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SENATE BILL NO. 55

Senate Amendments in [] — February 1, 2018

A *BILL to amend and reenact §§ 54.1-201 and 54.1-307 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-202.1, relating to the Department of Professional and Occupational Regulation; disciplinary actions by regulatory boards.*

Patron Prior to Engrossment—Senator DeSteph

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-201 and 54.1-307 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-202.1 as follows:

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

A. 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.

8. To receive complaints concerning the conduct of any regulant and to take appropriate disciplinary action if warranted.

9. [To provide a regulant subject to a disciplinary action with a notice advising the regulant of his right to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act. The notice shall state that if the regulant does not request an informal fact-finding conference within 30 days of receipt of the notice, the board may issue a case decision as defined in § 2.2-4001, with judicial review of the case decision in accordance with § 2.2-4026. If the regulant asserts his right to be heard prior to the board issuing its case decision, the board shall remand the case to an informal fact-finding conference. The notice required by this subdivision shall be sent by certified mail, return receipt requested or, if agreed to by the parties, electronic means, provided that the board retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

10. To provide a regulant subject to a disciplinary action with a notice advising the regulant of his right to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act. The notice shall state that if the regulant does not request an informal fact-finding conference within 30 days of receipt of the notice, the board may issue a case decision as defined in § 2.2-4001, with judicial review of the case decision in accordance with § 2.2-4026. If the regulant asserts his right to be heard prior to the board issuing its case decision, the board shall remand the case to an informal fact-finding conference. The notice required by this subdivision shall be sent by certified mail, return receipt requested or, if agreed to by the parties, electronic means, provided that the board

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60 retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a
61 confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender
62 confirming the electronic delivery.

63 10.] To promulgate canons of ethics under which the professional activities of regulants shall be
64 conducted.

65 B. A regulant shall furnish, upon the request of a person to whom the regulant is providing or
66 offering to provide service, satisfactory proof that the regulant (i) is duly licensed, certified, or registered
67 under this subtitle and (ii) has obtained any required bond or insurance to engage in his profession or
68 occupation.

69 C. As used in this section, "regulant" means any person, firm, corporation, association, partnership,
70 joint venture, or any other legal entity required by this subtitle to be licensed, certified, or registered.

71 **§ 54.1-202.1. Disciplinary action by regulatory boards**

72 A. A regulatory board shall ascertain the factual basis for its decisions through an informal
73 fact-finding conference in accordance with § 2.2-4019, unless the regulant and the regulatory board
74 agree to resolve the matter through a consent order or the regulant consents to waive such a conference
75 to go directly to a formal hearing. If such a conference has been waived or the conference has failed to
76 dispose of the case by consent, the regulatory board shall conduct a formal hearing pursuant to
77 § 2.2-4020. Notwithstanding the foregoing, if the regulant without good cause fails to attend or appear
78 at the informal fact-finding conference, the regulatory board may proceed with a default order pursuant
79 to § 2.2-4020.2.

80 B. Any formal hearing held in accordance with this subsection A shall be presided over by a hearing
81 officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be
82 subject to review and approval by the regulatory board. Any party aggrieved by the final decision shall
83 be entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act
84 (§ 2.2-4000 et seq.).

85 C. This section shall not be construed to limit the authority of a regulatory board to delegate to an
86 appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal
87 fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a regulant may
88 be subject to a disciplinary action.

89 **§ 54.1-307. Subpoenas.**

90 A. In addition to the authority granted in § 2.2-4022 to issue subpoenas and the right to issue
91 subpoenas granted the several regulatory boards within the Department of Professional and Occupational
92 Regulation, the Director or a designated subordinate shall have the right to make an ex parte application
93 to the circuit court for the county or city or county wherein evidence sought is kept or wherein a
94 licensee does business, for the issuance of a subpoena duces tecum in furtherance of the investigation of
95 a sworn complaint within the jurisdiction of the Department or a regulatory board to request production
96 of any relevant records, documents and physical or other evidence of any person, partnership, association
97 or corporation licensed or regulated by the Department. The court shall be authorized to issue and
98 compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that
99 reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a
100 subpoena duces tecum requiring the immediate production of evidence.

101 B. Any person, partnership, association, or corporation licensed or regulated by the Department that
102 [~~has~~ prevails on] a motion to quash a subpoena duces tecum issued pursuant to subsection A shall be
103 awarded reasonable costs and attorney fees or \$500, whichever is greater.