

CHAPTER 1122

S.B. No. 1497

AN ACT

relating to the regulation of veterinarians and other persons who dispense certain drugs; providing criminal and civil penalties.

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

SECTION 1. Section 2, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. [(a)] As used in this Act, except where the context otherwise requires:

(1)[r] "Veterinarian" means any person who is licensed to practice Veterinary Medicine by the Texas State Board of Veterinary Medical Examiners.

(2) [(b)] Any person shall be deemed in the "Practice of Veterinary Medicine" 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, ~~[application or]~~ veterinary appliance, or *veterinary application* for any physical ailment, injury, deformity, or condition of ~~[domestic]~~ animals, for compensation.

(3) ~~[(e)]~~ “Board” means the State Board of Veterinary Medical Examiners.

(4) ~~[(d)]~~ “Licensee” means any person holding a license to practice veterinary medicine issued by the Board.

(5) ~~[(e)]~~ “Applicant” means any person requesting that the Board examine *the person’s* ~~[his]~~ qualifications for the practice of veterinary medicine or requesting the issuance or renewal of a license.

(6) ~~[(f)]~~ “License” means license to practice veterinary medicine.

SECTION 2. The Veterinary Licensing Act, as amended (Article 7465a, Vernon’s Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. *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) *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, as amended (Article 7465a, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) The provisions of this Act shall not apply to ~~[nor shall the following be construed as the practice of veterinary medicine]:~~

(1) Treatment or caring for animals in any manner personally by the owner thereof, or by any employee of the owner thereof, *unless the ownership or employment has been established with the intent of circumventing this Act.*

(2) Performance of the operation of male castration on ~~[domestic]~~ animals *raised for human consumption*, or docking or ear-marking of ~~[domestic]~~ animals *raised for human consumption.*

(3) Performance of the operation of dehorning cattle, or ~~[the spaying of large animals, or operation in]~~ aid in ~~[of]~~ the *nonsurgical* birth process in large animals, *as defined by Board rule.*

(4) ~~Treatment [Drenching and spraying]~~ of ~~[domestic]~~ animals for internal or external parasites, or vaccination for black-leg, shipping fever, or sore mouth *with a nonprescription medicine.*

(5) ~~Selling [Recommendation]~~ by a retail distributor of a *nonprescription* medicine, remedy or insecticide which is adequately labeled ~~[and has been duly registered with the Texas State Department of Health as required by the Texas Livestock Remedy Act when the retail distributor is advised by the customer of the type of ailment which he wishes to treat].~~

(6) *Performance of cosmetic or production techniques to reduce injury in poultry intended for human consumption* ~~[Treatment and caring for poultry and rabbits].~~

(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* ~~[on a college]~~ extern or preceptor program *approved by the Board* if the acts are performed under direct supervision of a licensee employing the person.

(b) *This Act does not apply to an unlicensed person engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while performing official duties required by the program.*

(c) *This Act does not apply to an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training offered by the Texas Department of Health under Section 3, Chapter 677, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-6b, Vernon's Texas Civil Statutes).*

(d) *This Act does not apply to an unlicensed person who renders emergency care without expectation of compensation in an emergency situation or disaster.*

SECTION 4. Section 4, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. *Except as provided by Section 3 of this Act, a [No] person may not [shall] 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.*

SECTION 5. Subsections (b) and (h), Section 5, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) *Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Six [Seven] members must be licensed veterinarians and three [two] members must be members of the general public.*

(h) *Each Board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may [not] receive [any] compensation for travel expenses, including expenses for meals and lodging, [other than transportation expenses]. A member is entitled to compensation for travel [transportation] expenses as prescribed by the General Appropriations Act.*

SECTION 6. Section 6, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) *The Board may employ an executive director [secretary] and such other persons as it deems advisable to carry out the purposes of this Act, and shall require the executive director [secretary], charged with the safekeeping of the moneys and proper disbursement of the veterinary fund provided for in this Act, to file with the Board a surety bond in an amount not less than \$5,000 [Five Thousand Dollars (\$5,000)], conditioned on the faithful performance of the duties of his office.*

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

(c) *The executive director [secretary] or the executive director's [his] designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director [secretary] must be based on the system established under this subsection.*

SECTION 7. Section 7, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and by adding Subsection (c) to read as follows:

(b) *The Board shall [may] require its licensees to maintain a record-keeping system for [certain] controlled substances, as prescribed by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) [Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient]. 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.*

(c) *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 8. Section 9, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. (a) The Board shall issue and renew licenses for the practice of veterinary medicine as provided for in this Act, and shall keep a record in which shall be registered the name and residence or place of business of all persons licensed to practice veterinary medicine in this State.

(b) *The Board shall maintain records that contain the name, residence address, and business address of each licensee. Each licensee shall notify the Board of a change of business address or a change of employer, if any, not later than the 60th day after the date on which the change takes effect.*

(c) *Except as provided by Subsection (d) of this section, all of the records of the Board are public records and are available for public inspection during normal business hours.*

(d) *The investigation files and records of the Board are confidential.*

SECTION 9. Section 10, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. (a) Any person not previously licensed in this State is qualified to be licensed, provided:

- (1) *the person [he] has attained the age of majority;*
- (2) *the person [he] is a graduate of a [reputable] school or college of veterinary medicine [as] approved by the Board;*
- (3) *the person [he] successfully completes the examination conducted by the Board; and*
- (4) *the Board does not refuse issuance of the license as provided in Section 14 (Refusing Examination, License or Renewal).*

(b) *The Board may 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 [another state having license requirements substantially equivalent to those of this State, and who successfully completes an examination on Texas veterinary jurisprudence and veterinary medical subjects which either are unique to Texas or are common to Texas and not common in most other states].*

SECTION 10. The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by adding Section 10A to read as follows:

Sec. 10A. (a) *The Board may issue a special license to:*

- (1) *a member of the faculty or staff of a Board-approved veterinary program at an institution of higher education;*
- (2) *a veterinarian employee of the Texas Animal Health Commission;*
- (3) *a veterinarian employee of the Texas Veterinary Medical Diagnostic Laboratory; or*
- (4) *a veterinarian licensed in another jurisdiction whose specialty practice is determined by the Board to be unrepresented or underrepresented in this state.*

(b) *To be eligible for a special license under this section, an applicant must:*

- (1) *be at least 21 years of age;*
- (2) *be a graduate of a Board-approved veterinary medicine program at an institution of higher education; and*
- (3) *pass the jurisprudence section of the state Board licensing examination.*

(c) *The Board shall adopt rules relating to the issuance of special licenses.*

(d) *A special license is valid only for the performance of duties within the scope of the licensee's employment or practice. Termination of the employment or practicing*

outside the scope of the license constitutes grounds for the suspension or revocation of the special license.

SECTION 11. Section 12, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. (a) The Board shall hold regular meetings at least twice each year *to conduct state Board licensing* ~~[for the holding of]~~ examinations as provided by Board rule ~~[in this Act]~~, at such times and places as it deems convenient for applicants for examinations. Notice of meetings for holding examinations shall be given by publication in such newspapers or periodicals as the Board may select, and the Board shall examine all qualified applicants. ~~[applications for examinations as follows:]~~

(b) ~~[(4)]~~ Examinations shall be on subjects ~~[and operations]~~ pertaining to veterinary medicine including veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, *public health* ~~[sanitary science]~~, veterinary practice, veterinary jurisprudence, veterinary physiology and bacteriology and such other subjects as are regularly taught in reputable schools of veterinary medicine.

(c) ~~[(2)]~~ 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.

(d) ~~[(3)]~~ Applicants shall demonstrate such standard of proficiency as the Board may determine is essential for a qualified veterinarian.

(e) *The Board shall notify each examinee of the examination results not later than the 14th day after the date on which the Board has obtained all of the examination results.*

~~[(b)]~~ Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of ~~[the]~~ examination results will be delayed for 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)]~~ ~~[(e)]~~ If requested in writing by a person who fails the *state Board* licensing examination ~~[administered under this Act]~~, the Board shall furnish the person with a review ~~[an analysis]~~ of the person's performance on the examination. *The Board shall conduct the review at its main office in Austin, Texas.*

SECTION 12. Section 13, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) to read as follows:

(a) Licenses shall expire March 1st of each calendar year, and any licensee may renew *the* ~~[his]~~ 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.

(c) 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* ~~[provided further, licensees who are full-time members of the faculty of a reputable veterinary college or school in the State of Texas where such faculty members perform their services for the sole benefit of such school or college and who do not engage in private or civilian practice shall pay one-half (1/2) of the annual renewal fee fixed by the Board pursuant to law].~~

SECTION 13. Section 14, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. (a) Except as provided by this section with respect to conviction of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the Board *may* ~~[shall]~~ revoke or suspend a license, *impose a civil penalty*, place a 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* [~~(a) Has~~] presented to the Board dishonest or fraudulent evidence of qualification or [~~;~~] has been guilty of [~~illegal~~] fraud or deception in the process of examination, or for the purpose of securing a license; [~~or~~]
- (2) *is* [~~(b) Is~~] chronically or habitually intoxicated, *has a chemical dependency*, or is addicted to drugs; [~~or~~]
- (3) *has* [~~(c) Has~~] engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; [~~or~~]
- (4) *has* [~~(d) Has~~] been convicted of a felony under the laws of this or any other state of the United States or of the United States; [~~or~~]
- (5) *has* [~~(e) 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; [~~or~~]
- (6) *has* [~~(f) 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.*

(b) *The Board may also suspend or revoke the license of a licensee who is found to be mentally incompetent by a court of competent jurisdiction. If the licensee is later determined to be mentally competent by a court, the Board may reinstate the license* [~~for the purpose of treating, or offering to treat, sick, injured or afflicted animals~~].

(c) On conviction of a person licensed by the Board of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the Board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the Board shall revoke the person's license. The Board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express

determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

SECTION 14. The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by adding Section 14B to read as follows:

Sec. 14B. (a) If a person violates this Act in a manner that constitutes grounds for disciplinary action by the Board, the Board may assess a civil penalty against that person in addition to taking action under Section 14 or 14A of this Act.

(b) The Board may assess the civil penalty in an amount not to exceed \$2,500. In determining the amount of the penalty, the Board shall consider the seriousness of the violation.

SECTION 15. Section 15, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. If the Board ~~refuses to examine an applicant for a license, refuses [proposes to refuse] a person's application for a license, suspends or revokes [to suspend or revoke] a person's license, or places [to place] on probation, reprimands, or assesses a civil penalty against [reprimand] a licensee, the applicant or licensee [person]~~ is entitled to a hearing before the Board. The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 16. Section 16, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. An appeal of an action of the Board ~~must be filed in a district court in Travis County and judicial [is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial]~~ review of an action of the Board shall be conducted under the substantial evidence rule.

SECTION 17. Section 17, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. 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 18. Section 18, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. (a) Any member or employee of the Board who issues a license other than as provided in this Act, or who gives an applicant for examination a list of questions to be propounded at the examination, shall be fined not less than \$1,000 ~~[Two Hundred Dollars (\$200)]~~, nor more than \$5,000 ~~[One Thousand Dollars (\$1,000)]~~.

(b) A person commits an offense if the person violates this Act. An offense under this subsection is a Class B misdemeanor. [Any person who practices, offers or attempts to practice veterinary medicine in this State without first having complied with the provisions of this Act shall be fined not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200). Each day of practicing, attempting or offering to practice is a separate offense.]

SECTION 19. Section 18A, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18A. (a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the 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 shall maintain an information file about each complaint filed with the Board relating to a licensee.

(c) 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. ~~Each written contract for services in this state of a licensed veterinarian shall contain the name, mailing address, and telephone number of the Board.~~

SECTION 20. The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended by adding Section 18C to read as follows:

Sec. 18C. The Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) does not apply to a veterinarian licensed under this Act with respect to claims for damages for veterinary malpractice or alleged to have resulted from negligence on the part of the veterinarian.

SECTION 21. Section 19, The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. (a) The Board shall establish reasonable and necessary fees for the administration of this Act. ~~[in amounts not to exceed:~~

1. Examination fee	\$200
2. Reciprocal license fee	200
3. Annual license renewal fee	85
4. Duplicate license fee	60

(b) The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

SECTION 22. Subsection (a), Section 20, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All fees collected by the Board under this Act shall be placed in the State Treasury every 30 ~~[thirty (30)]~~ days, as collected, to the credit of a special fund to be known as the "Veterinary Fund," and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of \$150,000 ~~[One Hundred Thousand Dollars (\$100,000)]~~ remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

SECTION 23. Subdivision (30), Section 5, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(30) "Practitioner" means:

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to *prescribe*, distribute, *administer*, or dispense a prescription drug or device in the course of professional practice in this state; ~~[or]~~

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; *or*

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs. "Practitioner" does not include a person licensed under this Act.

SECTION 24. Subsection (g), Section 40, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) No written prescription issued by a practitioner, as such term is defined in ~~[Paragraph (A) of Subdivision (30) of]~~ Section 5~~(30)(A)~~ of this Act, may be dispensed

unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written." The practitioner shall communicate dispensing instructions to the pharmacist by signing on the appropriate line. If the practitioner's signature does not clearly indicate that the prescription must be dispensed as written, generically equivalent drug selection is permitted. No prescription form furnished a practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer.

SECTION 25. Subsection (e), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The term "practitioner" means a person licensed:

(1) by the State Board of Medical Examiners, State Board of Dental Examiners, State Board of Podiatry [~~Chiropractic~~] Examiners, or [~~and~~] State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs;

(2) by another state in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; or

(3) in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs.

SECTION 26. Section 3, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

(a) The delivery or offer of delivery of any dangerous drug unless:

(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, pursuant to a ~~upon an original~~ prescription issued by a practitioner as defined by Section 2(e)(1) or (2) of this Act, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the pharmacy ~~owner of the establishment~~ from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was dispensed ~~filled~~; the number of such prescription as filed in the prescription files of the pharmacy from which the ~~pharmacist who filled such~~ prescription was dispensed; the name of the practitioner who prescribed such drug; the name of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; ~~or~~

(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the date of delivery, the name and strength of the drug, the directions for use of such drug, the name and address of such practitioner, the name of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal; or

(3) Such dangerous drug is delivered or offered to be delivered by a pharmacist, pursuant to an original written prescription issued by a practitioner as defined by Section 2(e)(3) of this Act, and a label is affixed to the immediate container in which the drug is delivered or offered to be delivered that bears the name and address of the pharmacy from which the drug was delivered or offered to be delivered; the date on which the prescription for the drug was dispensed; the number of the prescription as filed in the prescription files of the pharmacy from which the prescription was dispensed; the name of the prescribing practitioner; the name of the patient, and if the drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription.

(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.

(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a)(1) and (2) of this Act.

(e) The refusal to make available and to accord full opportunity to check any record or file as required by Section 5 and Section 6.

(f) The failure to keep records as required by Section 5 and Section 6.

(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.

(h) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act.

SECTION 27. Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), is amended by adding Section 3A to read as follows:

Sec. 3A. A pharmacist called on to dispense a dangerous drug pursuant to a prescription issued by a practitioner as defined by Section 2(e)(3) of this Act shall determine, in the exercise of the pharmacist's professional judgment, that the prescription is authentic and was issued pursuant to a valid patient-physician relationship and that the prescribed drug is considered necessary for the treatment of illness.

SECTION 28. Section 1.05, Article 4414b, Revised Statutes, is amended by adding Subsection (i) to read as follows:

(i)(1) The board may hold public hearings in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to determine whether there is compelling evidence that a dangerous drug as defined in Subsection (a), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), has been abused by either being prescribed for nontherapeutic purposes or has been abused by the ultimate user. Upon making such a finding, the board may limit the availability of the abused drug to dispensing only upon the prescription of a practitioner as defined in Subdivision (1) or (2), Subsection (e), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes).

(2) If the commissioner of health has compelling evidence that an immediate danger to the public health exists as a result of drugs being prescribed by practitioners as defined in Subdivision (3), Subsection (e), Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), the commissioner may use his or her existing emergency authority to limit such drugs' availability to prescriptions from practitioners defined in Subdivision (1) or (2), Subsection (e), Section 2, of that Act.

SECTION 29. (a) The change in law made by Section 18 of this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 30. (a) This Act takes effect September 1, 1987.

(b) This Act does not affect the term or qualification requirements of a person who is serving on the State Board of Veterinary Medical Examiners on the effective date of this Act. The governor shall appoint a member of the general public to fill the first vacancy of a position held by a veterinarian member of the board occurring after September 1, 1987, as a result of expiration of the member's term or otherwise.

SECTION 31. 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 May 20, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on June 1, 1987, by a viva-voce vote. Passed the House, with amendments, on May 30, 1987, by a non-record vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.