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SENATE BILL NO. 1751

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 12, 2019)

(Patron Prior to Substitute—Senator Ruff)

A BILL to amend and reenact §§ 54.1-111 and 54.1-113 of the Code of Virginia, relating to the Department of Professional and Occupational Licensing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-111 and 54.1-113 of the Code of Virginia are amended and reenacted as follows:

§ 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. 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.

B. 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 A 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.

C. The Director of the Department of Professional and Occupational Regulation, or his designee, may issue a notice to any person violating the provisions of subdivisions A 1 through 5 or A 8 to cease and desist such activity.

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

E. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his 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 or (ii) charging a reasonable fee, in accordance with subsections B2, B3, B4, and B6 of § 8.01-413 or subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

F. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or

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60 engaging in the practice of a profession or occupation for which such individual is licensed, (ii)
61 providing or rendering professional services related thereto through the licensed individual, or (iii)
62 having a legitimate interest in enforcing the terms of employment or its contract with the licensed
63 individual.

64 ~~E.~~ G. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure
65 privilege to practice nursing in the Commonwealth of Virginia.

66 **§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of**
67 **health regulatory boards prohibited.**

68 *A. Following the close of any biennium, when the account for any regulatory board within the*
69 *Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that*
70 *unspent and unencumbered revenue exceeds 20 percent or \$100,000 of the total expenses allocated to*
71 *the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i)*
72 *distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for*
73 *certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not*
74 *excessive to cover expenses.*

75 *B. Following the close of any biennium, when the account for any regulatory board within the*
76 ~~Department of Professional and Occupational Regulation or the~~ Department of Health Professions
77 maintained under ~~§ 54.1-308 or~~ 54.1-2505 shows expenses allocated to it for the past biennium to be
78 more than 10 percent greater or less than moneys collected on behalf of the *regulatory* board, it shall
79 revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that
80 the fees are sufficient but not excessive to cover expenses.

81 ~~B.~~ C. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and
82 accounted for and deposited into a special fund by the Director of the Department of Health Professions
83 shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners'
84 Monitoring Program, and the Department and Board of Health Professions and shall not be transferred
85 to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1
86 and 54.1-3011.2.

87 **2. That the provisions of this act amending § 54.1-113 of the Code of Virginia shall become**
88 **effective on July 1, 2022.**