

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 146

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Agriculture)

Education, Health, and Environmental Affairs

Environmental Matters

State Board of Veterinary Medical Examiners - Licensing

This departmental bill establishes a detailed definition of “convicted” as it pertains to disposition of criminal cases involving veterinarians. The bill also authorizes the State Board of Veterinary Medical Examiners (SBVME) to direct a veterinarian, veterinary practitioner, or applicant for a veterinary license to submit to a mental or physical examination and establishes related provisions. The bill also authorizes the board to refuse an application or take specified disciplinary action against a licensee based on an inability to practice veterinary medicine competently due to a physical or mental disability, replacing the board’s authority to take such action based on a person having been adjudicated insane. The bill also makes clarifications regarding the board’s disciplinary authority.

Fiscal Summary

State Effect: State finances are not expected to be materially affected. SBVME may incur costs for mental or physical examinations (estimated at up to \$2,000 each), but these are expected to be infrequent. Further, any additional costs may be at least partially offset to the extent the bill avoids lengthy SBVME hearings to discipline veterinarians involved in criminal cases that are disposed of in a manner short of a conviction.

Local Effect: None.

Small Business Effect: The Maryland Department of Agriculture (MDA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Definition of “Convicted”

The bill defines “convicted” to include a finding of guilt by a court or jury and court acceptance of a defendant’s plea of guilty, *nolo contendere*, or Alford plea. Under current law, SBVME may refuse an applicant for a veterinary license or take disciplinary action against a licensed veterinarian based on an individual having been convicted of specified crimes/violations.

Mental/Physical Examination of Veterinarian, Veterinary Practitioner, or Applicant

The bill authorizes SBVME to direct a veterinarian, veterinary practitioner, or applicant for a veterinary license to submit to a mental or physical examination when the board has reasonable evidence indicating the inability of that individual to practice veterinary medicine competently. The board must pay the reasonable cost of the examination.

The veterinarian, veterinary practitioner, or applicant is deemed to have consented to such an examination and waived any claim of privilege as to the examination report or testimony regarding the report in return for the privilege given by the State in issuing a license or registration. The report or testimony of an examining physician or other person designated by the board, however, is confidential except as to specified contested case proceedings.

The unreasonable failure or refusal of a veterinarian, veterinary practitioner, or license applicant to submit to an examination is sufficient evidence of the individual’s inability to practice veterinary medicine competently unless the board finds the failure or refusal was beyond the individual’s control.

Inability to Practice Competently Due to Mental/Physical Disability

The board may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing, if a veterinarian or veterinary practitioner is unable to practice veterinary medicine competently due to a physical or mental disability. This authorization replaces an existing reason for disciplinary action – a person having been “adjudicated insane.”

Clarifications of SBVME Disciplinary Authority

The bill also makes certain other clarifications regarding the board's disciplinary authority. The bill clarifies that the board can take disciplinary action in general against both veterinarians and veterinary practitioners. The bill also clarifies an existing reason that the board may take disciplinary action, specifying that disciplinary action may be taken when a veterinarian or veterinary practitioner is determined by four members to be *professionally* incompetent as a veterinary practitioner.

Current Law: SBVME must issue a license to, and annually register, any person who passes a specified examination, is of good moral character, and has a diploma from an approved college or institution conferring upon him or her the degree of Doctor of Veterinary Medicine. The board may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing for various specified reasons, including if a veterinarian is adjudicated insane, convicted of specified offenses, or after a hearing is determined by four members to be incompetent as a veterinary practitioner.

Background: MDA indicates that the bill's definition of "convicted" broadens the board's ability, when pursuing disciplinary action, to rely on the court record in cases involving alleged offenses for which a veterinarian can be disciplined, but which result in a disposition short of a conviction, such as a court-accepted plea. MDA indicates that currently, if a case ends with a court-accepted plea, in order to take disciplinary action, SBVME has to hold a separate hearing and call all of the parties involved in the original court case, which places a burden on the victim and is complicated by the fact that SBVME's subpoena authority only extends to its licensees.

MDA indicates that SBVME would likely rely heavily upon the results of a mental or physical examination in deliberating whether to take action regarding an individual whose competence to practice veterinary medicine is called into question. The authority the bill grants SBVME to direct an applicant or veterinary practitioner to undergo a mental or physical examination would help to avoid circumstances in which the board may be prevented from taking action regarding an individual that may not be competent to practice but will not submit to an examination and has not yet harmed an animal. Other health-related licensing boards in Maryland have similar authority, including the State Board of Physicians, State Board of Pharmacy, and State Board of Examiners of Psychologists.

According to MDA, the repeal of "adjudicated insane" is necessary because it is obscure and outdated and, from a licensing and enforcement standpoint, it is more appropriate for the board to have the authority to take disciplinary action against a licensee who is

deemed incompetent to practice veterinary medicine than to be limited to taking such action based on a finding of insanity in a court of law.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2011
ncs/lgc

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Board of Veterinary Medical Examiners – Licensing

BILL NUMBER: SB 146

PREPARED BY: Maryland Department of Agriculture

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.