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HOUSE BILL NO. 1932

Offered January 12, 2005

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A BILL to amend and reenact §§ 54.1-201, 54.1-202, 54.1-306 and 54.1-307.1 of the Code of Virginia, relating to the Department of Professional and Occupational Regulation; powers and duties of regulatory boards.

Patron—Shannon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-201, 54.1-202, 54.1-306 and 54.1-307.1 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-201. Powers and duties of regulatory boards.

The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.

3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.

7. To place a *regulant on probation* or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. *Conditions of probation may include, but not be limited to the successful completion of remedial education or examination or the payment of restitution.*

8. To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if warranted.

9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ 54.1-202. Monetary penalty; delegation to Director of authority enter consent agreements.

A. Any person licensed or certified by a regulatory board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.

B. Any regulatory board within Subtitle II (§ 54.1-200 et seq.) of this title may adopt a resolution delegating to the Director the authority to enter into consent agreements on behalf of the regulatory board with regulants of the board. Such resolution shall specify the types of violations to which the delegation applies and the maximum monetary penalty that may be imposed in a consent agreement for each regulatory violation. No delegation of authority pursuant to this subsection shall provide for a monetary penalty over \$2,500 per regulatory violation.

§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators appointed by Director.

A. The Director or investigators appointed by him shall be sworn to enforce the statutes and

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59 regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of
60 this title, and any of the programs which may be in another title of this Code for which any regulatory
61 board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him
62 shall have the authority to investigate violations of the statutes and regulations that the Director is
63 required to enforce. The Director or investigators appointed by him shall also have the authority to issue
64 summonses for violations of the statutes and regulations governing the unlicensed practice of professions
65 regulated by the Department. In the event a person issued such a summons fails or refuses to
66 discontinue the unlawful acts or refuses to give a written promise to appear at the time and place
67 specified in the summons, the investigator may appear before a magistrate or other issuing authority
68 having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal
69 investigators of the Department's Criminal Investigations section shall be statewide conservators of the
70 peace while engaged in the performance of their official duties.

71 B. All investigators appointed by the Director are vested with the authority to administer oaths or
72 affirmations for the purpose of receiving complaints and conducting investigations of violations of this
73 subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with
74 any investigation conducted on behalf of any regulatory board within this subtitle or a program which
75 may be located in another title in this Code. Such investigators are vested with the authority to obtain,
76 serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory
77 board under the authority of the Director and request and receive criminal history information under the
78 provisions of § 19.2-389.

79 C. Any regulatory board within Subtitle II (§ 54.1-200 et seq.) of this title may adopt a resolution
80 delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to
81 conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority,
82 an investigator may initiate an investigation based on any act, omission, or condition witnessed by the
83 investigator and offer a consent agreement to the regulant to resolve any violation discovered during the
84 inspection, subject to the provisions of subsection B of § 54.1-202. If a consent agreement is offered
85 pursuant to the delegation of authority authorized by this subsection, it shall not become effective until
86 approved by the Director.

87 § 54.1-307.1. Time for filing complaints against regulants.

88 A. Except as otherwise provided in § 36-96.9 and subsections B and C of this section, any complaint
89 against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within
90 Subtitle II (§ 54.1-200 et seq.) of this title or any of the programs which may be in another title of the
91 Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be
92 investigated by the Department, shall be made in writing, or otherwise made in accordance with
93 Department procedures, and received by the Department within three years of the act, omission or
94 occurrence giving rise to the violation. Public information obtained from any source by the Director or
95 agency staff may serve as the basis for a written complaint against a regulant.

96 B. However, where a regulant has materially and willfully misrepresented, concealed or omitted any
97 information and the information so misrepresented, concealed or omitted is material to the establishment
98 of the violation, the complaint may be made at any time within two years after discovery of the
99 misrepresentation, concealment or omission.

100 C. In cases where criminal charges have been filed involving matters that, if found to be true, would
101 also constitute a violation of the regulations or laws of the regulant's profession enforced by the
102 Department, an investigation may be initiated by the Department at any time within two years following
103 the date such criminal charges are filed.

104 D. Nothing in this section shall be construed to require the filing of a complaint if the alleged
105 violation of the statute or regulation is discovered during the conduct of an inspection authorized by
106 law, and the acts, omissions, or conditions constituting the alleged violations are witnessed by a sworn
107 investigator appointed by the Director.