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HOUSE BILL 227

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joni Marie Gutierrez

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; MAKING AN APPROPRIATION.

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. PURPOSE.--The purpose of the Animal Sheltering Services Act is to promote safe, healthy and clean living conditions for animals housed in animal shelters, to license euthanasia providers and euthanasia agencies and to certify

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1 euthanasia instructors.

2 Section 3. DEFINITIONS.--As used in the Animal Sheltering
3 Services Act:

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

6 B. "animal shelter":

7 (1) means:

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

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

15 (2) does not include a municipal zoological
16 park;

17 C. "board" means the animal sheltering services
18 board;

19 D. "department" means the regulation and licensing
20 department;

21 E. "disposition" means adoption of an animal;
22 return of an animal to the owner; release of an animal to a
23 rescue organization; release of an animal to another animal
24 shelter licensed pursuant to the Animal Sheltering Services Act
25 or to a rehabilitator licensed by the department of game and

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1 fish or the United States fish and wildlife service; or
2 euthanasia of an animal;

3 F. "emergency field euthanasia" means the process
4 defined by rule of the board to cause the death of an animal in
5 an emergency situation when safe and humane transport of the
6 animal is not possible;

7 G. "euthanasia" means to produce a humane death of
8 an animal by standards deemed acceptable by the national animal
9 control association and as set forth in rules of the board;

10 H. "euthanasia agency" means a facility that
11 provides shelter to animals on a regular basis, including a dog
12 pound, a humane society or a public or private shelter facility
13 that temporarily houses stray, unwanted or injured animals, and
14 that performs euthanasia;

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

19 J. "euthanasia instructor" means a euthanasia
20 provider licensed and certified by the board to instruct other
21 individuals in euthanasia techniques;

22 K. "euthanasia provider" means a person licensed by
23 the board to administer euthanasia drugs to euthanize animals
24 for a euthanasia agency;

25 L. "livestock" means all domestic or domesticated

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1 animals that are used or raised on a farm or ranch and exotic
2 animals in captivity and includes horses, asses, mules, cattle,
3 sheep, goats, swine, bison, poultry, ostriches, emus, rheas,
4 camelids and farmed cervidae but does not include canine or
5 feline animals;

6 M. "rescue organization" means an organization that
7 rescues animals and is not involved in the breeding of animals;

8 N. "supervising veterinarian" means a person who is
9 a veterinarian, who holds both a valid New Mexico controlled
10 substance license and a valid federal drug enforcement agency
11 license and who approves the drug protocols and the procurement
12 and administration of all pharmaceuticals; and

13 O. "veterinarian" means a person who is licensed as
14 a doctor of veterinary medicine by the board of veterinary
15 medicine pursuant to the Veterinary Practice Act.

16 Section 4. BOARD CREATED--MEMBERS--QUALIFICATIONS--
17 TERMS--VACANCIES--REMOVAL.--

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

20 (1) one animal shelter employee with training
21 and education in euthanasia;

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

24 (3) one representative from a nonprofit animal
25 advocacy group;

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- 1 (4) one member of the public;
- 2 (5) a manager or director of a New Mexico
- 3 facility that provides shelter to animals on a regular basis;
- 4 (6) one representative of the New Mexico
- 5 association of counties;
- 6 (7) one representative of the New Mexico
- 7 municipal league;
- 8 (8) one member of a rescue organization; and
- 9 (9) one member of the domestic pet breeder
- 10 community.

11 B. No more than two board members shall be
12 appointed from any one county within the state. Appointments
13 shall be made in such manner that the terms of no more than two
14 board members expire on July 1 of each year.

15 C. The board is administratively attached to the
16 department.

17 D. The board and its operations are governed by the
18 Uniform Licensing Act. If the provisions of the Uniform
19 Licensing Act conflict with the provisions of the Animal
20 Sheltering Services Act, the provisions of the Animal
21 Sheltering Services Act shall prevail.

22 E. The governor shall appoint board members for
23 terms of four years, except in the first year of the enactment
24 of the Animal Sheltering Services Act, when board members shall
25 be appointed for staggered terms. Of the first appointments,

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1 three board members shall be appointed for four-year terms, two
2 board members shall be appointed for three-year terms, two
3 board members shall be appointed for two-year terms and two
4 board members shall be appointed for one-year terms.

5 Subsequent appointments shall be made to fill vacancies created
6 in unexpired terms, but only until the term ends or for a full
7 four-year term when the term of a board member expires. Board
8 members shall hold office until their successors are duly
9 qualified and appointed. Vacancies shall be filled by
10 appointment by the governor for the unexpired term within sixty
11 days of the vacancy to maintain the required composition of the
12 board.

13 F. Members of the board shall be reimbursed for per
14 diem and mileage as provided in the Per Diem and Mileage Act
15 and shall receive no other compensation, perquisite or
16 allowance, but shall be permitted to attend at least one
17 conference or seminar per year relevant to their board position
18 as the board's budget will allow.

19 G. A simple majority of the appointed board members
20 constitutes a quorum.

21 H. The board shall hold at least four regular
22 meetings each year and may meet at such other times as it deems
23 necessary.

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

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1 J. A board member failing to attend three duly
2 noticed meetings, regular or special, within a twelve-month
3 period, without an excuse acceptable to the board, may be
4 removed as a board member.

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

7 L. The department shall employ three employees at
8 minimum to execute the daily operations of the board. One
9 employee shall be a veterinarian who holds both a valid New
10 Mexico controlled substance license and a valid federal drug
11 enforcement agency license, and who will order, maintain and
12 dispense euthanasia drugs in accordance with local, state and
13 federal laws.

14 Section 5. FUND CREATED--ADMINISTRATION.--

15 A. The "animal care and facility fund" is created
16 in the state treasury.

17 B. The animal care and facility fund shall consist
18 of money collected by the board pursuant to the Animal
19 Sheltering Services Act; income from investment of the fund;
20 and money appropriated to the fund or accruing to it through
21 fees, cooperative research agreements, income, gifts, grants,
22 donations, bequests, sales of promotional items, handbooks or
23 educational materials or any other source. Money in the fund
24 shall not be transferred to another fund or encumbered or
25 expended except for expenditures authorized pursuant to the

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1 Animal Sheltering Services Act.

2 C. Money in the fund is appropriated to the
3 department to be used to help animal shelters defray the cost
4 of implementing the board's initiatives conducted pursuant to
5 the Animal Sheltering Services Act. The fund shall be
6 administered by the department to carry out the purposes of the
7 Animal Sheltering Services Act.

8 D. Disbursements from the fund shall be made only
9 upon warrant drawn by the secretary of finance and
10 administration pursuant to vouchers signed by the
11 superintendent of regulation and licensing or the
12 superintendent's designee.

13 E. Unexpended and unencumbered balances in the fund
14 at the end of a fiscal year shall not revert to the general
15 fund.

16 Section 6. BOARD POWERS AND DUTIES.--The board shall:

17 A. provide board-recommended standards regarding
18 the infrastructure for all animal shelters;

19 B. provide board-recommended operating standards
20 for all animal shelters;

21 C. adopt procedures for determining when emergency
22 field euthanasia shall apply;

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

25 E. have authority to issue licenses and

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1 certificates pursuant to the Animal Sheltering Services Act;

2 F. establish the types of licenses and certificates
3 that may be issued pursuant to the Animal Sheltering Services
4 Act and establish criteria for issuing the licenses and
5 certificates;

6 G. prescribe standards and approve curricula for
7 educational programs that will be used to train and prepare
8 persons for licensure or certification pursuant to the Animal
9 Sheltering Services Act;

10 H. implement continuing education requirements for
11 licensees and certificate holders pursuant to the Animal
12 Sheltering Services Act;

13 I. conduct administrative hearings upon charges
14 relating to violations of provisions of the Animal Sheltering
15 Services Act or rules adopted pursuant to that act in
16 accordance with the Uniform Licensing Act;

17 J. provide for all examinations and for issuance
18 and renewal of licenses and certificates;

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

22 L. establish committees as the board deems
23 necessary to effect the provisions of the Animal Sheltering
24 Services Act;

25 M. apply for injunctive relief to enforce the

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1 provisions of the Animal Sheltering Services Act;

2 N. conduct national criminal background checks on
3 applicants seeking licensure or certification under the Animal
4 Sheltering Services Act;

5 O. keep a record of all proceedings;

6 P. make an annual report to the governor;

7 Q. provide for the inspection of animal shelters
8 and euthanasia agencies;

9 R. develop mechanisms to address complaints of
10 misconduct at animal shelters and euthanasia agencies and
11 noncompliance with the provisions of the Animal Sheltering
12 Services Act or rules adopted pursuant to that act;

13 S. develop mechanisms to address complaints of
14 licensee and certificate holder misconduct and noncompliance;

15 T. develop comprehensive dog and cat sterilization
16 plans and community outreach plans for animal shelters and
17 euthanasia agencies;

18 U. disburse money from the animal care and facility
19 fund; and

20 V. provide board-recommended standards for
21 maintaining records concerning health care and disposition of
22 animals.

23 Section 7. EUTHANASIA PROVIDER--LICENSE.--

24 A. The board shall have authority to license
25 euthanasia providers.

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1 B. A person, other than a veterinarian licensed to
2 practice in New Mexico, who engages in euthanasia for a
3 euthanasia agency in this state shall be licensed by the board.

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

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

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

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

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

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

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

24 (5) not be intemperate or addicted to the use
25 of habit-forming drugs;

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- 1 (6) not be guilty of unprofessional conduct;
2 (7) pay the required fee; and
3 (8) comply with all other requirements
4 established by the board.

5 F. The board may issue a license to practice as a
6 euthanasia provider without examination or a certificate of
7 completion in a training course in euthanasia to a
8 veterinarian.

9 G. The board may issue a license to practice as a
10 euthanasia provider without examination to an applicant who
11 meets the qualifications required for euthanasia providers in
12 this state as set forth in Paragraphs (3) through (8) of
13 Subsection E of this section. The application for a license as
14 a euthanasia provider shall be accompanied by proof of
15 completion of training in euthanasia practices, as approved by
16 the board.

17 H. A person whose euthanasia provider license
18 expires while the person is on active duty with a branch of the
19 armed forces of the United States, called into service or
20 training with the state militia or in training or education
21 under the supervision of the United States government prior to
22 induction into military service may have the license restored
23 without paying renewal fees, if within two years after the
24 termination of that service, training or education, except
25 under conditions other than honorable, the board is furnished

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1 with satisfactory evidence that the person had been engaged in
2 the service, training or education.

3 Section 8. EUTHANASIA INSTRUCTORS--CERTIFICATION.--

4 A. The board shall have authority over the
5 certification of euthanasia instructors.

6 B. A person certified to practice as a euthanasia
7 instructor shall:

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

10 (2) have completed instructor training in
11 euthanasia practices, as defined by the board, within one year
12 preceding the date the application for certification is
13 submitted;

14 (3) have participated in the euthanasia of
15 animals for a minimum of three years preceding the date of
16 application;

17 (4) not have been found guilty of fraud or
18 deceit in procuring or attempting to procure any type of
19 certification;

20 (5) not be intemperate or addicted to the use
21 of habit-forming drugs;

22 (6) not have been found guilty of
23 unprofessional conduct; and

24 (7) pay the required fee.

25 C. The board may certify an applicant as a

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1 euthanasia instructor without an examination if the applicant
2 has been certified or licensed under the laws of another state
3 and the applicant meets the qualifications set forth in
4 Paragraphs (3) through (7) of Subsection B of this section.
5 The application for certification shall be accompanied by proof
6 of completion of instructor training in euthanasia practices,
7 as approved by the board.

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

19 Section 9. EUTHANASIA AGENCIES--INSPECTIONS--
20 EXEMPTIONS.--

21 A. The board shall have authority over the
22 licensing of euthanasia agencies. All euthanasia agencies
23 shall be licensed by the board for euthanasia to be performed
24 for that agency.

25 B. The board shall adopt rules governing the

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1 procedures for administering euthanasia.

2 C. The board shall establish rules for inspecting a
3 facility holding or claiming to hold a license as a euthanasia
4 agency in this state.

5 D. The board shall establish policies and
6 procedures for record keeping and for securing, using and
7 disposing of euthanasia drugs in accordance with requirements
8 of the Controlled Substances Act, the federal drug enforcement
9 agency Controlled Substances Act and the rules of the board of
10 pharmacy.

11 E. Euthanasia agencies shall have on staff or under
12 contract a supervising veterinarian and a consulting pharmacist
13 as that position is defined in the Pharmacy Act.

14 F. A supervising veterinarian is not required to be
15 on the premises of a euthanasia agency when euthanasia is
16 performed.

17 G. Nothing in the Animal Sheltering Services Act
18 shall be construed as allowing a licensed euthanasia provider
19 or a certified euthanasia instructor to engage in the practice
20 of veterinary medicine when performing the duties set forth in
21 that act.

22 H. Nothing in the Animal Sheltering Services Act
23 shall be construed as preventing a certified euthanasia
24 instructor from humanely euthanizing animals during a board-
25 approved course on euthanasia instruction.

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1 I. Nothing in the Animal Sheltering Services Act
2 affects wildlife rehabilitators working under the auspices of
3 the department of game and fish.

4 J. A veterinary clinic serving as a euthanasia
5 agency pursuant to a contract with a local government is exempt
6 from the provisions of the Animal Sheltering Services Act;
7 provided that the veterinary clinic is subject to licensure and
8 rules adopted pursuant to the Veterinary Practice Act.

9 K. A municipal facility that is a zoological park
10 is exempt from the provisions of the Animal Sheltering Services
11 Act.

12 Section 10. VIOLATIONS.--

13 A. Unless otherwise provided in the Animal
14 Sheltering Services Act, it is a violation of that act for a
15 person to:

16 (1) perform euthanasia for a euthanasia agency
17 or an animal shelter in this state without possessing a valid
18 license pursuant to the Animal Sheltering Services Act;

19 (2) solicit, advertise or offer to perform an
20 act for which licensure or certification is required, unless
21 the person holds a license or certification;

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

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

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1 (5) make a material misstatement in an
2 application for licensure or certification;

3 (6) intentionally make a material misstatement
4 to the department during an official investigation;

5 (7) impersonate an official or inspector;

6 (8) refuse or fail to comply with rules
7 adopted by the board or with a lawful order issued by the
8 board;

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

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

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

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

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

20 (14) assist an unlicensed or unauthorized
21 person in euthanizing animals, except during a board-approved
22 course in euthanasia.

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

25 (1) refuse to permit entry or inspection of

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1 its facilities by the board or its designees;

2 (2) sell, offer for sale, barter, exchange or
3 otherwise transfer animals that are prohibited by the
4 department of game and fish, the United States department of
5 agriculture or any other regulatory agency to be kept unless
6 the sale, offer for sale, bartering, exchanging or transferring
7 of the animal is to a facility employing permitted
8 rehabilitators or an individual that is a permitted
9 rehabilitator pursuant to the rules adopted by the department
10 of game and fish or another agency that has authority over
11 people who are permitted to receive and provide care for such
12 animals;

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

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

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

24 Section 11. ENFORCEMENT AND INJUNCTIONS.--

25 A. The board or the board's designees shall enforce

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1 the provisions of the Animal Sheltering Services Act.

2 B. Whenever the board has reasonable cause to
3 believe a violation of a provision of the Animal Sheltering
4 Services Act or a rule adopted pursuant to that act has
5 occurred that creates a health risk for the animals or the
6 community and immediate enforcement is deemed necessary, the
7 board may issue a cease and desist order to require a person to
8 cease violations. At any time after service of the order to
9 cease and desist, the person may request a prompt hearing to
10 determine whether a violation occurred. If a person fails to
11 comply with a cease and desist order within twenty-four hours,
12 the board may bring a suit for a temporary restraining order
13 and for injunctive relief to prevent further violations.

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

21 Section 12. DISCIPLINARY ACTIONS--EUTHANASIA PROVIDERS,
22 EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--HEARINGS.--

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

25 B. The board may:

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

9 (2) impose an administrative penalty on a
10 person who makes any 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 or
15 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 adopted
19 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

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

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

4 (6) has been convicted of a felony or other
5 crime involving moral turpitude; or

6 (7) is intemperate or addicted to the use of
7 habit-forming drugs.

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

14 E. Disciplinary proceedings may be instituted by a
15 person by filing a complaint with the board. In addition, the
16 board may institute disciplinary proceedings upon a vote of a
17 majority of the board to do so. A party to a disciplinary
18 hearing may obtain a copy of the hearing record upon payment of
19 costs for the copy.

20 F. The board shall not initiate a disciplinary
21 action more than two years after the date that it receives a
22 complaint or that it begins an investigation without a filed
23 complaint.

24 G. The board may administer oaths, take statements
25 and compel disclosure by the witnesses of all facts known to

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1 them relative to matters under investigation.

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

6 I. A person or euthanasia agency whose license or
7 certificate is suspended or revoked by the board pursuant to
8 the provisions of this section may, at the discretion of the
9 board, obtain a license or certificate at any time without
10 examination upon written application to the board showing cause
11 to justify reinstatement or renewal of the license or
12 certificate.

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

15 K. The board shall not be required to certify a
16 record to the court of appeals of a decision of the board until
17 the proper fee has been paid to the board for a copy and
18 certification of the record.

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

21 M. A person who practices, offers to practice,
22 attempts to practice or makes any representation as being a
23 euthanasia provider, a euthanasia instructor or a licensed
24 euthanasia agency without holding a license or certificate
25 issued by the board shall, in addition to any other penalty

1 provided in this section or any other law, pay an
2 administrative penalty to the board in an amount not to exceed
3 five hundred dollars (\$500) for each offense.

4 Section 13. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--

5 The animal sheltering services board is terminated on July 1,
6 2009 pursuant to the Sunset Act. The board shall continue to
7 operate according to the provisions of the Animal Sheltering
8 Services Act until July 1, 2010. Effective July 1, 2010, the
9 Animal Sheltering Services Act is repealed.

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