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HOUSE BILL NO. 926

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 54.1-111 and 54.1-3434.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-104.1, relating to professions and occupations; unlawful acts; employment of illegal aliens.

Patrons—Byron, Albo, Athey, Carrico, Cline, Frederick, Gear, Gilbert, Griffith, Hogan, Howell, W.J., Hugo, Janis, Jones, S.C., Kilgore, Landes, Lingamfelter, Marshall, D.W., Marshall, R.G., O'Bannon, Purkey, Putney, Sherwood and Tata

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-111 and 54.1-3434.01 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 54.1-104.1 as follows:

§ 54.1-104.1. Grounds for disciplinary action; conviction for employing illegal immigrant.

A. Any regulatory board established pursuant to this title may suspend, revoke, or fail to renew the license, certificate, registration or authority it has issued any person who has been convicted of violating: (i) § 40.1-11.1, (ii) § 54.1-111 A 9, or (ii) any federal law for knowingly employing any person who is not legally eligible to be employed in the United States.

B. In addition, a regulatory board may determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.

6. Materially misrepresenting facts in an application for licensure, certification or registration.

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

9. Employing any person who cannot provide legal documents indicating that he is legally eligible to be employed in the United States.

10. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil

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57 penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act constituting a
58 separate violation; but in no event shall the civil penalties against any one person, partnership,
59 corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in the name of
60 the Commonwealth by the appropriate Department in the circuit court or general district court of the city
61 or county in which the unlawful act occurred or in which the defendant resides.

62 C. This section shall not be construed to prohibit or prevent the owner of patient records from (i)
63 retaining copies of his patient records or prescription dispensing records after the closing of a business
64 or professional practice or the transfer of ownership of a business or professional practice or (ii)
65 charging a reasonable fee, in accordance with subsections A and B of § 8.01-413 or subsection J of
66 § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

67 D. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege
68 to practice nursing in the Commonwealth of Virginia.

69 § 54.1-3434.01. Notice of pharmacy closing; change of ownership; penalty.

70 A. Prior to the closing of a pharmacy for more than one week, the owner shall either (i) post a
71 conspicuous notice at least thirty days prior to the anticipated closing or (ii) mail a notice, at least
72 fourteen days prior to the anticipated closing, to every current pharmacy customer having refill authority.
73 Each notice posted or mailed pursuant to this section shall indicate the date of such closing, if available,
74 and the name of the pharmacy to which prescriptions and other required prescription dispensing records
75 and individual patient records will be transferred unless patients indicate their preference to the contrary.
76 The Board of Pharmacy shall promulgate regulations providing for a definition of "closing of a
77 pharmacy" and exceptions to the requirements of this section.

78 B. Upon any change of ownership of a pharmacy, regardless of how such change may be effectuated,
79 the prescription dispensing records and other patient records for at least two years immediately prior to
80 the change of ownership, shall be transferred, in accordance with Board regulations, to the new owner in
81 a manner to ensure the confidentiality, integrity, and security of the pharmacy's prescription dispensing
82 records and other patient records and the continuity of pharmacy services at substantially the same level
83 as that offered by the previous owner.

84 Refusing to process a request for the prescription dispensing records and other patient records
85 tendered in accordance with law or regulation shall constitute a closing and the requirements of this
86 section shall apply. Such refusal may constitute a violation of § 54.1-111 A 9 10, depending on the
87 circumstance.