

The Commonwealth of Massachusetts



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WILLIAM F. WELD
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January 21, 1994

To the Honorable Senate and House of Representatives:

Today, as we file House 1 for Fiscal Year 1995, we are also filing several separate bills with important implications for our Budget for the coming fiscal year. Among these bills is the attached legislative proposal entitled "An Act Relative to Enforcement of State Licensing Laws."

This bill provides the Division of Registration with the tools necessary to enforce state licensing laws. It authorizes the various licensing boards within the Division to: take emergency action to suspend licenses in cases of a threat to public safety; prosecute cases of unlicensed practice; assess civil fines up to \$5000 in cases of proven misconduct; and order restitution to customers.

These provisions will aid the Division in ensuring safe and ethical practice among the many professions it licenses and in obtaining redress for consumers injured by unsafe or unethical practice. The expanded range of civil and administrative penalties included in the bill will serve both the professionals and the public. For example, under existing law, a Board's only recourse for unlicensed practice is criminal prosecution by referral to the Attorney General. With the problems of violent crime, limited resources, and crowded court dockets, most of these cases are never prosecuted. When this bill is enacted, the Boards will be able to take independent action without waiting for criminal prosecution.

We urge your prompt and favorable consideration of this bill. These expanded civil enforcement powers will enhance the ability of the Boards of Registration to monitor and discipline licensed professionals and to respond promptly and effectively to citizen complaints.

Respectfully submitted,

William F. Weld

William F. Weld
Governor

Argo Paul Cellucci

Argo Paul Cellucci
Lieutenant Governor

The Commonwealth of Massachusetts

In The Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATIVE TO THE ENFORCEMENT OF STATE LICENSING LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 13 of the General Laws, as appearing in
2 he 1992 Official Edition, is hereby amended by adding, after
3 Section 9B, the following two new sections: —

4 Section 9C. Each board of registration shall have the power to
5 sue and be sued in its official name as an agency of the common-
6 wealth. Each board may invoke the aid of any court of the
7 commonwealth in requiring the appearance and testimony of wit-
8 nesses and the production of documentary evidence. Each board,
9 its members and its agents shall be immune from personal liability
10 ty for actions taken in good faith in the discharge of their respon-
11 sibilities, and the commonwealth shall hold each board, its
12 members and its agents harmless from all costs, damages and
13 attorney's fees arising from claims and suits against them with
14 respect to matters to which such immunity applies.

15 Section 9D. No person filing a complaint or reporting or pro-
16 viding information pursuant to this chapter or assisting any board,
17 at its request, in any manner in discharging its duties and func-
18 tions shall be liable in any cause of action arising out of the
19 receiving of such information or assistance, provided the person
20 making the complaint or reporting or providing such information
21 or assistance does so in good faith and without malice.

1 SECTION 2. Section 61 of Chapter 112 of the General Laws,
2 as appearing in the 1992 Official Edition, is hereby amended by
3 striking the first paragraph in its entirety and inserting in place
4 thereof the following paragraph: —

5 Except as otherwise provided by law, a board of registration
6 within the division of registration may, by majority vote of the
7 whole board and upon a determination made after a hearing that

8 the holder of a license, certificate, registration or authority issued
9 by such board is guilty of any of the offenses enumerated in this
10 section:

11 (a) suspend, revoke, cancel or place on probation such license,
12 certificate, registration or authority;

13 (b) reprimand or censure such holder;

14 (c) assess upon such holder a fine not to exceed five thousand
15 dollars;

16 (d) require such holder to perform up to one hundred hours of
17 public service in a manner and at a time and place determined by
18 the board;

19 (e) require such holder to complete additional education or
20 training or both as a condition of retention or future consideration
21 of reinstatement of said license, certificate, registration and
22 authority;

23 (f) require such holder to practice under appropriate supervi-
24 sion for a period of time determined by the board as a condition of
25 retention or future consideration of reinstatement of said license,
26 certificate, registration or authority;

27 (g) require such holder to participate in an alcohol or drug reha-
28 bilitation program or undergo drug testing, or any combination
29 thereof as a condition of retention or future consideration or rein-
30 statement of said license, certificate, registration or authority; or

31 (h) require restitution, where appropriate, or any combination
32 of these subparagraphs.

33 Each board of registration may discipline the holder of a license,
34 certificate, registration or authority issued by it in accordance with
35 provisions of this section if such holder:

36 (a) is guilty of conduct which places into question the holder's
37 competence to practice his or her profession including, but not lim-
38 ited to, gross misconduct or misconduct in the practice of the pro-
39 fession, or practicing the profession fraudulently or beyond its
40 authorized scope, or with gross incompetence, or with negligence
41 on more than one occasion;

42 (b) is guilty of practicing his or her profession while the ability
43 to practice is impaired by alcohol, drugs, physical disability or
44 mental instability or any combination thereof;

45 (c) is guilty of violating any law, rule or regulation of the board
46 of registration governing the practice of his or her profession;

47 (d) has been convicted of a criminal offense which reasonably
48 calls into question the holder's ability to practice his or her pro-
49 fession;

50 (e) is guilty of dishonesty, fraud or deceit which is reasonably
51 related to the practice of his or her profession;

52 (f) is guilty of knowingly permitting, aiding or abetting an unli-
53 censed person to perform activities requiring a license, certificate,
54 registration or authority;

55 (g) has had a license, certificate, registration or authority issued
56 by another state or territory of the United States, the District of
57 Columbia, or foreign state or nation with authority to issue such a
58 license, certificate, registration or authority revoked, canceled or
59 suspended if the basis for the action would constitute a basis for
60 disciplinary action in the commonwealth.

1 SECTION 3. Said chapter 112, as so appearing, is hereby
2 amended by striking section 65 in its entirety and inserting in
3 place thereof the following section: —

4 Section 65. Each board of registration may refer for criminal
5 prosecution any person who continues to practice any profession
6 or trade after his or her license, certificate, registration or authori-
7 ty authorizing him or her so to do has been suspended, revoked or
8 canceled under authority of section sixty-one; provided, that each
9 board may also refer for such prosecution any person who know-
10 ingly continues to practice any profession or trade after his or her
11 license, certificate, registration or authority has expired and who
12 is not authorized to so practice, except as otherwise permitted by
13 law.

14 Such referral shall be made by the board to the district attorney
15 for the district in which the alleged unlicensed practice occurred
16 or to the attorney general of the commonwealth. Any person
17 found guilty of violation of this section shall be punished by a
18 fine of not more than five thousand dollars, imprisonment for not
19 more than six months, or both

1 SECTION 4. Chapter 112 of the General Laws, as appearing
2 in the 1992 Official Edition, is hereby amended by adding after
3 section 65 the following new sections: —

4 Section 65A. Each board of registration may assess and collect

5 a fine of up to five thousand dollars upon any person who contin-
6 ues to practice any trade or profession after his or her license, cer-
7 tificate, registration or authority to do so has been suspended,
8 revoked, or canceled pursuant to section sixty-one, and upon any
9 person who knowingly practices any trade or profession after his
10 or her license, certificate, registration or authority authorizing him
11 or her to do so has expired.

12 Each board may apply to the appropriate court for an order
13 enjoining the unlicensed practice or ordering payment of any
14 assessed fine or both. The court shall grant an injunction, restrain-
15 ing order or other order as may be appropriate upon a showing by
16 the board that such person has engaged in unlicensed practice.

17 Section 65B. Except as otherwise permitted by law, each board
18 of registration, after a hearing held pursuant to chapter thirty A
19 before any such board having jurisdiction, may assess and collect
20 a fine of up to five thousand dollars upon any person who, without
21 holding the required license, certificate, registration or authority,
22 engages in the practice of any trade or profession for which a
23 license, certificate, registration or authority is required. The provi-
24 sions of this section shall not affect, but shall be in addition to,
25 any other penalty or remedy provided by law.

26 Each board may make application to the appropriate court for
27 an order enjoining unlicensed practice, or payment of any
28 assessed fine or both, and upon a showing by the board that such
29 person has engaged in unlicensed practice, an injunction, restrain-
30 ing order or other order as may be appropriate shall be granted by
31 such court.

32 Section 65C. Each board of registration which has jurisdiction
33 over a licensee whose continued practice poses an immediate and
34 serious threat to the public health, safety or welfare may suspend
35 or refuse to renew the holder's license, certificate, registration or
36 authority pending a hearing on the merits of the allegations
37 against the holder; provided, that such board shall afford the hold-
38 er the opportunity for a hearing pursuant to chapter thirty A on the
39 necessity for the emergency action within seven days of such
40 action. If such hearing is not held within seven days of the board's
41 emergency action, the license, certificate, registration or authority
42 against which action was taken shall be deemed reinstated.
43 Following such hearing, any continuing suspension imposed by a

44 board shall remain in effect until the conclusion of any formal
45 proceeding on the merits of the allegations against the holder,
46 including judicial review thereof, unless sooner dissolved by a
47 court of competent jurisdiction or withdrawn by such board. Each
48 board shall, after proper notice and hearing, adopt rules and regu-
49 lations governing the emergency suspension procedure authorized
50 by this section.

51 Section 65D. Each board of registration shall keep confidential
52 any complaint, report, record or other information received or
53 kept by any board in connection with an investigation conducted
54 by the board pursuant to section sixty-one: provided, however,
55 that, except to the extent that disclosures of records or other infor-
56 mation may be restricted as otherwise provided by law, investiga-
57 tive records or information of the board shall not be kept confi-
58 dential after the board has disposed of the matter under investiga-
59 tion by issuing an order to show cause, by dismissing a complaint
60 or by taking other final action; nor shall the requirement that
61 investigative records or information be kept confidential at any
62 time apply to requests from the person under investigation, the
63 complainant or other state or federal agencies, boards or institu-
64 tions as the board shall determine by regulation.

65 Section 65E. After a complaint has been filed with a board of
66 registration alleging that a holder of a license, certificate, registra-
67 tion or authority issued by such board may be incompetent or
68 unable to practice his or her profession or trade with reasonable
69 skill and safety because such holder's ability to practice is
70 impaired due to mental illness or physical illness, the board may
71 order such holder to be examined by one or more physicians or
72 psychotherapists or both, approved by the board at the board's
73 expense. If the individual fails or refuses to comply with the
74 board's order for such examination, and upon reasonable notice to
75 the holder, the board may apply to the superior court for an order
76 compelling the holder to submit to such examination. If the
77 board's application is granted, the court may, after opportunity for
78 hearing, require the individual to pay to the board its reasonable
79 expenses incurred in obtaining the order, including attorney's
80 fees, unless the court finds an award of expenses unjust. The
81 holder's failure to comply with a court order issued under this
82 section shall constitute grounds for disciplinary action by the

83 board. The report of the examiners shall be made available to the
84 holder and may be received as direct evidence in formal adjudica-
85 tory proceedings; provided, however, that said report shall remain
86 confidential except to the extent it is disclosed in such proceed-
87 ings.

