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SENATE BILL NO. 270

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 30, 2020)

(Patron Prior to Substitute—Senator Bell)

A BILL to amend and reenact §§ 53.1-234 and 54.1-3307 of the Code of Virginia, relating to practice of pharmacy; compounding; regulation by Board of Pharmacy.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-234 and 54.1-3307 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-234. Transfer of prisoner; how death sentence executed; who to be present.

The clerk of the circuit court in which is pronounced the sentence of death against any person shall, after such judgment becomes final in the circuit court, deliver a certified copy thereof to the Director. Such person so sentenced to death shall be confined prior to the execution of the sentence in a state correctional facility designated by the Director. Prior to the time fixed in the judgment of the court for the execution of the sentence, the Director shall cause the condemned prisoner to be conveyed to the state correctional facility housing the death chamber.

The Director, or the assistants appointed by him, shall at the time named in the sentence, unless a suspension of execution is ordered, cause the prisoner under sentence of death to be electrocuted or injected with a lethal substance, until he is dead. The method of execution shall be chosen by the prisoner. In the event the prisoner refuses to make a choice at least 15 days prior to the scheduled execution, the method of execution shall be by lethal injection. Execution by lethal injection shall be permitted in accordance with procedures developed by the Department. At the execution, there shall be present the Director or an assistant, a physician employed by the Department or his assistant, such other employees of the Department as may be required by the Director, and, in addition thereto, at least six citizens who shall not be employees of the Department. In addition, the counsel for the prisoner and a clergyman may be present.

The Director may make and enter into contracts with a pharmacy, as defined in § 54.1-3300, or an outsourcing facility, as defined in § 54.1-3401, for the compounding of drugs necessary to carry out an execution by lethal injection. Any such drugs provided to the Department pursuant to the terms of such a contract shall be used only for the purpose of carrying out an execution by lethal injection. The compounding of such drugs pursuant to the terms of such a contract (i) shall not constitute the practice of pharmacy as defined in § 54.1-3300; (ii) is not subject to the jurisdiction of the Board of Pharmacy, the Board of Medicine, or the Department of Health Professions; and (iii) is exempt from the provisions of Chapter 33 (§ 54.1-3300 et seq.) of Title 54.1 and the Drug Control Act (§ 54.1-3400 et seq.). The pharmacy or outsourcing facility providing such drugs to the Department pursuant to the terms of such a contract shall label each such drug with the drug name, its quantity, a projected expiration date for the drug, and a statement that the drug shall be used only by the Department for the purpose of carrying out an execution by lethal injection.

The identities identity of any pharmacy or outsourcing facility that enters into a contract with the Department for the compounding of drugs necessary to carry out an execution by lethal injection, any officer or employee of such pharmacy or outsourcing facility, and any person or entity used by such pharmacy or outsourcing facility to obtain equipment or substances to facilitate the compounding of such drugs and any information reasonably calculated to lead to the identities of such persons or entities, including their names, shall not be confidential, shall be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and may be subject to discovery or introduction as evidence in any civil proceeding. However, the residential and office addresses, residential and office telephone numbers, social security numbers, and tax identification numbers, of officers and employees of the outsourcing facility and any person or entity used by the outsourcing facility to obtain equipment or substances to facilitate the compounding of such drugs shall be confidential; shall be and exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); and shall not be subject to discovery or introduction as evidence in any civil proceeding unless good cause is shown.

§ 54.1-3307. Specific powers and duties of Board.

A. The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices. The Board shall also control the character and standard of all drugs, cosmetics, and devices within the Commonwealth, investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices, and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding, and disposal of such drugs, cosmetics, and devices that do not conform to the requirements of law.

60 The Board's regulations shall include criteria for:

61 1. Maintenance of the quality, quantity, integrity, safety, and efficacy of drugs or devices distributed,
62 dispensed, or administered.

63 2. Compliance with the prescriber's instructions regarding the drug; *and* its quantity, quality, and
64 directions for use.

65 3. Controls and safeguards against diversion of drugs or devices.

66 4. Maintenance of the integrity of, and public confidence in, the profession and improving the
67 delivery of quality pharmaceutical services to the citizens of Virginia.

68 5. Maintenance of complete records of the nature, quantity, or quality of drugs or substances
69 distributed or dispensed; and of all transactions involving controlled substances or drugs or devices so as
70 to provide adequate information to the patient, the practitioner, or the Board.

71 6. Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled
72 substances.

73 7. Promotion of scientific or technical advances in the practice of pharmacy and the manufacture and
74 distribution of controlled drugs, devices, or substances.

75 8. Impact on costs to the public and within the health care industry through the modification of
76 mandatory practices and procedures not essential to meeting the criteria set out in subdivisions 1 through
77 7 of this section.

78 9. Such other factors as may be relevant to, and consistent with, the public health and safety and the
79 cost of rendering pharmacy services.

80 B. The Board may collect and examine specimens of drugs, devices, and cosmetics that are
81 manufactured, distributed, stored, or dispensed in the Commonwealth.

82 *C. The Board shall report annually by December 1 to the Chairmen of the Senate Committee on*
83 *Education and Health and the House Committee on Health, Welfare and Institutions on (i) the number*
84 *of pharmacies and outsourcing facilities permitted or registered by the Board that perform sterile*
85 *compounding in Virginia or ship sterile compounded drugs into Virginia and (ii) the name of any*
86 *pharmacies or outsourcing facilities that received disciplinary action for a violation of law or regulation*
87 *related to compounding.*