

CHAPTER 287

S.B. No. 623

AN ACT

relating to the continuation and functions of the State Board of Veterinary Medical Examiners and to the regulation of the practice of veterinary medicine and the administration of dangerous drugs to animals; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended by amending Subdivision (2) and adding Subdivisions (7) through (11) to read as follows:

- (2) ~~Any person shall be deemed in the~~ "Practice of Veterinary Medicine" means:
- (A) *the diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury, or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;*
 - (B) *the representation of an ability and willingness to perform an act included in Paragraph (A) of this subdivision;*
 - (C) *the use of a title, words, or letters to induce the belief that a person is legally authorized and qualified to perform an act included in Paragraph (A) of this subdivision; or*
 - (D) *the receipt of compensation for performing an act included in Paragraph (A) of this subdivision* ~~[who represents himself as engaged in the practice of veterinary medicine; or uses any words, letters or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the~~

~~practice of veterinary medicine, or any person who performs a surgical or dental operation or who diagnoses, treats, immunizes or prescribes any prescription drug, prescription medicine, veterinary appliance, or veterinary application for any physical ailment, injury, deformity, or condition of animals, for compensation].~~

(7) "Compensation" includes all fees, monetary rewards, discounts, and emoluments received directly or indirectly by a person.

(8) "Direct supervision" means the actual physical presence of a responsible veterinarian on the premises.

(9) "General supervision" means supervision by a responsible veterinarian being readily available to communicate with the person being supervised by the veterinarian.

(10) "Registered veterinary technician" means a person who works under the supervision of a licensee and who fulfills the requirements established by an organization approved by the Board.

(11) "Veterinary medicine" includes veterinary surgery, veterinary reproduction and obstetrics, veterinary dentistry, veterinary ophthalmology, veterinary dermatology, veterinary cardiology, and all other disciplines and specialties of veterinary medicine.

SECTION 2. Section 2A, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 2A. (a) A veterinarian-client-patient relationship exists if:

(1) a veterinarian assumes responsibility for medical judgments regarding the health of an animal and a client who is the owner or other caretaker of the animal agrees to follow the veterinarian's instructions; [or]

(2) there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and/or is personally acquainted with the keeping and care of the animal by virtue of the examination of the animal, and/or by medically appropriate and timely visits to the premises where the animal is kept; and

(3) the veterinarian is readily available to provide or has provided follow-up medical care in case of an adverse reaction or failure of the regimen of therapy provided by the veterinarian.

(b) The professional services of a veterinarian may not be controlled or exploited by any person or entity not licensed under this Act that intervenes between the client and the veterinarian. A veterinarian may not allow a person or entity not licensed under this Act to interfere or intervene with the veterinarian's practice of veterinary medicine and a veterinarian may not submit to interference or intervention by a person or entity not licensed under this Act. A veterinarian shall avoid all relationships that may result in interference or intervention in the veterinarian's practice by a person or entity not licensed under this Act. A veterinarian is responsible for the veterinarian's own actions and is directly responsible to the client and for the care and treatment of the patient. ~~[a veterinarian, through personal examination of an animal or a representative sample of a herd or flock, obtains sufficient information to make at least a general or preliminary diagnosis of the medical condition of the animal, herd, or flock, which is expanded through medically appropriate visits to the premises where the animal, herd, or flock is kept.]~~

SECTION 3. Section 3, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The provisions of this Act ~~do~~ [shall] not apply to:

(1) ~~treatment~~ [Treatment] or caring for animals in any manner [either personally by the owner [thereof,] or by any employee of the owner or a designated caretaker [thereof,] unless the ownership, [or] employment, or designation was [has been] established with the intent of circumventing this Act;[.]

(2) a person who performs acts prescribed by the Board as accepted livestock management practices, including:

(A) performing ~~[Performance of]~~ the operation of male castration on animals raised for human consumption, or docking or ear-marking of animals raised for human consumption;

(B) performing ~~[(3) Performance of]~~ the operation of dehorning cattle;

(C) ~~aiding[, or aid]~~ in the nonsurgical birth process in large animals, as defined by Board rule;

(D) ~~treating[, (4) Treatment of]~~ animals for *disease prevention* ~~[internal or external parasites, or vaccination for black-leg, shipping fever, or sore mouth]~~ with a nonprescription medicine or vaccine;

(E) branding or identification of animals in any manner;

(F) artificial insemination, including training, insemination, and compensation for services associated with this practice; and

(G) shoeing horses;

~~(3) the performance[(5) Selling by a retail distributor of a nonprescription medicine, remedy or insecticide which is adequately labeled.~~

~~[(6) Performance]~~ of cosmetic or production techniques to reduce injury in poultry intended for human consumption;

~~(4) the performance of duties involving food production animals, other than diagnosis, prescription, or surgery, by an employee of a licensed veterinarian under the direction and general supervision of the veterinarian who shall be responsible for the employee's performance; and~~

~~(5) the performance of acts[(7) Branding animals in any manner.~~

~~[(8) Acts performed]~~ by persons who are full-time students of an accredited college of veterinary medicine or who are foreign graduates of a Board-approved equivalent competency program for foreign veterinary graduates and who are participating in an extern or preceptor program approved by the Board if the acts are performed under direct supervision of a licensee employing the person.

(e) This Act does not apply to consultations by a veterinarian residing in another state who is lawfully qualified under the laws of that state with a licensed veterinarian in this state.

SECTION 4. Section 4, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 4. (a) Except as provided by Section 3 of this Act, a person may not practice, offer or attempt to practice veterinary medicine in this State without first having obtained a valid license to do so from the Texas Board of Veterinary Medical Examiners.

(b) *A person commits an offense if the person violates this section. The offense is a Class A misdemeanor.*

SECTION 5. Section 5, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended by amending Subsections (b), (c), (d), (g), (i), and (k) through (o) and adding Subsections (p) and (q) to read as follows:

(b) Appointments to the Board shall be made without regard to the race, color ~~[ered]~~, disability, sex, religion, age, or national origin of the appointees. Six members must be licensed veterinarians and three members must be members of the general public. *Not more than one veterinarian member of the Board may be a member of the faculty of a college of veterinary medicine.*

(c) To be eligible for appointment to the Board as a licensed veterinarian member, a person must:

(1) have resided in the state and practiced veterinary medicine for the six years next preceding his appointment;

(2) be of good repute; and

(3) not be *licensed under Section 10A of this Act* ~~[a member of the faculty of any veterinary medical college or of the veterinary medical department of any college or have a financial interest in a veterinary medical college].~~

(d) A person is not eligible for appointment as a public member if the person or the person's spouse:

- (1) is licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment *or that is regulated by the Board or receives funds from the Board*; ~~or~~
- (3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment *or that is regulated by the Board 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.*

(g) At its first meeting each year the Board shall elect from its number a president and any other officers it considers necessary or convenient. *Five* ~~Six~~ members of the Board constitute a quorum for the transaction of Board business.

(i) The State Board of Veterinary Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 ~~1993~~.

(k) *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 17, of the position classification salary schedule.*

(l) *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 Board member 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 17, of the position classification salary schedule.*

(m) *For the purposes of Subsections (k) and (l) of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined 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* ~~[A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the veterinary medical industry].~~

(n) ~~[(l) A member or employee of the Board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.~~

~~[(m)] A person may not serve as a member of the Board or act as general counsel to the Board if the person [who] 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 [may not serve as a member of the Board or act as the general counsel to the Board].~~

(o) ~~[(n)]~~ It is a ground for removal from the Board if a member:

- (1) does not have at the time of appointment the qualifications required by Subsection (c) or (d) of this section ~~[for appointment to the Board]~~;
- (2) does not maintain during ~~[his]~~ service on the Board the qualifications required by Subsection (c) or (d) of this section ~~[for appointment to the Board]~~;
- (3) violates a prohibition established by Subsection (k), (l), or (n) ~~[(m)]~~ of this section; ~~or~~
- (4) *cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or*

(5) *is absent from more than* ~~[fails to attend at least]~~ half of the regularly scheduled Board meetings that the member is eligible to attend during ~~[held in]~~ a calendar year unless the absence is excused by majority vote~~[-, excluding meetings held while the person was not a member]~~ of the Board.

(p) ~~[(q)]~~ The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a Board member exists ~~[of the Board existed]~~.

(q) *If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the Board of the ground. The president shall then notify the governor that a potential ground for removal exists.*

SECTION 6. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 5A to read as follows:

Sec. 5A. (a) Each Board member shall comply with the Board member training requirements established by any other state agency that is given authority to establish the requirements for the Board.

(b) The Board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 7. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.

SECTION 8. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 5C to read as follows:

Sec. 5C. (a) The Board shall establish a training program for the members of the Board.

(b) Before a member of the Board may assume the member's duties, the member must complete at least one course of the training program established under this section, and before the member may be confirmed by the senate, the member must pass an examination given in conjunction with the Attorney General on subjects described by Subsections (c)(7), (8), and (9) of this section.

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the Board to which the member is appointed;

(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;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

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

(9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the Board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) *In the event that another state agency or entity is given the authority to establish the training requirements, the Board shall allow that training in lieu of developing its own program.*

SECTION 9. Subsection (b), Section 6, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

(b) *The executive director or the executive director's designee shall develop an intra-agency [intraagency] career ladder program. The program shall require intra-agency[~~one part of which shall be the intraagency~~] posting of all nonentry level positions concurrently with [~~for at least 10 days before~~] any public posting.*

SECTION 10. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 6A to read as follows:

Sec. 6A. (a) *The executive director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:*

(1) *personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;*

(2) *a comprehensive analysis of the Board work force that meets federal and state guidelines;*

(3) *procedures by which a determination can be made of significant underutilization in the Board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to address those areas of underutilization appropriately.*

(b) *A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.*

(c) *The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.*

SECTION 11. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 6B to read as follows:

Sec. 6B. (a) *The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.*

(b) *The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.*

SECTION 12. Subsections (b) and (c), Section 7, The Veterinary Licensing Act (Article 8890, Revised Statutes), are amended to read as follows:

(b) *The Board shall adopt rules to protect the public and to ensure that the performance of alternate therapies, including ultrasound diagnosis and therapy, magnetic field therapy, holistic medicine, homeopathy, chiropractic treatment, acupuncture, and laser therapy are performed only by a licensee or under the supervision of a licensee.*

(c) *The Board may adopt rules for the use of registered veterinary technicians working under the supervision of a licensee.*

(d) *The Board shall require its licensees to maintain a record-keeping system for controlled substances, as prescribed by Chapter 481, Health and Safety Code. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.*

(e) [(e)] After notice and hearing, the Board may approve an exception to a rule adopted by the Board. The Board may consider an exception on the request of a person subject to regulation by the Board.

SECTION 13. Subsection (d), Section 9, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

(d) The investigation files and records of the Board, *including files and records relating to complaints found to be groundless*, are confidential.

SECTION 14. Section 10, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) The Board may grant a provisional license to an applicant who presents proof of a current license in another state, the District of Columbia, or a territory of the United States that maintains professional standards considered by the Board to be equivalent to those set forth in this Act ~~[waive any license requirement for an applicant with a valid license from any jurisdiction whose licensing requirements are approved by the Board. The Board may require the applicant to demonstrate proficiency and competency through a skills assessment examination prescribed by the Board].~~ *An applicant for a provisional license under this section must:*

(1) *be licensed in good standing as a veterinarian in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;*

(2) *have passed a national or other examination recognized by the Board relating to veterinary medicine; and*

(3) *be sponsored by a person licensed by the Board under this Act with whom the provisional licensee may practice under this section.*

(c) *An applicant for a provisional license may be excused from the requirement of Subsection (b)(3) of this section if the Board determines that compliance with that subsection constitutes a hardship to the applicant.*

(d) *A provisional license is valid until the date the Board approves or denies the provisional licensee's application for a license. The Board shall issue a license under this Act to the holder of a provisional license under this section if:*

(1) *the provisional licensee passes the examination under Section 12 of this Act;*

(2) *the Board verifies that the provisional licensee has the academic and experience requirements for a license under this Act; and*

(3) *the provisional licensee satisfies any other license requirements under this Act.*

(e) *The Board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued.*

SECTION 15. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 10B to read as follows:

Sec. 10B. (a) The Board by rule may provide for the issuance of a temporary license.

(b) The Board by rule may provide for a person who holds a license under this Act to be placed on inactive status. Rules adopted under this subsection shall include a time limit for a licensee to remain on inactive status.

SECTION 16. Subsections (c), (e), and (f), Section 12, The Veterinary Licensing Act (Article 8890, Revised Statutes), are amended to read as follows:

(c) Examinations may be given orally, in writing, or a practical demonstration of the applicant's skill, or any combination of these as the Board may determine. *The Board shall have the written portion of the examination, if any, validated by an independent testing professional.*

(e) *Not later than the 30th day after the date on which a licensing examination is administered under this Act, the [The] Board shall notify each examinee of the [examination] results of the examination [not later than the 14th day after the date on which the Board has obtained all of the examination results]. However, if an examination is graded or reviewed by*

a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the date on which the Board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer [more] than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(f) If requested in writing by a person who fails a ~~the state Board~~ licensing examination administered under this Act, the Board shall furnish the person with an analysis [a review] of the person's performance on the examination. ~~[The Board shall conduct the review at its main office in Austin, Texas.]~~

SECTION 17. Section 13, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 13. (a) A person may renew an unexpired license by paying to the Board before the expiration of the license the required renewal fee ~~[Licenses shall expire March 1st of each calendar year, and any licensee may renew the license on or before March 1st by making written application to the Board setting forth such facts as the Board may require, and by paying the required fee].~~

(b) ~~[A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.]~~ If a person's license has been expired for [not more than] 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half ~~[(1/2)]~~ of the examination fee for the license.

(c) If a person's license has been expired for longer [more] than 90 days but less than one year ~~[two years]~~, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(d) If a person's license has been expired for one year ~~[two years]~~ or longer [more], the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, 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 application. The person must pay to the Board a fee that is equal to the examination fee for the license.

(e) At least 30 days before the expiration of a person's license, the Board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the Board.

(f) ~~[(e)]~~ The requirements governing the payment of the annual renewal fee and the penalty for late renewal shall not apply to licensees who are on active duty with the Armed Forces of the United States of America and who do not engage in private or civilian practice or to licensees who are permanently and totally retired.

(g) The Board by rule shall establish a minimum number of hours of continuing education required to renew a license under this Act. The Board may establish broad general categories of continuing education that meet the needs of licensees and may require licensees to successfully complete continuing education courses.

~~[(d) The Board may recognize, prepare, or implement continuing education programs for veterinarians. Participation in the programs is voluntary.]~~

SECTION 18. Section 14, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) Except as provided by this section with respect to conviction of a felony under Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code, or Chapter 483, Health and Safety Code, the Board may revoke or suspend a license, impose a civil penalty, place a licensee or person whose license has been suspended on probation, or reprimand a licensee, or may refuse to examine an applicant or to issue a license or a renewal of a license, after notice and hearing as provided in Section 15 of this Act, or as provided by the rules of the Board, if it finds that an applicant or licensee:

(1) has presented to the Board dishonest or fraudulent evidence of qualification or has been guilty of fraud or deception in the process of examination, or for the purpose of securing a license;

(2) is chronically or habitually intoxicated, has a chemical dependency, or is addicted to drugs;

(3) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(4) has been convicted of a felony under the laws of this or any other state of the United States or of the United States;

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

(6) has permitted or allowed another to use his license, or certificate to practice veterinary medicine in this state;

(7) has fraudulently issued a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine that relates to the presence or absence of animal disease;

(8) has issued a false certificate relating to the sale for human consumption of inedible animal products;

(9) has committed fraud in the application or reporting of any test of animal disease;

(10) has paid or received any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(11) has performed or prescribed unnecessary or unauthorized treatment;

(12) has ordered prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(13) has refused to admit a representative of the Board to inspect the client and patient records and business premises of the person during regular business hours;

(14) has failed to keep the equipment and business premises in a sanitary condition;

(15) has committed gross malpractice or is guilty of a pattern of acts indicating consistent malpractice, negligence, or incompetence in the practice of veterinary medicine;
or

(16) is subject to a disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine issued by another jurisdiction.

(d) A person not licensed under this Act who violates this Act or a rule adopted by the Board under this Act is subject to a civil penalty of \$1,000 for each day of violation. At the request of the Board, the attorney general shall bring an action to recover a civil penalty authorized under this subsection.

(e) In addition to the other disciplinary actions authorized by this section, the Board may require that a licensee who violates this Act participate in continuing education programs. The Board shall specify the continuing education programs that may be attended and the number of hours that must be completed by an individual licensee to fulfill the requirements of this subsection. However, the continuing education programs specified by the Board must be relevant to the violation, and the number of hours required under this subsection are not in addition to the hours required to renew a license under this Act.

(f) If a license suspension is probated, the Board may require the licensee to:

(1) report regularly to the Board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the Board; or

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

SECTION 19. Section 14B, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 14B. (a) ~~The [If a person violates this Act in a manner that constitutes grounds for disciplinary action by the Board, the] Board may impose an administrative [assess a civil] penalty against a [that] person who violates a provision of this Act or a rule or order adopted [in addition to taking action] under [Section 14 or 14A of] this Act.~~

(b) ~~The [Board may assess the civil] penalty for each violation may be in an amount not to exceed \$2,500. The penalty for a violation related to a controlled substance may not exceed \$5,000 per violation.~~

(c) ~~The Board shall base the amount of the penalty on:~~

(1) ~~the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;~~

(2) ~~the economic harm to property or the environment caused by the violation;~~

(3) ~~the history of previous violations;~~

(4) ~~the amount necessary to deter future violations;~~

(5) ~~efforts to correct the violation; and~~

(6) ~~any other matter that justice may require. [In determining the amount of the penalty, the Board shall consider the seriousness of the violation.]~~

(d) ~~A subcommittee of the Board shall recommend the amount of the penalty based on a standardized penalty schedule. The subcommittee shall consist of at least one public member of the Board. The penalty schedule used by the subcommittee shall be developed by the Board, through rule, and shall be based on the criteria in Subsection (c) of this section.~~

(e) ~~If the subcommittee of the Board determines that a violation has occurred, it may issue to the Board a report that states the facts on which the determination is based and the subcommittee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.~~

(f) ~~Within 14 days after the date the report is issued to the Board, the executive director shall give written notice of the subcommittee's report to the person who committed the violation. The notice may be given by certified mail. The notice must include a notice of all the alleged violations and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.~~

(g) ~~Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the subcommittee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.~~

(h) ~~If the person accepts the determination and recommended penalty of the subcommittee, the Board by order shall approve the determination and impose the recommended penalty.~~

(i) ~~If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.~~

(j) ~~The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.~~

(k) ~~Within 30 days after the date the Board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:~~

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(l) Within the 30-day period, a person who acts under Subsection (k)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(m) An executive director who receives a copy of an affidavit under Subsection (l)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give the supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(o) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(s) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(t) *Nothing in this section shall be construed as preventing the Board from assessing an administrative penalty using an informal proceeding governed by the requirements of Section 18F of this Act.*

SECTION 20. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 14C to read as follows:

Sec. 14C. (a) *An executive committee of the Board, consisting of the president of the Board and two other Board members appointed by the president, may temporarily suspend the license of a licensee under this Act if the executive committee determines from the evidence or information presented to the committee that the continued practice by the licensee constitutes a continuing or imminent threat to the public welfare.*

(b) *A temporary suspension authorized under Subsection (a) of this section may also be ordered on a majority vote of the Board.*

(c) *A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this Act should be initiated against the licensee is scheduled to be held not later than the 14th day after the date of the suspension. A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated.*

(d) *The Board by rule shall adopt procedures for the temporary suspension of a license under this section.*

SECTION 21. Section 15, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 15. (a) *If the Board refuses to examine an applicant for a license, refuses a person's application for a license, suspends or revokes a person's license, or places on probation, reprimands, or assesses a civil penalty against a licensee, the applicant or licensee is entitled to a hearing before the State Office of Administrative Hearings [Board]. The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The schedule of sanctions adopted by the Board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.*

(b) *The Board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the Board shall vote and announce its decision to the licensee in open session.*

SECTION 22. Section 17, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 17. *The Board, through the Attorney General or any District or County Attorney, may institute any injunction proceeding or any such other proceeding incident to such injunction proceeding as to enforce the provisions of this Act and to enjoin any person from the practice of veterinary medicine, as defined in this Act, without such person having complied with the other provisions of this Act. The venue for such injunction proceedings shall be in the county of the residence of the person against whom such injunction proceedings are instituted. If the person does not reside in this state, venue is in Travis County.*

SECTION 23. Subsection (b), Section 18, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

(b) *A person commits an offense if the person violates this Act. An offense under this subsection is a Class A [B] misdemeanor.*

SECTION 24. Section 18A, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 18A. (a) *The Board shall prepare information of public [consumer] interest describing the [regulatory] functions of the Board and Board's procedures by which [consumer] complaints are filed with and resolved by the Board. The Board shall make the information available to the [general] public and appropriate state agencies.*

(b) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board.

(c) The Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a veterinarian if the toll-free number is established under other state law ~~[shall maintain an information file about each complaint filed with the Board relating to a licensee]~~.

~~[(e) If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as 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].~~

SECTION 25. Section 18B, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 18B. (a) The Board shall maintain an information file about each complaint filed with the Board ~~[relating to a licensee]~~. The Board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons 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; and
- (4) other relevant information.

(b) If a written complaint is filed with the Board that the Board has authority to resolve ~~[relating to a licensee]~~, the Board, at least as frequently as 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 by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint with the Board.

(d) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

SECTION 26. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 18D to read as follows:

Sec. 18D. (a) The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

(b) The Board shall dispose of all complaints in a timely manner. The Board shall establish a schedule for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director of the Board shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

SECTION 27. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 18E to read as follows:

Sec. 18E. (a) A veterinarian may not violate the confidential relationship between the veterinarian and a client and may not be required to disclose any information concerning the veterinarian's care for an animal except on written authorization or another form of waiver executed by the client or on receipt by the veterinarian of an appropriate court order or subpoena.

(b) A veterinarian who releases information on written authorization or another form of waiver executed by the client or on receipt by the veterinarian of an appropriate court order or subpoena is not liable to the client or any other person for an action resulting from the release of that information.

(c) The privilege under this section is waived to the extent that the client of a veterinarian or the owner of an animal treated by the veterinarian places the care and treatment of the animal by the veterinarian or the nature and extent of injuries of an animal treated by the veterinarian at issue in a civil or criminal proceeding.

(d) This section does not apply to inspections or investigations conducted by the Board or an agent of the Board.

SECTION 28. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 18F to read as follows:

Sec. 18F. (a) The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the Attorney General to advise the Board or Board's employees.

SECTION 29. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Section 18G to read as follows:

Sec. 18G. The Board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the Board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor licensees who represent a risk to the public.

SECTION 30. Section 19, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 19. (a) The Board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the costs of administering [for the administration of] this Act.

(b) The [board shall not maintain unnecessary fund balances, and] fee amounts [shall be] set by the Board may be adjusted so that the total fees collected are sufficient to cover the costs of administering this Act [in accordance with this requirement].

(c) The Board may not set a fee for an amount less than the amount of that fee on September 1, 1993.

SECTION 31. Subsection (c), Section 20, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

(c) The Board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act [On or before January 1 of each year, the Board shall make in writing to the Governor and the Presiding

~~Officer of each House of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the Board during the preceding year].~~

SECTION 32. Section 22, The Veterinary Licensing Act (Article 8890, Revised Statutes), is amended to read as follows:

Sec. 22. (a) *No sole proprietorship, partnership, or corporation shall engage in veterinary medicine unless the owner, partners, or shareholders, respectively, are all licensees.*

(b) *A partnership between a veterinarian and a member of another profession or a person who is not a member of a profession may not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine [Each of the following fees imposed by or under another section of this Act is increased by \$200:*

~~(1) any examination fee established by the Board; and~~

~~(2) any license renewal fee established by the Board.~~

~~[(b) Of each fee increase collected, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of each fee increase regardless of any other provision of law providing for a different disposition of funds].~~

SECTION 33. The Veterinary Licensing Act (Article 8890, Revised Statutes) is amended by adding Sections 23 and 24 to read as follows:

Sec. 23. (a) *The practice of a veterinarian who leases space from and practices veterinary medicine on the premises of a mercantile establishment must be owned by a licensed veterinarian. The practice and the leased premises must be under the exclusive control of a licensed veterinarian. The leased space must be definite and apart from the space occupied by other occupants of the premises, which means the space must be separated from space used by other occupants of the premises by the use of solid, opaque partitions or walls from floor to ceiling. Railings, curtains, and other similar arrangements are not sufficient to comply with the requirement of this subsection. The leased space shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. The aisle of a mercantile establishment does not comply with the requirement of this subsection. An entrance to the leased space is not a patient's entrance within the meaning of this subsection unless the entrance is actually used as an entrance by the veterinarian's patients. However, an additional patient's entrance, that may be nonopaque, is permitted from inside the mercantile establishment directly into the leased space. No part of the veterinarian's practice may be conducted as a department or concession of the mercantile establishment and there may not be legends or signs stating "Veterinary Department," or other words that imply the practice is not an independent veterinary practice, displayed in the premises or in any advertising for the premises. Any use of a veterinarian's name must clearly indicate that the veterinarian's practice is independent and not under the ownership or control of the mercantile establishment. Provided, however, this paragraph shall not prohibit the delivery of temporary limited-service veterinary activities, including preventative veterinary services, such as vaccinations and testing, at a mercantile establishment not owned or under the exclusive control of a veterinarian so long as such services are delivered by a veterinarian and are periodic only in nature. The Board may establish by rule the conditions under which such services may be provided.*

(b) *All patient and business records of the practice are the sole property of the veterinarian and free from the control of the mercantile establishment or any person not licensed under this Act. Business records essential to the initiation or continuation of a percentage of gross receipts lease of space may be inspected by the applicable lessor. Nothing in this subsection prohibits a veterinarian from entering into a management agreement and permitting employees or agents of the management company to have access to or copies of patient records as necessary for management functions.*

(c) *It shall not be construed as a violation of this Act for a veterinarian or a business entity authorized by the provisions of this Act to render veterinary services to lease space, to pay for franchise fees or other services on a percentage of receipts basis, or to sell, transfer, or assign accounts receivable.*

(d) *The provisions of Subsection (a) of this section regarding the requirement of a patient's entrance opening on a public street, hall, lobby, corridor, or other public thorough-*

fare do not apply to a practice or its legal successor operating in space in which the practice was open and operating prior to January 1, 1993.

Sec. 24. In the event of the death of a licensed veterinarian, the practice ownership and patient records become the property of the veterinarian's heirs to dispose of as necessary not later than the second anniversary of the veterinarian's death.

SECTION 34. Section 483.042, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to food production animals in an agricultural operation under a written medical directive or treatment guideline from a veterinarian licensed under The Veterinary Licensing Act (Article 8890, Revised Statutes) and its subsequent amendments.

SECTION 35. (a) On the effective date of this Act, a contested case pending before the State Board of Veterinary Medical Examiners is transferred to the State Office of Administrative Hearings. A proceeding transferred under this subsection is treated as if the actions taken in the proceedings had been taken by the State Office of Administrative Hearings.

(b) The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation of The Veterinary Licensing Act (Article 8890, Revised Statutes) or a rule adopted by the State Board of Veterinary Medical Examiners that occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for this purpose.

(c) The changes in law made by this Act in the qualifications of members of the State Board of Veterinary Medical Examiners do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office on the board for the term for which the member was appointed. The changes in the qualifications apply only to a member appointed on or after September 1, 1993.

SECTION 36. This Act takes effect September 1, 1993.

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 22, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 10, 1993, by a viva-voce vote; passed the House, with amendments, on May 6, 1993, by a non-record vote.

Approved May 26, 1993.

Effective Sept. 1, 1993.