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AN ACT

RELATING TO ANIMALS; ENACTING THE ANIMAL SHELTERING SERVICES ACT; CREATING LICENSING PROCEDURES FOR EUTHANASIA PROVIDERS AND EUTHANASIA AGENCIES; CREATING CERTIFICATION PROCEDURES FOR EUTHANASIA INSTRUCTORS; PROMOTING SAFE AND HUMANE CONDITIONS FOR ANIMALS IN ANIMAL SHELTERS; CREATING A FUND; CREATING A BOARD; PROVIDING BOARD POWERS AND DUTIES; PROVIDING FOR EXEMPTIONS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Animal Sheltering Services Act".

Section 2. DEFINITIONS.--As used in the Animal Sheltering Services Act:

A. "animal" means any animal, except humans, not defined as "livestock" in Subsection L of this section;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a dog pound; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

1 (2) does not include a municipal zoological
2 park;

3 C. "board" means the animal sheltering services
4 board;

5 D. "department" means the regulation and licensing
6 department;

7 E. "disposition" means adoption of an animal;
8 return of an animal to the owner; release of an animal to a
9 rescue organization; release of an animal to another animal
10 shelter licensed pursuant to the Animal Sheltering Services
11 Act or to a rehabilitator licensed by the department of game
12 and fish or the United States fish and wildlife service; or
13 euthanasia of an animal;

14 F. "emergency field euthanasia" means the process
15 defined by rule of the board to cause the death of an animal
16 in an emergency situation when safe and humane transport of
17 the animal is not possible;

18 G. "euthanasia" means to produce a humane death of
19 an animal by standards deemed acceptable by the board as set
20 forth in its rules;

21 H. "euthanasia agency" means a facility that
22 provides shelter to animals on a regular basis, including a
23 dog pound, a humane society or a public or private shelter
24 facility that temporarily houses stray, unwanted or injured
25 animals, and that performs euthanasia;

1 I. "euthanasia drugs" means non-narcotic schedule
2 II or schedule III substances and chemicals as set forth in
3 the Controlled Substances Act that are used for the purposes
4 of euthanasia and pre-euthanasia of animals;

5 J. "euthanasia instructor" means a euthanasia
6 provider licensed and certified by the board to instruct
7 other individuals in euthanasia techniques;

8 K. "euthanasia provider" means a person licensed
9 by the board to euthanize animals for a euthanasia agency;

10 L. "livestock" means all domestic or domesticated
11 animals that are used or raised on a farm or ranch and exotic
12 animals in captivity and includes horses, asses, mules,
13 cattle, sheep, goats, swine, bison, poultry, ostriches, emus,
14 rheas, camelids and farmed cervidae but does not include
15 canine or feline animals;

16 M. "rescue organization" means an organization
17 that rescues animals and is not involved in the breeding of
18 animals;

19 N. "supervising veterinarian" means a person who
20 is a veterinarian, who holds both a valid New Mexico
21 controlled substance license and a valid federal drug
22 enforcement agency license and who approves the drug
23 protocols and the procurement and administration of all
24 pharmaceuticals; and

25 O. "veterinarian" means a person who is licensed

1 as a doctor of veterinary medicine by the board of veterinary
2 medicine pursuant to the Veterinary Practice Act.

3 Section 3. BOARD CREATED--MEMBERS--QUALIFICATIONS--
4 TERMS--VACANCIES--REMOVAL.--

5 A. The "animal sheltering services board" is
6 created. The board shall consist of nine members as follows:

7 (1) one euthanasia agency employee with
8 training and education in euthanasia;

9 (2) one licensed veterinarian who has
10 provided paid or unpaid services to an animal shelter;

11 (3) one representative from a nonprofit
12 animal advocacy group;

13 (4) one member of the public;

14 (5) a manager or director of a New Mexico
15 facility that provides shelter to animals on a regular basis,
16 provided that the manager or director selected is trained in
17 animal shelter standards;

18 (6) one representative of the New Mexico
19 association of counties;

20 (7) one representative of the New Mexico
21 municipal league;

22 (8) one member of a rescue organization; and

23 (9) one member of the domestic pet breeder
24 community.

25 B. No more than two board members shall be

1 appointed from any one county within the state. Appointments
2 shall be made in such manner that the terms of no more than
3 two board members expire on July 1 of each year.

4 C. The board is administratively attached to the
5 department.

6 D. The board and its operations are governed by
7 the Uniform Licensing Act. If the provisions of the Uniform
8 Licensing Act conflict with the provisions of the Animal
9 Sheltering Services Act, the provisions of the Animal
10 Sheltering Services Act shall prevail.

11 E. The governor shall appoint board members for
12 terms of four years, except in the first year of the
13 enactment of the Animal Sheltering Services Act, when board
14 members shall be appointed for staggered terms. Of the first
15 appointments, three board members shall be appointed for
16 four-year terms, two board members shall be appointed for
17 three-year terms, two board members shall be appointed for
18 two-year terms and two board members shall be appointed for
19 one-year terms. Subsequent appointments shall be made to
20 fill vacancies created in unexpired terms, but only until the
21 term ends or for a full four-year term when the term of a
22 board member expires. Board members shall hold office until
23 their successors are duly qualified and appointed. Vacancies
24 shall be filled by appointment by the governor for the
25 unexpired term within sixty days of the vacancy to maintain

1 the required composition of the board.

2 F. Members of the board shall be reimbursed for
3 per diem and mileage as provided in the Per Diem and Mileage
4 Act and shall receive no other compensation, perquisite or
5 allowance, but shall be permitted to attend at least one
6 conference or seminar per year relevant to their board
7 position as the board's budget will allow.

8 G. A simple majority of the appointed board
9 members constitutes a quorum.

10 H. The board shall hold at least four regular
11 meetings each year and may meet at such other times as it
12 deems necessary.

13 I. A board member shall not serve more than two
14 full or partial terms, consecutive or otherwise.

15 J. A board member failing to attend three duly
16 noticed meetings, regular or special, within a twelve-month
17 period, without an excuse acceptable to the board, may be
18 removed as a board member.

19 K. The board shall elect a chair and other
20 officers as it deems necessary to administer its duties.

21 L. The department shall hire employees to execute
22 the daily operations of the board. One employee shall be a
23 veterinarian who holds both a valid New Mexico controlled
24 substance license and a valid federal drug enforcement agency
25 license, and who will be responsible for ordering,

1 maintaining and dispensing euthanasia drugs as necessary in
2 accordance with local, state and federal laws.

3 Section 4. FUND CREATED--ADMINISTRATION.--

4 A. The "animal care and facility fund" is created
5 in the state treasury. All fees collected pursuant to the
6 Animal Sheltering Services Act shall be deposited in the
7 fund.

8 B. The animal care and facility fund shall consist
9 of money collected by the board pursuant to the Animal
10 Sheltering Services Act; income from investment of the fund;
11 and money appropriated to the fund or accruing to it through
12 fees or administrative penalties, cooperative research
13 agreements, income, gifts, grants, donations, bequests, sales
14 of promotional items, handbooks or educational materials or
15 any other source. Money in the fund shall not be transferred
16 to another fund or encumbered or expended except for
17 expenditures authorized pursuant to the Animal Sheltering
18 Services Act.

19 C. Money in the fund is subject to appropriation
20 by the legislature to the department to be used to help
21 animal shelters and communities defray the cost of
22 implementing the board's initiatives conducted pursuant to
23 the Animal Sheltering Services Act. The fund shall be
24 administered by the department to carry out the purposes of
25 the Animal Sheltering Services Act.

1 D. A disbursement from the fund shall be made only
2 upon a warrant drawn by the secretary of finance and
3 administration pursuant to a voucher signed by the
4 superintendent of regulation and licensing or the
5 superintendent's designee.

6 E. Unexpended and unencumbered balances in the
7 fund at the end of a fiscal year shall not revert to the
8 general fund.

9 Section 5. BOARD POWERS AND DUTIES.--The board shall:

10 A. provide board-recommended standards regarding
11 the infrastructure for all animal shelters;

12 B. provide board-recommended operating standards
13 for all animal shelters;

14 C. adopt methods and procedures acceptable for
15 conducting emergency field euthanasia;

16 D. adopt, promulgate and revise rules necessary to
17 carry out the provisions of the Animal Sheltering Services
18 Act;

19 E. have authority to issue licenses and
20 certificates pursuant to the Animal Sheltering Services Act;

21 F. establish the types of licenses and
22 certificates that may be issued pursuant to the Animal
23 Sheltering Services Act and establish criteria for issuing
24 the licenses and certificates;

25 G. prescribe standards and approve curricula for

1 educational programs that will be used to train and prepare
2 persons for licensure or certification pursuant to the Animal
3 Sheltering Services Act;

4 H. implement continuing education requirements for
5 licensees and certificate holders pursuant to the Animal
6 Sheltering Services Act;

7 I. conduct administrative hearings upon charges
8 relating to violations of provisions of the Animal Sheltering
9 Services Act or rules adopted pursuant to that act in
10 accordance with the Uniform Licensing Act;

11 J. provide for all examinations and for issuance
12 and renewal of licenses and certificates;

13 K. establish fees not to exceed one hundred fifty
14 dollars (\$150) for licenses and certificates pursuant to the
15 Animal Sheltering Services Act;

16 L. establish committees as the board deems
17 necessary to effect the provisions of the Animal Sheltering
18 Services Act;

19 M. apply for injunctive relief to enforce the
20 provisions of the Animal Sheltering Services Act;

21 N. conduct national criminal background checks on
22 applicants seeking licensure or certification under the
23 Animal Sheltering Services Act;

24 O. keep a record of all proceedings;

25 P. make an annual report to the legislature and to SB 458
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1 the governor;

2 Q. provide for the inspection of animal shelters
3 and euthanasia agencies;

4 R. develop mechanisms to address complaints of
5 misconduct at animal shelters and euthanasia agencies and
6 noncompliance with the provisions of the Animal Sheltering
7 Services Act or rules adopted pursuant to that act;

8 S. develop mechanisms to address complaints of
9 licensee and certificate holder misconduct and noncompliance;

10 T. develop and implement comprehensive dog and cat
11 spay and neuter plans and community outreach plans in support
12 of and in conjunction with animal shelters and euthanasia
13 agencies;

14 U. disburse money from the animal care and
15 facility fund;

16 V. provide board-recommended standards for
17 maintaining records concerning health care and disposition of
18 animals; and

19 W. refer to national animal control association
20 standards in determining its regulations.

21 Section 6. EUTHANASIA PROVIDER--LICENSE.--

22 A. The board shall have authority to license
23 euthanasia providers.

24 B. A person, other than a veterinarian licensed to
25 practice in New Mexico, who engages in euthanasia for a

1 euthanasia agency in this state shall be licensed by the
2 board.

3 C. Applicants for licensure by examination as a
4 euthanasia provider shall be required to pass a euthanasia
5 provider examination administered by the board and shall be
6 required to complete a training course approved by the board
7 in euthanasia practices.

8 D. The board shall adopt rules to provide for
9 interim placements for euthanasia agencies that have no
10 permanent employees who are euthanasia providers.

11 E. A person licensed to practice as a euthanasia
12 provider shall:

13 (1) have passed the examination to qualify
14 as a euthanasia provider;

15 (2) hold a certificate of completion in a
16 training course in euthanasia issued within three years of
17 the date that the euthanasia provider examination is
18 successfully completed;

19 (3) have attained an age of at least
20 eighteen years;

21 (4) not be guilty of fraud or deceit in
22 procuring or attempting to procure a license;

23 (5) pay the required fee to be determined by
24 the board, but not to exceed fifty dollars (\$50.00); and

25 (6) comply with all other requirements

1 established by the board.

2 F. The board may issue a license to practice as a
3 euthanasia provider without examination to an applicant who
4 meets the qualifications required for euthanasia providers in
5 this state as set forth in Paragraphs (3) through (6) of
6 Subsection E of this section. The application for a license
7 as a euthanasia provider shall be accompanied by proof of
8 completion of training in euthanasia practices, as approved
9 by the board.

10 G. A person whose euthanasia provider license
11 expires while the person is on active duty with a branch of
12 the armed forces of the United States, called into service or
13 training with the state militia or in training or education
14 under the supervision of the United States government prior
15 to induction into military service may have the license
16 restored without paying renewal fees, if within two years
17 after the termination of that service, training or education,
18 except under conditions other than honorable, the board is
19 furnished with satisfactory evidence that the person had been
20 engaged in the service, training or education.

21 Section 7. EUTHANASIA INSTRUCTORS--CERTIFICATION.--

22 A. The board shall have authority over the
23 certification of euthanasia instructors.

24 B. A person certified to practice as a euthanasia
25 instructor shall:

1 (1) have passed the examination administered
2 by the board to qualify as a euthanasia instructor;

3 (2) have completed instructor training in
4 euthanasia practices, as defined by the board, within one
5 year preceding the date the application for certification is
6 submitted;

7 (3) have participated in the euthanasia of
8 animals for a minimum of three years preceding the date of
9 application;

10 (4) not have been found guilty of fraud or
11 deceit in procuring or attempting to procure any type of
12 certification; and

13 (5) pay the required fee.

14 C. The board may certify an applicant as a
15 euthanasia instructor without an examination if the applicant
16 has been certified or licensed under the laws of another
17 state and the applicant meets the qualifications set forth in
18 Paragraphs (3) through (5) of Subsection B of this section.
19 The application for certification shall be accompanied by
20 proof of completion of instructor training in euthanasia
21 practices, as approved by the board.

22 D. A person whose euthanasia instructor
23 certification expires while on active duty with the armed
24 forces of the United States, called into service or training
25 with the state militia or in training or education under the

1 supervision of the United States government prior to
2 induction into military service may have the certification
3 restored without paying renewal fees, if within two years
4 after the termination of that service, training or education,
5 except under conditions other than honorable, the board is
6 furnished with satisfactory evidence that the person has been
7 engaged in such service, training or education.

8 Section 8. EUTHANASIA AGENCIES--INSPECTIONS--
9 EXEMPTIONS.--

10 A. The board shall have authority over the
11 licensing of euthanasia agencies. All euthanasia agencies
12 shall be licensed by the board prior to euthanasia being
13 performed by that agency.

14 B. The board shall adopt rules governing the
15 procedures for administering euthanasia.

16 C. The board shall establish rules for inspecting
17 a facility holding or claiming to hold a license as a
18 euthanasia agency in this state.

19 D. The board shall establish policies and procedures for
20 record keeping and for securing, using and disposing of
21 euthanasia drugs in accordance with requirements of the
22 Controlled Substances Act, the federal drug enforcement
23 agency Controlled Substances Act and the rules of the board
24 of pharmacy.

25 E. Euthanasia agencies using controlled substances SB 458
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1 shall have on staff or under contract a supervising
2 veterinarian and a consulting pharmacist as that position is
3 defined in the Pharmacy Act.

4 F. A supervising veterinarian is not required to
5 be on the premises of a euthanasia agency when euthanasia is
6 performed.

7 G. Nothing in the Animal Sheltering Services Act
8 shall be construed as allowing a licensed euthanasia provider
9 or a certified euthanasia instructor to engage in the
10 practice of veterinary medicine when performing the duties
11 set forth in that act.

12 H. Nothing in the Animal Sheltering Services Act
13 shall be construed as preventing a certified euthanasia
14 instructor from euthanizing animals during a board-approved
15 course on euthanasia instruction.

16 I. Nothing in the Animal Sheltering Services Act
17 affects wildlife rehabilitators working under the auspices of
18 the department of game and fish.

19 J. A veterinary clinic serving as a euthanasia
20 agency pursuant to a contract with a local government is
21 exempt from the provisions of the Animal Sheltering Services
22 Act; provided that the veterinary clinic is subject to
23 licensure and rules adopted pursuant to the Veterinary
24 Practice Act.

25 K. A municipal facility that is a zoological park

1 is exempt from the provisions of the Animal Sheltering
2 Services Act.

3 Section 9. VIOLATIONS.--

4 A. Unless otherwise provided in the Animal
5 Sheltering Services Act, it is a violation of that act for a
6 person to:

7 (1) perform euthanasia for a euthanasia
8 agency or an animal shelter in this state without possessing
9 a valid license pursuant to the Animal Sheltering Services
10 Act;

11 (2) solicit, advertise or offer to perform
12 an act for which licensure or certification is required
13 pursuant to the Animal Sheltering Services Act, unless the
14 person holds a license or certification;

15 (3) refuse to comply with a cease and desist
16 order issued by the board;

17 (4) refuse or fail to comply with the
18 provisions of the Animal Sheltering Services Act;

19 (5) make a material misstatement in an
20 application for licensure or certification;

21 (6) intentionally make a material
22 misstatement to the department during an official
23 investigation;

24 (7) impersonate an official or inspector;

25 (8) refuse or fail to comply with rules

1 adopted by the board or with a lawful order issued by the
2 board;

3 (9) aid or abet another in violating
4 provisions of the Animal Sheltering Services Act, or a rule
5 adopted by the board;

6 (10) alter or falsify a certificate of
7 inspection, license or certification issued by the board;

8 (11) fail to carry out the duties of a
9 euthanasia provider in a professional manner;

10 (12) abuse the use of a chemical substance
11 or be guilty of habitual or excessive use of intoxicants or
12 drugs;

13 (13) sell or give chemical substances used
14 in euthanasia procedures to an unlicensed person; and

15 (14) assist an unlicensed or unauthorized
16 person in euthanizing animals, except during a board-approved
17 course in euthanasia.

18 B. It is a violation of the Animal Sheltering
19 Services Act for a euthanasia agency or an animal shelter to:

20 (1) refuse to permit entry or inspection of
21 its facilities by the board or its designees;

22 (2) sell, offer for sale, barter, exchange
23 or otherwise transfer animals that are prohibited by the
24 department of game and fish, the United States department of
25 agriculture or any other regulatory agency to be kept unless

1 the sale, offer for sale, bartering, exchanging or
2 transferring of the animal is to a facility employing
3 permitted rehabilitators or an individual that is a permitted
4 rehabilitator pursuant to the rules adopted by the department
5 of game and fish or another agency that has authority over
6 people who are permitted to receive and provide care for such
7 animals;

8 (3) allow a license or certificate issued
9 pursuant to the Animal Sheltering Services Act to be used by
10 an unlicensed or uncertified person; or

11 (4) make a misrepresentation or false
12 promise through advertisements, employees, agents or other
13 mechanisms in connection with the euthanasia of an animal.

14 C. It is a violation of the Animal Sheltering
15 Services Act for an employee or official of the board or a
16 person in the department to disclose or use for that person's
17 own advantage information derived from reports or records
18 submitted to the department or the board pursuant to that
19 act.

20 Section 10. ENFORCEMENT AND INJUNCTIONS.--

21 A. The board or the board's designees shall
22 enforce the provisions of the Animal Sheltering Services Act.

23 B. Whenever the board has reasonable cause to
24 believe a violation of a provision of the Animal Sheltering
25 Services Act or a rule adopted pursuant to that act has

1 occurred that creates a health risk for the animals or the
2 community and immediate enforcement is deemed necessary, the
3 board may issue a cease and desist order to require a person
4 to cease violations. At any time after service of the order
5 to cease and desist, the person may request a prompt hearing
6 to determine whether a violation occurred. If a person fails
7 to comply with a cease and desist order within twenty-four
8 hours, the board may bring a suit for a temporary restraining
9 order and for injunctive relief to prevent further
10 violations.

11 C. Whenever the board possesses evidence that
12 indicates a person has engaged in or intends to engage in an
13 act or practice constituting a violation of the Animal
14 Sheltering Services Act or a rule adopted pursuant to that
15 act, the board may seek temporarily or permanently to
16 restrain or enjoin the act or practice. The board shall not
17 be required to post a bond when seeking a temporary or
18 permanent injunction.

19 Section 11. DISCIPLINARY ACTIONS--EUTHANASIA PROVIDERS,
20 EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--HEARINGS--
21 PENALTIES.--

22 A. The provisions of the Uniform Licensing Act
23 apply to all disciplinary procedures and hearings of the
24 board.

25 B. The board may:

1 (1) deny, suspend, revoke, reprimand, place
2 on probation or take other action against a license or
3 certificate held or applied for pursuant to the Animal
4 Sheltering Services Act, including imposing an administrative
5 penalty, upon a finding by the board that the licensee,
6 certificate holder or applicant has performed acts in
7 violation of the Animal Sheltering Services Act or a rule
8 adopted pursuant to that act; and

9 (2) impose an administrative penalty on a
10 person who makes a false representation as being a licensed
11 euthanasia provider, a certified euthanasia instructor or a
12 licensed euthanasia agency.

13 C. The board may issue letters of admonition or
14 deny, suspend, refuse to renew, restrict or revoke a license
15 or certification authorized pursuant to the Animal Sheltering
16 Services Act if the applicant or licensee:

17 (1) has refused or failed to comply with a
18 provision of the Animal Sheltering Services Act, a rule
19 adopted pursuant to that act or an order of the board;

20 (2) is guilty of cruelty to animals pursuant
21 to a statute of this state or another state;

22 (3) has had an equivalent license or
23 certificate denied, revoked or suspended by an authority;

24 (4) has refused to provide the board with
25 reasonable, complete and accurate information regarding the

1 care or euthanasia of animals when requested by the board; or

2 (5) has falsified information requested by
3 the board or the board's designee.

4 D. In a proceeding held pursuant to this section,
5 the board may accept as prima facie evidence of grounds for
6 disciplinary action any disciplinary action taken against a
7 licensee from another jurisdiction, if the violation that
8 prompted the disciplinary action in that jurisdiction would
9 be grounds for disciplinary action pursuant to this section.

10 E. Disciplinary proceedings may be instituted by
11 the board or by a complaint to the board.

12 F. The board shall not initiate a disciplinary
13 action more than two years after the date that it receives a
14 complaint or that it begins an investigation without a filed
15 complaint.

16 G. The board may administer oaths, take statements
17 and compel disclosure by the witnesses of all facts known to
18 them relative to matters under investigation.

19 H. The board may impose an administrative penalty
20 in an amount not to exceed five hundred dollars (\$500) on a
21 holder of a license or certificate for violations of the
22 Animal Sheltering Services Act.

23 I. A person or euthanasia agency whose license or
24 certificate is suspended or revoked by the board pursuant to
25 the provisions of this section may, at the discretion of the

1 board, obtain a license or certificate at any time without
2 examination upon written application to the board showing
3 cause to justify reinstatement or renewal of the license or
4 certificate.

5 J. The board shall adopt other rules pertaining to
6 hearings, appeals and rehearings as it deems necessary.

7 K. The board shall not be required to certify a
8 record to the court of appeals of a decision of the board
9 until the proper fee has been paid to the board for a copy and
10 certification of the record.

11 L. A person engaging in acts without a license or
12 certificate issued by the board is guilty of a misdemeanor.

13 M. A person who practices, offers to practice,
14 attempts to practice or makes any representation as being a
15 euthanasia provider, a euthanasia instructor or a licensed
16 euthanasia agency without holding a license or certificate
17 issued by the board shall, in addition to any other penalty
18 provided in this section or any other law, pay an
19 administrative penalty to the board in an amount not to exceed
20 five hundred dollars (\$500) for each offense.

21 Section 12. TERMINATION OF AGENCY LIFE--DELAYED
22 REPEAL.--The animal sheltering services board is terminated on
23 July 1, 2011 pursuant to the Sunset Act. The board shall
24 continue to operate according to the provisions of the Animal
25 Sheltering Services Act until July 1, 2012. Effective July 1,

1 2012, the Animal Sheltering Services Act is repealed.

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