

By: Rodriguez of Travis

H.B. No. 2390

A BILL TO BE ENTITLED

AN ACT

relating to the medical treatment and care of animals by certain persons in animal shelters and releasing agencies.

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

SECTION 1. Sec. 823.001, Health and Safety Code, is amended by adding a new subsection as follows:

(5-a) "Releasing agency" has the meaning assigned by Section 828.001, Health and Safety Code.

SECTION 2. Sec. 823.003, Health and Safety Code, is amended by adding a new subsection as follows:

(e-1) Before an animal adoption becomes final, an animal shelter or releasing agency must provide the proposed new owner with a written history that shows if the animal has been screened or tested for diseases and conditions that are common to that species. If the animal has been tested, the written history should include the dates and results of each test.

(e-2) The State Board of Veterinary Medical Examiners shall promulgate forms that an animal shelter or releasing agency may use to comply with subsection (e-1). An animal shelter or releasing agency may use an alternative form, so long as it complies with subsection (e-1).

(e-3) Nothing in this section requires an animal shelter or releasing agency to provide certain screens or tests.

SECTION 3. Chapter 823, Health and Safety Code, is amended

1 by adding Section 823.004 to read as follows:

2 Sec. 823.004. TREATMENT OF ANIMALS ON BEHALF OF ANIMAL
3 SHELTERS AND RELEASING AGENCIES. (a) Notwithstanding any other
4 law, once an animal shelter or releasing agency takes possession of
5 an animal:

6 (1) A veterinarian acting on behalf of the animal
7 shelter or releasing agency may:

8 a. Perform a surgical or nonsurgical
9 sterilization of:

10 i. A dog or cat that shows no evidence
11 of ownership; or

12 ii. A dog or cat that is surrendered
13 by its owner or whose owner has not claimed the animal within the
14 hold period as designed by local law;

15 b. Prescribe or administer a vaccine or
16 medication for or to the animal; and

17 c. Provide any other treatment that the
18 veterinarian reasonably believes will promote the health and
19 wellbeing of the animal or to alleviate the pain, suffering, or
20 discomfort of the animal;

21 (2) An unlicensed employee, volunteer, or agent acting
22 on behalf of the animal shelter or releasing agency may provide
23 nonsurgical veterinary care or treatment to the animal:

24 a. Under the authorization and general
25 supervision of a veterinarian; or

26 b. Pursuant to a protocol approved by a
27 veterinarian; and

1 (3) Any employee, volunteer, or agent acting on behalf
2 of the animal shelter or releasing agency may provide emergency
3 veterinary care or treatment to the animal.

4 (b) Notwithstanding any other law, a veterinarian who
5 provides treatment on behalf of an animal shelter or releasing
6 agency may deliver or cause to be delivered a medication to an
7 unlicensed employee, volunteer, or agent of an animal shelter or
8 releasing agency. The unlicensed employee, volunteer, or agent may
9 then administer the medication in keeping with the veterinarian's
10 instructions. A veterinarian who delivers or causes to be
11 delivered a controlled substance under this section must comply
12 with Section 801.359, Occupations Code.

13 SECTION 4. Subchapter A, Chapter 801, Occupations Code, is
14 amended by adding Section 801.0011 to read as follows:

15 Sec. 801.0011. POLICY; CONSTRUCTION. (a) The Legislature
16 hereby finds that the public's attitude towards animal shelters and
17 releasing agencies has shifted since this chapter was first
18 enacted. As a result of this shift, many animal shelters and
19 releasing agencies now seek to save the life of as many stray,
20 homeless, abandoned, or unwanted animals as possible. The
21 Legislature intends to promote this practice.

22 (b) This chapter should be construed in favor of licensed
23 veterinarians and unlicensed persons who care for stray, homeless,
24 abandoned, or unwanted animals that would be killed but for their
25 care so long as they are acting with a good faith intent to save
26 animals' lives and with reasonable consideration of animals' pain.

27 SECTION 5. Sec. 801.002, Occupations Code, is amended by

1 adding subsections (0), (5-a), and (5-b) to read as follows:

2 (0) "Animal shelter" has the meaning assigned by
3 Section 823.001, Health and Safety Code;

4 (5-a) "Releasing agency" has the meaning assigned by
5 Section 828.001, Health and Safety Code;

6 (5-b) "Safety net shelter" means an animal shelter
7 that:

8 (A) Accepts animals without regard to their breed
9 or size;

10 (B) Attempts to rehome or provide hospice care to
11 all of the animals it receives; and

12 (C) During its latest full calendar year,
13 satisfied the no-kill benchmarks in Section 801.0021.

14 SECTION 6. Subchapter A, Chapter 801, Occupations Code, is
15 amended by adding Section 801.0021 to read as follows:

16 Sec. 801.0021. NO-KILL BENCHMARKS. (a) To satisfy the
17 no-kill benchmarks, an animal shelter must first declare its intent
18 to satisfy the no-kill benchmarks in writing to the department.

19 (b) During the first two years after an animal shelter
20 declares its intent under subsection (a), an animal shelter
21 satisfies the no-kill benchmarks if it euthanizes 30% or less of the
22 animals it takes ownership of in a year.

23 (b) During the third and fourth years after an animal
24 shelter declares its intent under subsection (a), an animal shelter
25 satisfies the no-kill benchmarks if it euthanizes 20% or less of the
26 animals it takes ownership of in a year.

27 (c) Beginning on the four-year anniversary of the date the

1 animal shelter declared its intent under subsection(a), an animal
2 shelter satisfies the no-kill benchmarks if it euthanizes 15% or
3 less of the animals it takes ownership of in a year.

4 SECTION 7. Sec. 801.004, Occupations Code, is amended to
5 read as follows:

6 Sec. 801.004. APPLICATION OF CHAPTER. (a)Except as
7 provided by Section 801.4021, this chapter does not apply to:

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

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

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

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

18 (C) dehorning cattle;

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

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

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

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

1 (H) shoeing a horse;

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

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

7 (A) the duty involves food production animals;

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

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

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

14 (5) the performance of an act by a person who is a
15 full-time student of an accredited college of veterinary medicine
16 if the act is performed under the direct supervision of a
17 veterinarian;

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

22 (7) a person who is engaged in a recognized
23 state-federal cooperative disease eradication or control program
24 or an external parasite control program while the person is
25 performing official duties required by the program;

26 (8) a person who, without expectation of compensation,
27 provides emergency care in an emergency or disaster; or

1 (9) a consultation given to a veterinarian in this
2 state by a person who:

3 (A) resides in another state; and

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

6 SECTION 8. Section 801.351, Occupations Code, is amended by
7 adding a new subsection as follows:

8 (d) This section does not apply to a person who provides
9 treatment on behalf of an animal shelter or releasing agency.

10 SECTION 9. Section 801.359, Occupations Code, is amended as
11 follows:

12 Sec. 801.359. [~~CONTROLLED SUBSTANCES RECORDS~~]
13 RECORDKEEPING REQUIREMENTS. (a) The board shall require each
14 veterinarian to maintain a recordkeeping system for controlled
15 substances as required by Chapter 481, Health and Safety Code.

16 (b) The records required to be maintained under subsection
17 (a) are subject to review by a law enforcement agency or board
18 representative.

19 (c) The records required to be maintained under subsection
20 (a) may be maintained in a daily log, or in billing records,
21 provided that the treatment information that is entered is adequate
22 to substantiate the identification of the animals treated and the
23 medical care provided. Animal shelter or releasing agency
24 employees, volunteers, or agents who are not veterinarians but who
25 act under the general supervision or protocol of a veterinarian may
26 contribute to the records.

27 SECTION 10. Sec. 801.402, Occupations Code, is amended to

1 read as follows:

2 Sec. 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR
3 DISCIPLINARY ACTION. Except as provided by Section 801.4021, a
4 person is subject to denial of a license or to disciplinary action
5 under Section 801.401 if the person:

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

8 (2) commits fraud or deception in the examination
9 process or to obtain a license;

10 (3) is chronically or habitually intoxicated,
11 chemically dependent, or addicted to drugs;

12 (4) engages in dishonest or illegal practices in, or
13 connected with, the practice of veterinary medicine or the practice
14 of equine dentistry;

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

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

19 (7) permits another to use the person's license to
20 practice veterinary medicine or to practice equine dentistry in
21 this state;

22 (8) fraudulently issues a health certificate,
23 vaccination certificate, test chart, or other form used in the
24 practice of veterinary medicine or the practice of equine dentistry
25 that relates to the presence or absence of animal disease;

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

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

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

7 (12) performs or prescribes unnecessary or
8 unauthorized treatment;

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

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

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

17 (16) commits gross malpractice or a pattern of acts
18 that indicate consistent malpractice, negligence, or incompetence
19 in the practice of veterinary medicine or the practice of equine
20 dentistry;

21 (17) is subject to disciplinary action in another
22 jurisdiction, including the suspension, probation, or revocation
23 of a license to practice veterinary medicine or to practice equine
24 dentistry issued by another jurisdiction;

25 (18) is convicted for an offense under Section [42.09](#),
26 [42.091](#), or [42.092](#), Penal Code;

27 (19) represents the person as a veterinarian without a

1 license issued under this chapter;

2 (20) practices veterinary medicine or assists in the
3 practice of veterinary medicine without a license issued under this
4 chapter; or

5 (21) violates Section 801.353 or a rule adopted by the
6 board related to confidentiality.

7 SECTION 11. Subchapter I, Chapter 801, Occupations Code, is
8 amended by adding Section 801.4021 to read as follows:

9 Sec. 801.4021. DISCIPLINE FOR TREATMENT OR CARE PERFORMED
10 ON BEHALF OF AN ANIMAL SHELTER OR RELEASING AGENCY. (a)
11 Notwithstanding any other law, the board may not deny a license or
12 take disciplinary action against an unlicensed person for providing
13 treatment or care in accordance with Section 823.004, Health and
14 Safety Code.

15 (b) The board may not deny a license or take disciplinary
16 action against a veterinarian for providing treatment or care to an
17 animal on behalf of an animal shelter or releasing agency unless the
18 veterinarian acted without regard for the animal's health or safety
19 or intended to cause the animal pain.

20 (c) It is an affirmative defense to an action under
21 subsection (b) that the veterinarian:

22 (i) provided the treatment or care in
23 question on behalf of a safety net shelter;

24 (ii) had a reasonable belief that the
25 treatment or care provided would enable the animal to survive an
26 illness or injury; and

27 (iii) gave reasonable consideration to the

1 animal's pain.

2 (d) In making a determination under subsection (b) or (c),
3 the board

4 (i) may not rely solely on:

5 (A) allegations made by a person who
6 lacks personal knowledge of the underlying events; or

7 (B) the fact that the treatment or
8 care provided is new, innovative, low-cost, or results in the
9 animal's death; and

10 (ii) shall consider:

11 (A) the policy statement in Section
12 801.0011;

13 (B) the veterinarian's intent; and

14 (C) the size, sophistication, and
15 fiscal constraints of the animal shelter or releasing agency.

16 (e) Notwithstanding any other law, a veterinarian or
17 unlicensed person working on behalf of an animal shelter or
18 releasing agency is not liable for a violation of this chapter or
19 any applicable rules unless the violation is committed by:

20 (i) the veterinarian or unlicensed person;
21 or

22 (ii) a person under the direct or immediate
23 supervision of the veterinarian or unlicensed person.

24 SECTION 12. Section 801.410, Occupations Code, is amended
25 to read as follows:

26 Sec. 801.410. VENUE AND STANDARD OF REVIEW FOR APPEALS. An
27 appeal of an action of the board must be filed in a district court in

1 Travis County and is reviewed by trial de novo.

2 SECTION 13. This Act takes effect September 1, 2017.