

By: Zaffirini

S.B. No. 895

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of equine dental care providers;
3 providing penalties.

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

5 SECTION 1. Section 801.002, Occupations Code, is amended by
6 adding Subdivisions (3-a), (3-b), (4-a), and (5-a) to read as
7 follows:

8 (3-a) "Equine dental care" means the practice of
9 equine dentistry that consists only of tooth floating.

10 (3-b) "Equine dental care provider" means a person who
11 is not a veterinarian and who holds a certificate issued under this
12 chapter to practice equine dental care.

13 (4-a) "Practice of equine dentistry" means the
14 diagnosis, treatment, or prevention of a wound, injury, disease, or
15 other condition that affects any portion of an animal's mouth, jaw,
16 teeth, gums, or related tissue. The term includes:

17 (A) preventive dental procedures, including
18 procedures to:

19 (i) remove calculus, soft deposits, plaque,
20 and stains;

21 (ii) reshape teeth above the gum line by
22 tooth floating; and

23 (iii) polish tooth surfaces above the gum
24 line;

1 (B) surgical dental procedures or any other
2 dental procedure that invades the hard or soft oral tissue,
3 including a procedure to:

4 (i) alter the structure of one or more
5 teeth;

6 (ii) repair a misalignment between the
7 upper and lower teeth;

8 (iii) repair or treat damaged or diseased
9 teeth, including through restoration and endodontic procedures;

10 (iv) extract one or more teeth; and

11 (v) treat gum disease;

12 (C) the prescription or administration of
13 anesthetics, sedatives, tranquilizers, analgesics, or
14 antimicrobials; and

15 (D) dental radiography.

16 (5-a) "Tooth floating" means the performance of an
17 equine dental procedure, without the administration of a sedative,
18 tranquilizer, or general anesthetic that is available only by
19 prescription, to:

20 (A) remove enamel points; or

21 (B) smooth, contour, or level incisors or dental
22 arcades.

23 SECTION 2. Section 801.151(c), Occupations Code, is amended
24 to read as follows:

25 (c) The board shall adopt rules to:

26 (1) protect the public; [~~and~~]

27 (2) ensure that alternate therapies, including

1 ultrasound diagnosis and therapy, magnetic field therapy, holistic
2 medicine, homeopathy, chiropractic treatment, acupuncture, and
3 laser therapy, are performed only by a veterinarian or under the
4 supervision of a veterinarian;

5 (3) ensure that the practice of equine dentistry,
6 other than tooth floating, is performed only by a veterinarian; and

7 (4) ensure that tooth floating is performed only by a
8 veterinarian or a certified equine dental care provider.

9 SECTION 3. The heading to Subchapter F, Chapter 801,
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER F. LICENSE AND CERTIFICATION REQUIREMENTS

12 SECTION 4. Subchapter F, Chapter 801, Occupations Code, is
13 amended by adding Sections 801.259, 801.260, and 801.261 to read as
14 follows:

15 Sec. 801.259. EQUINE DENTIST DESIGNATIONS. (a) A person
16 may not represent to the public that the person is an equine dentist
17 or use the title "Eq.D.," "M/Eq.D.," or "Certified Equine Dentist"
18 unless the person is licensed under this chapter to practice
19 veterinary medicine and has specialized training in equine
20 dentistry by a board-approved program.

21 (b) The board shall adopt rules as necessary to implement
22 this section.

23 Sec. 801.260. LICENSE OR CERTIFICATE REQUIRED FOR EQUINE
24 DENTAL CARE. A person may not engage in the practice of, or offer or
25 attempt to engage in the practice of, equine dental care unless the
26 person is:

27 (1) a veterinarian; or

1 (2) a certified equine dental care provider.

2 Sec. 801.261. CERTIFIED EQUINE DENTAL CARE PROVIDER:
3 APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall
4 issue an equine dental care provider certificate to a person
5 qualified for certification under this chapter. A person is
6 qualified if the person:

7 (1) satisfactorily completes at least 80 hours of
8 training in equine dentistry at the Texas Institute of Equine
9 Dentistry or a similar program approved by the board; or

10 (2) is certified as an equine dental technician by the
11 International Association of Equine Dentistry or a similar program
12 approved by the board.

13 (b) An applicant for an equine dental care provider
14 certificate must submit to the board:

15 (1) an application on the form prescribed by the
16 board; and

17 (2) any other information required by the board.

18 SECTION 5. The heading to Subchapter G, Chapter 801,
19 Occupations Code, is amended to read as follows:

20 SUBCHAPTER G. LICENSE AND CERTIFICATE EXPIRATION AND RENEWAL

21 SECTION 6. Sections 801.301, 801.302, and 801.303,
22 Occupations Code, are amended to read as follows:

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

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

27 (c) For a year in which the license or certificate

1 expiration date is changed, license or certificate fees payable on
2 March 1 shall be prorated on a monthly basis so that each license or
3 certificate holder pays only that portion of the fee that is
4 allocable to the number of months during which the license or
5 certificate is valid. On renewal of the license or certificate on
6 the new expiration date, the total license or certificate renewal
7 fee is payable.

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

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

13 Sec. 801.303. PROCEDURE FOR RENEWAL. (a) A person who is

14 otherwise eligible to renew a license or certificate may renew an
15 unexpired license or certificate by paying the required renewal fee
16 to the board before the expiration date of the license or
17 certificate. A person whose license or certificate has expired may
18 not engage in activities that require a license or certificate
19 until the license or certificate has been renewed.

20 (b) A person whose license or certificate has been expired

21 for 90 days or less may renew the license or certificate by paying
22 to the board a renewal fee that is equal to the sum of 1-1/2 times
23 the renewal fee set by the board under Section 801.154(a) and the
24 additional fee required by Section 801.154(b), if applicable.

25 (c) A person whose license or certificate has been expired

26 for more than 90 days but less than one year may renew the license or
27 certificate by paying to the board a renewal fee that is equal to

1 the sum of two times the renewal fee set by the board under Section
2 801.154(a) and the additional fee required by Section 801.154(b),
3 if applicable.

4 (d) A person whose license or certificate has been expired
5 for one year or more may not renew the license or certificate. The
6 person may obtain a new license or certificate by complying with the
7 requirements and procedures, including the examination
8 requirements, for obtaining an original license or certificate.

9 SECTION 7. Section 801.307, Occupations Code, is amended by
10 adding Subsection (a-1) and amending Subsections (b) and (c) to
11 read as follows:

12 (a-1) The board shall require four hours of continuing
13 education annually to renew the certificate of an equine dental
14 care provider.

15 (b) The board may:

16 (1) establish general categories of continuing
17 education that meet the needs of veterinarians or certified equine
18 dental care providers; and

19 (2) require a veterinarian or certified equine dental
20 care provider to successfully complete continuing education
21 courses.

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

27 SECTION 8. The heading to Subchapter I, Chapter 801,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER I. LICENSE OR CERTIFICATE DENIAL AND DISCIPLINARY

3 PROCEDURES

4 SECTION 9. Sections 801.401(a), (c), and (d), Occupations
5 Code, are amended to read as follows:

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

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

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

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

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

15 (5) impose an administrative penalty.

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

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

20 (2) limit practice to the areas prescribed by the
21 board; or

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

26 (d) In addition to other disciplinary actions authorized by
27 this subchapter, the board may require a license or certificate

1 holder who violates this chapter to participate in a continuing
2 education program. The board shall specify the continuing
3 education programs that the license or certificate holder may
4 attend and the number of hours that the license or certificate
5 holder must complete. A continuing education program specified by
6 the board must be relevant to the violation committed by the license
7 or certificate holder.

8 SECTION 10. Section 801.402, Occupations Code, is amended
9 to read as follows:

10 Sec. 801.402. GENERAL GROUNDS FOR LICENSE OR CERTIFICATE
11 DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a
12 license or certificate or to disciplinary action under Section
13 801.401 if the person:

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

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

18 (3) is chronically or habitually intoxicated,
19 chemically dependent, or addicted to drugs;

20 (4) engages in dishonest or illegal practices in, or
21 connected with, the practice of veterinary medicine or the practice
22 of equine dental care;

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

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

27 (7) permits another to use the person's license to

1 practice veterinary medicine or certificate to practice equine
2 dental care in this state;

3 (8) fraudulently issues a health certificate,
4 vaccination certificate, test chart, or other form used in the
5 practice of veterinary medicine that relates to the presence or
6 absence of animal disease;

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

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

11 (11) pays or receives a kickback, rebate, bonus, or
12 other remuneration for treating an animal or for referring a client
13 to another provider of veterinary services or goods;

14 (12) performs or prescribes unnecessary or
15 unauthorized treatment;

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

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

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

24 (16) commits gross malpractice or a pattern of acts
25 that indicate consistent malpractice, negligence, or incompetence
26 in the practice of veterinary medicine or the practice of equine
27 dental care; or

1 (17) is subject to disciplinary action in another
2 jurisdiction, including the suspension, probation, or revocation
3 of a license to practice veterinary medicine or a certificate to
4 practice equine dental care issued by another jurisdiction.

5 SECTION 11. Sections 801.405 and 801.406, Occupations Code,
6 are amended to read as follows:

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

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

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

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

27 (1) the public; and

1 (2) the person whose license or certificate has been
2 suspended or revoked.

3 SECTION 12. Sections 801.407(a) and (d), Occupations Code,
4 are amended to read as follows:

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

7 (1) refuses to examine the person;

8 (2) denies the person's application for a license or
9 certificate;

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

12 (4) places the person on probation;

13 (5) reprimands the person; or

14 (6) assesses an administrative penalty against the
15 person.

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

20 SECTION 13. Sections 801.408(b) and (e), Occupations Code,
21 are amended to read as follows:

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

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

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

1 (e) At an informal proceeding under this section, and on
2 agreement with the license or certificate holder, the board may
3 order the license or certificate holder to refund an amount not to
4 exceed the amount a client paid to the license or certificate holder
5 instead of or in addition to imposing an administrative penalty
6 under this chapter. The board may not require payment of other
7 damages or estimate harm under this subsection.

8 SECTION 14. Section 801.409, Occupations Code, is amended
9 to read as follows:

10 Sec. 801.409. TEMPORARY LICENSE OR CERTIFICATE SUSPENSION.

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

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

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

1 (d) A second hearing on the suspended license or certificate
2 shall be held not later than the 60th day after the date the
3 suspension is ordered. If the second hearing is not held in the
4 time required by this subsection, the suspended license or
5 certificate is automatically reinstated.

6 SECTION 15. Section 801.501, Occupations Code, is amended
7 to read as follows:

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

12 (1) monitor for compliance a license or certificate
13 holder who is ordered by the board to perform certain acts; and

14 (2) identify and monitor a license or certificate
15 holder who represents a risk to the public.

16 SECTION 16. Section 801.502(a), Occupations Code, is
17 amended to read as follows:

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

21 (1) enforce this chapter; or

22 (2) enjoin a person, including a corporation,
23 organization, business trust, estate, trust, partnership,
24 association, or other legal entity, from practicing veterinary
25 medicine or equine dental care in violation of this chapter.

26 SECTION 17. The heading to Section 801.503, Occupations
27 Code, is amended to read as follows:

1 Sec. 801.503. ASSESSMENT OF CIVIL PENALTY AGAINST PERSON
2 NOT LICENSED OR CERTIFIED.

3 SECTION 18. Section 801.503(a), Occupations Code, is
4 amended to read as follows:

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

11 SECTION 19. Section 801.505, Occupations Code, is amended
12 to read as follows:

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

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

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

20 SECTION 20. Section 801.508(a), Occupations Code, is
21 amended to read as follows:

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

1 SECTION 21. (a) Not later than June 1, 2012, the State
2 Board of Veterinary Medical Examiners shall adopt the rules
3 required to implement the certification of equine dental care
4 providers under Chapter 801, Occupations Code, as amended by this
5 Act.

6 (b) Notwithstanding Section 801.260, Occupations Code, as
7 added by this Act, a person employed as an equine dental care
8 provider is not required to hold a certificate under Chapter 801,
9 Occupations Code, and is not subject to the imposition of a penalty
10 for not holding a certificate under that chapter before September
11 1, 2012.

12 SECTION 22. (a) Before September 1, 2013, the State Board
13 of Veterinary Medical Examiners shall issue a certificate required
14 by Section 801.260, Occupations Code, as added by this Act, to a
15 person who has not completed a board-approved training program for
16 certified equine dental care providers if the person:

17 (1) has performed acts that constitute the practice of
18 equine dental care before September 1, 2012; and

19 (2) submits, with the application and other
20 information required under Section 801.261(b), Occupations Code,
21 as added by this Act, three notarized affidavits described by
22 Subsection (b) of this section.

23 (b) Each affidavit must state that the affiant knows the
24 applicant and that the applicant is known in the community to
25 provide equine dental care commonly known as "tooth floating." The
26 affiants must be residents of this state. At least one of the
27 affiants must be a veterinarian licensed in this state. Two

1 affiants must be horse owners.

2 (c) A certificate issued under this section may be renewed
3 in the same manner as a certificate issued to a person who has
4 completed a board-approved training program for certified equine
5 dental care providers.

6 (d) The State Board of Veterinary Medical Examiners shall
7 revoke a certificate issued to a person under this section if the
8 person does not satisfactorily complete four hours of continuing
9 education for certified equine dental care providers before the
10 second anniversary of the date the certificate was issued.

11 (e) This section expires January 1, 2016.

12 SECTION 23. This Act takes effect September 1, 2011.