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SENATE BILL NO. 190

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-419.1, relating to summary suspension of licenses for group homes and residential facilities under certain circumstances; penalty.

Patrons—Martin; Delegate: Nixon

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 37.2-419.1, as follows:

§ 22.1-329. Denial, revocation or suspension of license; grounds; summary suspension under certain circumstances; penalty.

A. The Board may refuse to issue or renew a license or may revoke or suspend the license of any school issued pursuant to this chapter for the following causes:

- 1. Violation of any provision of this chapter or any regulation of the Board;
- 2. Furnishing false, misleading or incomplete information to the Board or Department or failure to furnish any information requested by the Board or Department;
- 3. Violation of any commitment made in an application for a license;
- 4. Presenting, either by the school or by any agent of the school, to prospective students information relating to the school which is false, misleading or fraudulent;
- 5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;
- 6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade or induce enrollments;
- 7. Paying commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;
- 8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;
- 9. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;
- 10. Failing within a reasonable time to provide information requested by the Board or Department as a result of a formal or informal complaint to or by the Board or Department which would indicate a violation of this chapter;
- 11. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the Board; or
- 12. Engaging in or authorizing any other conduct whether of the same or of a different character from that herein specified which constitutes fraudulent or dishonest dealings.

~~B.~~ The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to proceedings under this ~~section~~ subsection.

B. Pursuant to the procedures set forth in subsection C and in addition to the authority for other disciplinary actions provided in this chapter, the Superintendent of Public Instruction may issue a summary order of suspension of the license of a residential or day school for students with disabilities, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school and the Superintendent of Public Instruction believes the operation of the school should be suspended during the pendency of such proceeding.

C. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be

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59 *convened by the Superintendent of Public Instruction or his designee.*

60 *After such hearing, the Superintendent of Public Instruction may issue a final order of summary*
61 *suspension or may find that such summary suspension is not warranted by the facts and circumstances*
62 *presented. A final order of summary suspension shall include notice that the licensee may appeal the*
63 *Superintendent of Public Instruction's decision to the appropriate circuit court no later than 10 days*
64 *following issuance of the order. The sole issue before the court shall be whether the Superintendent of*
65 *Public Instruction had reasonable grounds to require the licensee to cease operations during the*
66 *pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial,*
67 *or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the*
68 *summary suspension.*

69 *The willful and material failure to comply with the summary order of suspension or final order of*
70 *summary suspension shall be punishable as a Class 2 misdemeanor. The Superintendent of Public*
71 *Instruction may require the cooperation of any other agency or subdivision of the Commonwealth in the*
72 *relocation of students who are residents of a home or facility whose license has been summarily*
73 *suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm*
74 *to students.*

75 § 37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation; summary
76 suspension under certain circumstances; penalty.

77 A. The Commissioner is authorized to revoke or suspend any license issued hereunder or refuse
78 issuance of a license on any of the following grounds: (i) violation of any provision of this article or of
79 any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the
80 commission of an illegal act in services delivered by the provider; or (iii) conduct or practices
81 detrimental to the welfare of any individual receiving services from the provider.

82 B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the
83 Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision
84 of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is
85 entitled to judicial review in accordance with the provisions of the Administrative Process Act.

86 C. If a license is revoked or refused as herein provided, a new application for license may be
87 considered by the Commissioner when the conditions upon which the action was based have been
88 corrected and satisfactory evidence of this fact has been furnished. In no event may an applicant reapply
89 for a license after the Commissioner has refused or revoked a license until a period of six months from
90 the effective date of that action has elapsed, unless the Commissioner in his sole discretion believes that
91 there has been such a change in the conditions causing refusal of the prior application or revocation of
92 the license as to justify considering the new application. When an appeal is taken by the applicant
93 pursuant to this section, the six-month period shall be extended until a final decision has been rendered
94 on appeal. A new license may then be granted after proper inspection has been made and all provisions
95 of this article and applicable regulations made thereunder have been complied with and
96 recommendations to that effect have been made to the Commissioner upon the basis of an inspection by
97 any authorized inspector or agent of the Department.

98 D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be
99 lifted and rights under the license fully or partially restored at such time as the Commissioner
100 determines, based on an inspection, that the rights of the licensee appear to so require and the interests
101 of the public will not be jeopardized by resumption of operation.

102 E. Pursuant to the procedures set forth in subsection F and in addition to the authority provided in
103 subsections A through D, the Commissioner may issue a summary order of suspension of the license of
104 a group home or residential facility for children, in conjunction with any proceeding for revocation,
105 denial, or other action, when conditions or practices exist in the home or facility that pose an immediate
106 and substantial threat to the health, safety, and welfare of the children who are residents and the
107 Commissioner believes the operation should be suspended during the pendency of such proceeding.

108 F. The summary order of suspension shall take effect upon its issuance and shall be served on the
109 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
110 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
111 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no
112 later than three business days after the issuance of the summary order of suspension and shall be
113 convened by the Commissioner or his designee.

114 After such hearing, the Commissioner may issue a final order of summary suspension or may find
115 that such summary suspension is not warranted by the facts and circumstances presented. A final order
116 of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to
117 the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before
118 the court shall be whether the ~~Department~~ Commissioner had reasonable grounds to require the licensee
119 to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The
120 concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing

121 on the appropriateness of the summary suspension.

122 The willful and material failure to comply with the summary order of suspension or final order of
123 summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the
124 cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who
125 are residents of a home or facility whose license has been summarily suspended pursuant to this section
126 and in any other actions necessary to reduce the risk of further harm to children.

127 § 37.2-419.1. Summary suspension of adult facility licenses under certain circumstances; due process;
128 penalty.

129 A. Pursuant to the procedures set forth in subsection B and in addition to the authority for other
130 disciplinary actions provided in this chapter, the Commissioner may issue a summary order of
131 suspension of the license of any group home or residential facility for adults, in conjunction with any
132 proceeding for revocation, denial, or other action, when conditions or practices exist in the home or
133 facility that pose an immediate and substantial threat to the health, safety, and welfare of the adults
134 who are residents and the Commissioner believes the operation of the home or facility should be
135 suspended during the pendency of such proceeding.

136 C. The summary order of suspension shall take effect upon its issuance and shall be served on the
137 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
138 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
139 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no
140 later than three business days after the issuance of the summary order of suspension and shall be
141 convened by the Commissioner or his designee.

142 After such hearing, the Commissioner may issue a final order of summary suspension or may find
143 that such summary suspension is not warranted by the facts and circumstances presented. A final order
144 of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to
145 the appropriate circuit court no later than 10 days following issuance of the order. The sole issue
146 before the court shall be whether the Commissioner had reasonable grounds to require the licensee to
147 cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The
148 concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing
149 on the appropriateness of the summary suspension.

150 The willful and material failure to comply with the summary order of suspension or final order of
151 summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the
152 cooperation of any other agency or subdivision of the Commonwealth in the relocation of adults who
153 are residents of a home or facility whose license has been summarily suspended pursuant to this section
154 and in any other actions necessary to reduce the risk of further harm to such residents.

155 § 63.2-1737. Cooperation of Department with other state departments concerning children's residential
156 facilities; interdepartmental regulation of children's residential facilities; summary suspension of
157 children's residential facility licenses under certain circumstances; penalty.

158 A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other
159 state departments in fulfilling their respective licensing and certification responsibilities and in reducing
160 and simplifying the regulations involved in such licensing and certification of children's residential
161 facilities. The Board shall adopt regulations for the interdepartmental regulation of children's residential
162 facilities, including group homes, that shall allow the Department to assist and cooperate with other state
163 departments in fulfilling their respective licensing and certification responsibilities and in reducing and
164 simplifying the regulations involved in such licensing and certification. Notwithstanding any other
165 provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative
166 efforts described in this section may be issued for periods of up to 36 successive months.

167 B. The Board's regulations for the interdepartmental regulation of children's residential facilities shall
168 address the services required to be provided in such facilities as it may deem appropriate to ensure the
169 health and safety of the children. In addition, the Board's regulations shall include, but shall not be
170 limited to (i) specifications for the structure and accommodations of such facilities according to the
171 needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed
172 curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a
173 community liaison who shall be responsible for facilitating cooperative relationships with the neighbors,
174 the school system, local law enforcement, local government officials, and the community at large.

175 C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as
176 a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under
177 minimum standards for licensed child-caring institutions as adopted by the Board and in effect on
178 January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the
179 interdepartmental regulations for children's residential facilities.

180 D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other
181 disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of

182 *the license of any group home or residential facility for children, in conjunction with any proceeding for*
183 *revocation, denial, or other action, when conditions or practices exist in the home or facility that pose*
184 *an immediate and substantial threat to the health, safety, and welfare of the children who are residents*
185 *and the Commissioner believes the operation of the home or facility should be suspended during the*
186 *pendency of such proceeding.*

187 *E. The summary order of suspension shall take effect upon its issuance and shall be served on the*
188 *licensee or its designee as soon as practicable thereafter by personal service and certified mail, return*
189 *receipt requested, to the address of record of the licensee. The order shall state the time, date, and*
190 *location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no*
191 *later than three business days after the issuance of the summary order of suspension and shall be*
192 *convened by the Commissioner or his designee.*

193 *After such hearing, the Commissioner may issue a final order of summary suspension or may find*
194 *that such summary suspension is not warranted by the facts and circumstances presented. A final order*
195 *of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to*
196 *the appropriate circuit court no later than 10 days following issuance of the order. The sole issue*
197 *before the court shall be whether the Commissioner had reasonable grounds to require the licensee to*
198 *cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The*
199 *concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing*
200 *on the appropriateness of the summary suspension.*

201 *The willful and material failure to comply with the summary order of suspension or final order of*
202 *summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the*
203 *cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who*
204 *are residents of a home or facility whose license has been summarily suspended pursuant to this section*
205 *and in any other actions necessary to reduce the risk of further harm to such residents.*

206 § 66-24. Cooperation of Department with other state departments; community group homes and other
207 residential facilities for certain juveniles; licensure; personnel; summary suspension under certain
208 circumstances; penalty.

209 A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their
210 respective licensing and certification responsibilities and in reducing and simplifying the regulations
211 involved in the licensing or certification of children's residential facilities. The Board shall promulgate
212 regulations that shall allow the Department to so assist and cooperate with other state departments.

213 B. The Department is authorized to establish and maintain such a system of community group homes
214 or other residential care facilities as the Department may from time to time acquire, construct, contract
215 for or rent for the care of juveniles in direct state care, pending development of more permanent
216 placement plans. Any community group home or other residential care facility that the Department may
217 contract for or rent for the care of juveniles in direct state care shall be licensed or certified in
218 accordance with the regulations of the Board.

219 Any more permanent placement plans shall consider adequate care and treatment, and suitable
220 education, training and employment for such juveniles, as is appropriate.

221 C. The Department is further authorized to employ necessary personnel for community group homes
222 or other residential care facilities or to contract with private entities for their operation.

223 D. The Board shall promulgate regulations for licensure or certification of community group homes
224 or other residential care facilities that contract with or are rented for the care of juveniles in direct state
225 care pursuant to subsection B.

226 The Board's regulations shall address the services required to be provided in such facilities as it may
227 deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations
228 shall include, but need not be limited to (i) specifications for the structure and accommodations of such
229 facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules
230 concerning allowable activities, local government- and group home- or residential care facility-imposed
231 curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility
232 have a community liaison who shall be responsible for facilitating cooperative relationships with the
233 neighbors, the school system, local law enforcement, local government officials, and the community at
234 large.

235 *E. Pursuant to the procedures set forth in subsection F and in addition to any other legally*
236 *authorized disciplinary actions, the Director may issue a summary order of suspension of the license or*
237 *certificate of any group home or residential facility so regulated by the Department, in conjunction with*
238 *any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or*
239 *facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles*
240 *who are residents and the Director believes the operation of the home or facility should be suspended*
241 *during the pendency of such proceeding.*

242 *F. The summary order of suspension shall take effect upon its issuance and shall be served on the*
243 *licensee or certificate holder or its designee as soon as practicable thereafter by personal service and*

244 certified mail, return receipt requested, to the address of record of the licensee or certificate holder. The
245 order shall state the time, date, and location of a hearing to determine whether the suspension is
246 appropriate. Such hearing shall be held no later than three business days after the issuance of the
247 summary order of suspension and shall be convened by the Director or his designee.

248 After such hearing, the Director may issue a final order of summary suspension or may find that
249 such summary suspension is not warranted by the facts and circumstances presented. A final order of
250 summary suspension shall include notice that the licensee or certificate holder may appeal the Director's
251 decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole
252 issue before the court shall be whether the Director had reasonable grounds to require the licensee to
253 cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The
254 concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing
255 on the appropriateness of the summary suspension.

256 The willful and material failure to comply with the summary order of suspension or final order of
257 summary suspension shall be punishable as a Class 2 misdemeanor. The Director may require the
258 cooperation of any other agency or subdivision of the Commonwealth in the relocation of the juveniles
259 who are residents of a home or facility whose license or certificate has been summarily suspended
260 pursuant to this section and in any other actions necessary to reduce the risk of further harm to such
261 residents.

262 **2. That the Board of Education, the Board of Mental Health, Mental Retardation and Substance**
263 **Abuse Services, the State Board of Juvenile Justice, and the Board of Social Services shall**
264 **promulgate regulations to implement the provisions of this act to be effective within 280 days of its**
265 **enactment.**

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