CS for HB 2732

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for

House Bill No. 2732

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2732 - By: RENEGAR of the House and _____ of the Senate.

An Act relating to professions and occupations; amending 59 O.S. 2001, Section 328.49, as amended by Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2007, Section 328.49), which relates to dentistry; increasing penalty for unlawful practice; amending 59 O.S. 2001, Section 491, as amended by Section 3, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 491), which relates to the practice of medicine or surgery; increasing penalty for practicing without a license; amending 59 O.S. 2001, Section 638, as amended by Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 638), which relates to the Oklahoma Osteopathic Medicine Act; increasing penalty for violation; amending 59 O.S. 2001, Section 698.18, which relates to veterinary medicine; modifying penalties for practice of veterinary medicine without a license; amending 59 O.S. 2001, Section 698.26, as amended by Section 7, Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007, Section 698.26), which relates to the unauthorized practice of veterinary medicine; providing penalty for permitting or directing violation; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.49, as amended by Section 10, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2007, Section 328.49), is amended to read as follows:

Section 328.49 A. The Board of Dentistry shall be responsible for the enforcement of the provisions of the State Dental Act against all persons who are in violation thereof,

including, but not limited to, individuals who are practicing or attempting to practice dentistry or dental hygiene without proper authorization from the Board.

B. 1. It shall be unlawful for any person, except a dentist, to:

a. practice or attempt to practice dentistry,

b. hold oneself out to the public as a dentist or as a person who practices dentistry, or

c. employ or use the words "Doctor" or "Dentist", or the letters "D.D.S." or "D.M.D.", or any modification or derivative thereof, when such use is intended to give the impression that the person is a dentist.

2. It shall be unlawful for any person, except a dental hygienist, to:

a. practice or attempt to practice dental hygiene,

b. hold oneself out to the public as a dental hygienist or as a person who practices dental hygiene, or

c. employ or use the words "Registered Dental Hygienist", or the letters "R.D.H.", or any modification or derivative thereof, when such use is intended to give the impression that the person is a dental hygienist.

3. It shall be unlawful for any person to:

a. give false or fraudulent evidence or information to the Board in an attempt to obtain any license or permit from the Board, or

b. aid or abet another person in violation of this subsection.

4. Each day of a violation of this subsection shall constitute a separate and distinct offense.

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C. 1. If a person violates any of the provisions of subsection B of this section, the Board may request that the district attorney of the county in which ~~such~~ the violation is believed to have occurred bring a criminal action in that county against the person. A duplicate copy of the Board's request shall be sent to the Attorney General of this state.

2. Any person who violates any of the provisions of paragraph 1 of subsection B of this section, upon conviction ~~thereof~~, shall be guilty of a ~~misdemeanor~~ felony and shall be punished ~~as follows:~~

~~a.~~ ~~for a first offense,~~ by a fine of not less than ~~Five Hundred Dollars ($500.00)~~ One Thousand Dollars ($1,000.00) nor more than ~~One Thousand Five Hundred Dollars ($1,500.00)~~ Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for not less than ninety (90) days nor more than ~~thirty (30) days~~ one (1) year, or by both such fine and imprisonment~~,~~

~~b. for a second offense, by a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment, or~~

~~c. for a third or subsequent offense, by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for~~

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~~not more than one hundred eighty (180) days, or by both such fine and imprisonment~~.

D. The Board may initiate a civil action, pursuant to Chapter 24 of Title 12 of the Oklahoma Statutes, seeking a temporary restraining order or injunction, without bond, commanding a person to refrain from engaging in conduct which constitutes a violation of any of the provisions of subsection B of this section. In an action filed pursuant to this subsection, the prevailing party shall be entitled to recover costs and reasonable attorney fees.

E. In addition to any other penalties provided herein, any person found guilty of contempt of court by reason of the violation of any injunction prohibiting the unlicensed practice of dentistry now in effect or hereafter entered pursuant to any provision of the State Dental Act or any preceding state dental act, shall be punished by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year, and by a fine of not less than Five Hundred Dollars ($500.00). The court may also require the defendant to furnish a good and sufficient bond in a penal sum to be set by the court, not less than One Thousand Dollars ($1,000.00), which shall be conditioned upon future compliance in all particulars with the injunction entered, and in the event of failure of the defendant to furnish such bond when so ordered, the defendant shall be confined in the county jail pending compliance therewith. Such bond shall be mandatory as to any person hereafter found guilty of a second contempt of court for violation of any injunction entered pursuant to the State Dental Act, or any preceding state dental act.

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SECTION 2. AMENDATORY 59 O.S. 2001, Section 491, as amended by Section 3, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 491), is amended to read as follows:

Section 491. A. 1. Every person before practicing medicine and surgery or any of the branches or departments of medicine and surgery, within the meaning of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, within this state, must be in legal possession of the unrevoked license or certificate issued pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.

2. Any person practicing in such manner within this state, who is not in the legal possession of ~~such~~ a license or certificate, shall, upon conviction ~~thereof~~, be guilty of a felony, and shall~~, in any court having jurisdiction, be fined for:~~

~~a. the first offense in any sum not less than One Thousand Dollars ($1,000.00), and not more than Five Thousand Dollars ($5,000.00), and~~

~~b. any succeeding offense, as provided in subparagraph a of this paragraph, and in addition thereto, be imprisoned in a county jail for a period of time of not less than thirty (30) days, nor more than one hundred eighty (180) days~~

be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the county jail for not less than ninety (90) days nor more than one (1) year, or by both such fine and imprisonment.

3. ~~In all instances~~ For the purposes of violations of this subsection, each event considered practicing medicine or patient receiving treatment shall be considered a

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separate and distinct offense. For the purposes of subsection B of this section, each day's practice shall constitute a separate and distinct offense.

4. Any person who practices medicine and surgery or any of the branches or departments thereof without first complying with the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall, in addition to the other penalties provided therein, receive no compensation for such medical and surgical or branches or departments thereof services.

B. 1. If a license has been revoked or suspended pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act whether for disciplinary reasons or for failure to renew ~~such~~ the license, the State Board of Medical Licensure and Supervision may, subject to rules promulgated by the Board, assess and collect an administrative fine not to exceed Five Thousand Dollars ($5,000.00) for each day after revocation or suspension whether for disciplinary reasons or for failure to renew such license that the person practices medicine and surgery or any of the branches or departments thereof within this state.

2. Fines assessed shall be in addition to any penalty provided pursuant to subsection A of this section.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 638, as amended by Section 12, Chapter 523, O.S.L. 2004 (59 O.S. Supp. 2007, Section 638), is amended to read as follows:

Section 638. A. Each of the following acts shall constitute a felony, punishable, upon conviction, by a fine of not less than One Thousand Dollars ($1,000.00) nor more

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than ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00) or by imprisonment in the county jail for not less than ninety (90) days nor more than one (1) year, or by both such fine and imprisonment:

1. The practice of osteopathic medicine or attempt to practice osteopathic medicine without a license issued by the State Board of Osteopathic Examiners, and each visit, treatment, prescription, or attempted visit, treatment, or prescription shall constitute a separate and distinct offense;

2. Obtaining of, or attempting to obtain, a license under the provisions of this act, or obtaining, or attempting to obtain, money or any other thing of value, by fraudulent representation or false pretense;

3. Advertising as an osteopathic physician and surgeon, or practicing or attempting to practice osteopathic medicine under a false, assumed, or fictitious name, or a name other than the real name; or

4. Allowing any person in the licensee's employment or control to practice as an osteopathic physician and surgeon when not actually licensed to do so.

B. Any person making any willfully false oath or affirmation whenever oath or affirmation is required by the Oklahoma Osteopathic Medicine Act shall be deemed guilty of the felony of perjury, and upon conviction, shall be punished as prescribed by the general laws of this state.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 698.18, is amended to read as follows:

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Section 698.18 A. It shall be unlawful for any person to practice veterinary medicine without a current license or certificate issued pursuant to the Oklahoma Veterinary Practice Act.

B. Any person practicing veterinary medicine pursuant to the Oklahoma Veterinary Practice Act without a license shall upon conviction be guilty of a felony and shall be punished by a fine of not less than Five Thousand Dollars ($5,000.00), nor more than Ten Thousand Dollars ($10,000.00), imprisonment up to five (5) years, or both such fine and imprisonment.

C. It shall be unlawful for any person to knowingly aid or abet in the unlicensed practice of veterinary medicine in this state.

~~B.~~ D. Any person who violates, aids or abets in violating any of the provisions of the Oklahoma Veterinary Practice Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars ($500.00) or not more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than ~~six (6) months~~ one (1) year, or by both such fine and imprisonment.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 698.26, as amended by Section 7, Chapter 172, O.S.L. 2002 (59 O.S. Supp. 2007, Section 698.26), is amended to read as follows:

Section 698.26 A. A registered veterinary technician, veterinary technologist, nurse, veterinary assistant or other employee shall not diagnose animal diseases, prescribe medical or surgical treatment, or perform as a surgeon.

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B. A registered veterinary technician may perform emergency treatments in a life saving situation in accordance with rules promulgated by the Board.

C. Any person certified as a veterinary technician, who practices veterinary medicine contrary to the provisions of the Oklahoma Veterinary Practice Act, violates, aids, or abets such actions, upon conviction thereof, shall be guilty of a misdemeanor and shall also be subject to revocation, suspension, probation or nonrenewal of certification by the Board. Any person who assumes the title of registered veterinary technician, or the abbreviation RVT, or any other words, letters, signs, or figures that might induce a person to believe that the person using the name is a registered veterinary technician, when in fact they are not certified, upon conviction thereof shall be guilty of a misdemeanor.

D. The penalties provided in subsection C of this section shall not apply to a student enrolled in an accredited school of veterinary technology while the student is under the supervision of an instructor and is performing activities required as a part of the student's training.

E. Any licensed veterinarian permitting or directing a veterinary technician, aide or animal attendant to perform a task or procedure in violation of the provisions of the Oklahoma Veterinary Practice Act, upon conviction thereof, shall be guilty of a misdemeanor <u>and subject to a fine of not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both</u>

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such fine and imprisonment, and shall also be subject to revocation, probation, nonrenewal or suspension of license by the Board.

SECTION 6. This act shall become effective November 1, 2008.

COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 02-28-08 - DO PASS, As Amended.

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