of Veterinary Medical Examiners is entitled to obtain
4 from the department criminal history record information maintained
5 by the department that relates to a person who is:

6 (1) an applicant for a certificate to practice equine
7 dentistry under Chapter 801, Occupations Code; or

8 (2) the holder of a license or certificate under that
9 chapter.

10 SECTION 28. (a) Not later than June 1, 2012, the State
11 Board of Veterinary Medical Examiners shall adopt the rules,
12 procedures, and jurisprudence examination required to implement
13 the registration of equine dental technicians under Chapter 801,
14 Occupations Code, as amended by this Act.

15 (b) Notwithstanding Section 801.260, Occupations Code, as
16 added by this Act, a person employed as an equine dental technician
17 is not required to hold a certificate under Chapter 801,
18 Occupations Code, and is not subject to the imposition of a penalty
19 for not holding a certificate under that chapter before September
20 1, 2012.

21 SECTION 29. This Act takes effect September 1, 2011.