

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 739

S. P. 212

In Senate, February 19, 1975

Referred to the Committee on Agriculture. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Hichens of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Maine Veterinary Practice.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 7 MRSA § 1, first sentence, as last repealed and replaced by PL 1973, c. 788, § 29, is amended to read:

The Department of Agriculture, as heretofore established and hereinafter in this Title called the "department," shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry, and shall consist of the Commissioner of Agriculture, hereinafter in this Title called the "commissioner," appointed by the Governor with the advice and consent of the Council, to serve a term coterminous with the Governor subject to removal from the office for cause by the Governor and Council, and the following as heretofore created and established: The Maine Dairy Council Committee, the Maine Milk Commission, the Maine Potato Commission, the Seed Potato Board, Milk Tax Committee, the Soil and Water Conservation Commission, the Harness Racing Commission and the Board of Veterinary ~~Examiners~~ Medicine.

Sec. 2. 7 MRSA § 2, last ¶, as last amended by PL 1973, c. 95, § 2, is further amended to read:

The commissioner does not have authority to exercise or interfere with the exercise of any discretionary statutory authority granted to the following, which authority shall be exclusively within the specific board, bureau, agency, commission, committee or other governmental unit: The Maine Dairy Council Committee, the Maine Milk Commission, the Seed Potato Board, the Harness Racing Commission, Milk Tax Committee, the Maine Potato Commis-

sion, the Soil and Water Conservation Commission and the Board of Veterinary ~~Examiners~~ Medicine.

Sec. 3. 32 MRSA c. 71, as amended, is repealed.

Sec. 4. 32 MRSA c. 71-A is enacted to read:

CHAPTER 71-A

MAINE VETERINARY PRACTICE ACT OF 1975

§ 4851. Legislative findings

The Legislature finds and declares that the public health, safety and welfare of the State of Maine requires the exercise of the police powers of this State to safeguard the people of Maine from incompetent, dishonest or unprincipled practitioners of veterinary medicine and further that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of personal and professional qualifications.

§ 4852. Short title

This chapter shall be known and may be cited as the "Maine Veterinary Practice Act of 1975."

§ 4853. Definitions

When used in this chapter, except where otherwise indicated by context, the following words and phrases shall have the following meaning.

1. **Animal.** "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.
2. **Animal technician.** "Animal technician" means a person who has completed a minimum of 2 college years of training or equivalent 2-year certified program to become an animal technician according to standards adopted by the American Veterinary Medical Association's Committee on Accreditation of Training for Animal Technicians and by the board as provided by rule and regulation and successfully passed an examination prescribed by such association and the board for registration.
3. **Board.** "Board" means the Maine State Board of Veterinary Medicine.
4. **Commissioner.** "Commissioner" means the Commissioner of Agriculture or his duly authorized agent.
5. **Licensed veterinarian.** "Licensed veterinarian" means a person who is validly and currently licensed by the board to practice veterinary medicine in this State.
6. **Person.** "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer or any other representative of such person.

7. Practice of veterinary medicine. "Practice of veterinary medicine" means:

A. To diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescription or administration of any drugs, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for testing for pregnancy or for correcting sterility, or infertility, or to render advice or recommendation with regard to any of the above;

B. To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph A;

C. To use any title, words, abbreviation or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph A, except where such a person is a veterinarian.

8. School of veterinary medicine. "School of veterinary medicine" means any veterinary college or division of a college or university that offers the degree of Doctor of Veterinary Medicine or its equivalent and that conforms to the standards required by the Maine State Board of Veterinary Medicine as provided in this chapter.

9. Veterinarian. "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from a school of veterinary medicine.

10. Veterinary medicine. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine.

§ 4854. Board of Veterinary Medicine

There is established in the Department of Agriculture a Maine State Board of Veterinary Medicine, which shall be appointed by the commissioner and shall consist of 5 members who shall serve until their successors are duly appointed and qualified. At least 30 days before the appointment of any board member the State Veterinary Medical Association shall forward to the commissioner for his consideration the names of 3 or more qualified veterinarians. The term of office of each present member of the board shall expire as now provided. One new member to be appointed to the board shall serve a 3-year term. One new member to be appointed to the board shall serve a 4-year term. Thereafter, all members shall be appointed for 5-year terms. No person shall serve 2 consecutive 5-year terms, but a person appointed for a term of less than 5 years may succeed himself.

A person shall be qualified to serve as a member of the board if he is a graduate of a veterinary school, a resident of this State and has been licensed to practice veterinary medicine in this State for the 5 years preceding the time of his appointment. No person may serve on the board who is, or has been during the 2 years preceding his appointment, a trustee or a member of the faculty or advisory board of a veterinary school.

§ 4855. Officers

The board shall organize annually by electing a president, a secretary who need not be a member of the board and such other officers as may be deemed necessary. The secretary shall maintain the correspondence of the board, keep a record of all proceedings, including the disposition of all applications for license or registration as animal technicians and keep a register of all persons currently licensed by the board or registered as an animal technician. All board records shall be open to public inspection during regular office hours.

All revenues received by the board shall be deposited with the Treasurer of State and expended on vouchers approved by the commissioner.

The commissioner shall have authority, subject to the Personnel Law, to employ such personnel as may be deemed necessary to carry out the purposes of this chapter.

§ 4856. Meetings

The board shall meet at least once a year at a time and place fixed by the board. Other meetings may be called by the president by giving notice as required by rule. A majority of the board constitutes a quorum.

§ 4857. Removal

Members of the board may be removed by the commissioner for cause, after notice and hearing.

§ 4858. Expenses

Members of the board shall be paid at the rate of \$50 for each day, or substantial portion thereof, they are engaged in the work of the board, in addition to their actual expenses while carrying out the functions of the board. Expenses shall be paid by vouchers approved by the commissioner.

§ 4859. Powers

The board shall have power to:

1. Establish standards. Establish, consistent with this chapter, standards of qualification for the practice of veterinary medicine in the State of Maine, and, for the purpose of section 4853, subsection 8 and section 4861, recognize schools of veterinary medicine.

2. Make reasonable rules and regulations. In accordance with the purpose and intent of the law and the standards set forth in this chapter, make such other reasonable rules and regulations, including rules and regulations concerning misconduct, fraud, advertising, standards of competency, personal conduct and relations with other veterinarians, as are appropriate to establish and maintain a high standard of integrity and dignity among licensed veterinarians and animal technicians.

3. Issue, renew, deny, suspend or revoke licenses. Issue, renew, deny, suspend or revoke licenses and temporary permits to practice veterinary medi-

cine in the State or otherwise discipline licensed veterinarians consistent with this chapter and the rules and regulations adopted thereunder.

4. Establish a schedule of fees. Establish a schedule of fees for the licensing and registration of veterinarians.

5. After hearing, adopt, amend or repeal rules and regulations. After hearing, adopt, amend or repeal rules and regulations necessary to carry into effect this chapter.

6. Conduct investigations. Conduct investigations of alleged violations of this chapter or rules and regulations adopted thereunder.

7. Hold hearings. Hold hearings on all matters properly brought before the board and in connection thereto to administer oaths, receive evidence, make necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records or other documentary evidence and commission depositions. The board may designate one or more of its members to serve as its hearing officer.

8. Register animal technicians. Register animal technicians in accordance with procedures as the board may prescribe by rules and regulations.

9. Bring proceedings. Bring proceedings in the courts for the enforcement of this chapter or any rules and regulations made pursuant thereto.

§ 486o. License required

No person may practice veterinary medicine in this State who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board. This shall not apply to:

1. Federal, state or local government employee. An employee of the federal, state or local government performing his official duties.

2. Regular student. A person who is a regular student in a veterinary school performing duties or actions assigned by his instructors or working under the direct supervision of a licensed veterinarian during a school vacation period.

3. Person performing accepted livestock practices. A person advising with respect to or performing acts which the board by rule has prescribed as accepted livestock management practices.

4. Out-of-state veterinarian consulting with licensed veterinarian. A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this State.

5. Owner or caretaker of an animal. The owner of an animal and the owner's full-time regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for purposes of circumventing this chapter.

6. Certain faculty members. A member of the faculty of a veterinary school performing his regular functions, or a person lecturing or giving in-

structions or demonstrating at a veterinary school or in connection with a continuing education course or seminar.

7. Person applying certain chemicals. Any person selling or applying any pesticide, insecticide or herbicide.

8. Person engaging in scientific research. Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals.

9. Person performing artificial insemination. Any person approved by the board performing artificial insemination.

§ 486i. Application for license; qualifications and examination

Any person desiring a license to practice veterinary medicine in this State shall make written application to the board. The application shall show that the applicant is a citizen of the United States or Canada, or an applicant for citizenship, a graduate of a veterinary school recognized and approved by the American Veterinary Medical Association and by the board, a person of good moral character and such other information and proof as the board may require. The application shall be accompanied by a fee in the amount established by the board.

If the Board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for a license without examination under subsection 2, the board may forthwith grant him a license. If an applicant is found not qualified to take the examination or for a license without examination, the secretary of the board shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant found unqualified may request a hearing on the question of his qualifications under the procedure set forth in section 4867.

1. Examinations. The board shall hold at least one examination during each year and may hold such additional examinations as are necessary. The secretary shall give public notice of the time and place for each examination at least 120 days in advance of the date set for the examination. A person desiring to take an examination shall make application at least 60 days before the date of the examination.

The preparation, administration, and grading of examinations shall be governed by regulations prescribed by the board.

After each examination the secretary shall notify each examinee of the result of his examination, and the board shall issue a certificate to each person successfully completing the examination. The secretary shall record the certificate and issue a license upon payment of the license fee. Any person failing an examination shall be admitted to any subsequent examination on payment of the application fee.

2. Board may issue license without written examination. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof that he is a graduate of a veterinary school and

who has for the 5 years next prior to filing his application been a practicing veterinarian licensed in a state, territory or district of the United States having license requirements, at the time the applicant was first licensed, which were substantially equivalent to the requirements of this chapter; and providing no license shall be issued under this section, unless the state from which the applicant comes shall accord equal rights to the duly licensed veterinarians of Maine.

At its discretion, the board may orally or practically examine any person qualifying for licensure under this section.

3. Temporary permit. The board may issue without examination a temporary permit to practice veterinary medicine in this State to a qualified applicant for license pending examination, provided that such temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued.

All persons granted permits under this section shall furnish proof of liability insurance to cover the date of this permit.

A temporary permit may be summarily revoked by majority vote of the board without a hearing.

§ 4862. Status of persons currently licensed

Any person holding a valid license to practice veterinary medicine in this State on the date this chapter becomes effective shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he complies with this chapter, including annual renewal of the license within 30 days of notification of its being due.

§ 4863. License renewal

All licenses shall expire annually on December 31st and shall be renewed by registration with the board and payment of a renewal fee established by the board. On December 1st of each year, the secretary shall mail a notice to each licensed veterinarian that his license will expire on December 31st and provide him with a form for reregistration. The secretary shall issue a renewal certificate to all persons registering under this chapter.

Any person who shall practice veterinary medicine after the expiration of his license and willfully or by neglect fails to renew such license shall be practicing in violation of this chapter; provided that any person may renew an expired license within 2 years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After 2 years have elapsed since the date of the expiration, the holder must make application for a new license.

By rule the board may waive the payment of the registration renewal fee of a licensed veterinarian during the period when he is on active duty with any branch of the Armed Services of the United States, not to exceed the longer of 3 years or the duration of a national emergency.

§ 4864. Revocation, suspension or discipline

Upon written complaint sworn to by any person, the board may, after a fair hearing and by a concurrence of 4 members, revoke or suspend for a stated time the license of, or otherwise discipline, any licensed veterinarian for any of the following reasons:

1. Fraud in obtaining a license. The employment of fraud, misrepresentation or deception in obtaining a license;
2. Insanity. An adjudication of insanity;
3. Chronic inebriety or use of drugs. Chronic inebriety or habitual use of drugs;
4. False advertising. The use of advertising or solicitation which is false, misleading or is otherwise deemed unprofessional under regulations adopted by the board;
5. Certain convictions. Conviction or cash compromise of a felony or other public offense involving moral turpitude;
6. Maleficence. Incompetence, gross negligence or other maleficence in the practice of veterinary medicine unlawfully.
7. Association with unlawful practitioner. Having professional association with or employing any person practicing veterinary medicine unlawfully.
8. Fraud in testing. Fraud or dishonesty in the application or reporting of any test for disease in animals.
9. Lack of sanitation. Failure to keep veterinary premises and equipment in a clean and sanitary condition.
10. Omitted or false report. Failure to report, as required by law, or making false report of any contagious or infectious disease.
11. Dishonesty in inspections. Dishonesty or gross negligence in the inspections of foodstuffs or the issuance of health or inspection certificates.
12. Cruelty. Cruelty to animals.
13. Revocation of license by another jurisdiction. Revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of registration fee.
14. Unprofessional conduct. Unprofessional conduct as defined in the rules and regulations of the board.

§ 4865. Animal technicians to be registered

No person may perform the services of an animal technician in this State who has not been registered by the board. Any person desiring such registration shall make written application to the board, providing such information as the board shall require.

All animal technicians shall reregister annually before December 31st and each reregistration shall be accompanied by a reregistration fee.

The board may, after a fair hearing and by a concurrence of 4 members, revoke or suspend the registration of any animal technician for unprofessional conduct as defined in rules and regulations adopted by the board.

§ 4866. Duties of animal technicians

An animal technician registered in the State may perform, under the supervision and direction of a licensed veterinarian, such duties as drug administration, nursing care, x-ray film exposure and processing, bandage changes, dental prophylaxis, restraint, blood and fecal collections, diagnostic laboratory procedures and other such duties as the supervising veterinarian or the board by rules and regulations may prescribe, consistent with this chapter, provided that no one but a veterinarian shall diagnose, prognose, prescribe or initiate treatment or surgery or perform surgery.

§ 4867. Hearing

A hearing shall be held no sooner than 20 days after written notice to a licensed veterinarian of a complaint against him under section 4865 or, in the case of a person whose application for license is denied, no sooner than 10 days after receipt by the board of a written request for a hearing. These provisions shall apply in like manner to an animal technician against whom charges of unprofessional conduct have been made under section 4865, or who has been denied registration by the board. Notice of the time and place of the hearing, along with a copy of the complaint filed, shall be served on a licensee or registrant in the same manner required for original service of process in a civil suit.

The applicant, licensee or registered animal technician shall have the right to be heard in person and by counsel, the right to subpoena witnesses in his behalf and the right to cross-examine witnesses appearing against him. Strict rules of evidence shall not apply. The board shall preserve a full record of the proceeding, a transcript of which record may be purchased by any person interested in such hearing on payment to the board of the cost of preparing such transcript.

The board shall notify the applicant, licensee or registered animal technician of its decision in writing 10 days after the conclusion of the hearing. The secretary, in all cases of suspension or revocation, shall enter the fact on the register. Any veterinarian whose license is revoked or suspended or animal technician whose registration is revoked or suspended shall be deemed an unlicensed or unregistered person for the purposes of this chapter.

The fees and expenses allowed witnesses and officers shall be paid by the board and shall be the same as prescribed by law in civil cases in the courts of this State.

§ 4868. Appeal

Any party aggrieved by a decision of the board may appeal such decision to the Superior Court within 90 days after receipt of notice of the board's

decision. Appeals shall be taken by filing with the court the record of the proceeding certified by the board, and serving upon the secretary of the board written notice of the appeal, stating the grounds thereof. The court shall review the decision of the board as it would the decision of an inferior court. The decision of the reviewing court shall be final and no further appeal shall be taken.

§ 486g. Reinstatement

Any veterinarian whose license is revoked or suspended or animal technician whose registration is revoked or suspended may, at the discretion of the board, be relicensed, reregistered or reinstated at any time without an examination by majority vote of the board on written application made to the board showing cause justifying such relicensing, reregistering or reinstatement.

§ 487o. Enforcement

Any person who shall practice veterinary medicine without a currently valid license or temporary permit or perform the duties of animal technician without being registered shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 90 days, or by both, provided that each act of such unlawful practice shall constitute a distinct and separate offense.

No person, who shall practice veterinary medicine without a currently valid license or temporary permit, may receive any compensation for services so rendered and no person shall be employed by a veterinarian to perform the duties of an animal technician unless such animal technician is currently registered.

The board or any citizen of this State may bring an action to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit. If the court finds that the person is violating, or is threatening to violate this chapter, it shall enter an injunction restraining him from such unlawful acts.

The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

§ 487i. Duties of the board

The board may:

1. Appoint representatives. Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable or necessary.

2. Adopt regulations. Adopt regulations, when deemed necessary, that require veterinarians in this State to present evidence to the board that they have complied with the requirements of continuing education for relicensure.

§ 4872. Practice of veterinarians

Any veterinarian may dispose of any animal abandoned in his establishment, provided he shall give notice of his intention to do so to the owner at

his last known address by registered or certified mail, return receipt requested and shall allow a period of 15 days to elapse after the receipt is returned before disposing of such animal; but if the owner cannot be located at such address, the veterinarian shall give such notice by publication in a newspaper having a circulation in the town in which such owner was last known to reside, and shall allow a period of 15 days to elapse after such publication before disposing of such animals.

§ 4873. Severability

If any part of this chapter is held invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid part remain in effect.

Sec. 5. **Transitional provision.** It is the intent of the Legislature that the members of the present Board of Veterinary Examiners shall be members of the Board of Veterinary Medicine for the period of their unexpired terms on the Board of Veterinary Examiners. Upon expiration of such terms, they may be reappointed to the Board of Veterinary Medicine in accordance with provisions of Title 32, chapter 71-A, section 4854.

STATEMENT OF FACT

The purpose of this bill is to update the Maine Veterinary Practice Act. The public health, safety and welfare of the State of Maine require the exercise of the police powers of this State to safeguard the people of Maine from incompetent, dishonest or unprincipled practitioners of veterinary medicine. Further, the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of personal and professional qualifications.