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**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[1/12/2012](file:///p:\pprever\2011-12\4593_20120112.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑1‑85 SO AS TO PROVIDE FOR THE DISCLOSURE OF CERTAIN INFORMATION RELATING TO PROCEEDINGS BEFORE A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, AMONG OTHER THINGS; BY ADDING SECTION 40‑1‑215 SO AS TO PROVIDE ADMINISTRATIVE CITATIONS, PENALTIES, AND APPEALS FOR A VIOLATION; TO AMEND SECTION 40‑1‑50, RELATING TO THE AUTHORITY OF THE DEPARTMENT, SO AS TO DELETE CERTAIN REQUIREMENTS THE DIRECTOR OF THE DEPARTMENT SHALL FOLLOW WHEN HIRING CERTAIN PERSONNEL OF A PROFESSIONAL OR OCCUPATIONAL LICENSING BOARD, AND TO PROVIDE THE DEPARTMENT MAY PROMULGATE CERTAIN REGULATIONS; TO AMEND SECTION 40‑1‑70, RELATING TO POWERS AND DUTIES OF THESE BOARDS, SO AS TO PROVIDE THESE BOARDS MAY DELEGATE ANY DUTY, RIGHT, OR RESPONSIBILITY OF THE BOARD TO THE DEPARTMENT; TO AMEND SECTION 40‑1‑80, RELATING TO INVESTIGATIONS BY THESE BOARDS, SO AS TO PROVIDE A PERSON FILING A WRITTEN COMPLAINT WITH A BOARD OR THE DIRECTOR MAY REQUEST HIS IDENTITY BE WITHHELD FROM THE LICENSEE AGAINST WHOM THE COMPLAINT IS MADE FOR A GOOD CAUSE, AND TO PROVIDE THAT THE APPROPRIATE BODY MUST HOLD A HEARING ON THE MOTION AND RENDER A DECISION ON THE MOTION WITHIN THIRTY DAYS AFTER THE MOTION IS FILED; TO AMEND SECTION 40‑1‑90, RELATING TO DISCIPLINARY ACTION PROCEEDINGS BEFORE A BOARD, SO AS TO PROVIDE AN ALTERNATE MEANS OF SERVING NOTICE TO A LICENSEE, AND TO PROVIDE THAT IN THE ABSENCE OF A QUORUM OF THE BOARD IN A DISCIPLINARY HEARING DUE TO RECUSALS OF BOARD MEMBERS, THE DIRECTOR OR HIS DESIGNEE MAY APPOINT AN IMPARTIAL TRIBUNAL TO REACH A FINAL DETERMINATION OF THE PENDING DISCIPLINARY MATTER; TO AMEND SECTION 40‑1‑100, RELATING TO IMMUNITIES OF THE DIRECTOR AND THE MEMBERS OF THE BOARD, SO AS TO PROVIDE THE DIRECTOR OR INDIVIDUAL BOARD MEMBERS MAY NOT BE INDIVIDUALLY LIABLE FOR ACTIONS THEY TAKE IN THEIR OFFICIAL CAPACITIES EXCEPT UPON A SHOWING OF ACTUAL MALICE; AND TO AMEND SECTION 40‑1‑115, RELATING TO JURISDICTION OF A BOARD, SO AS TO PROVIDE A BOARD MAY FINE A LICENSE APPLICANT FOR UNAUTHORIZED PRACTICE AS A CONDITION OF LICENSURE OR RENEWAL OF A LICENSE IF THE APPLICANT HAS PRACTICED WITHOUT A LICENSE OR WITH A LAPSED, SUSPENDED, OR REVOKED LICENSE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40‑1‑85. (A)(1) A person connected with a complaint, investigation, or other proceeding before a board including, but not limited to, a witness, counsel, a counsel staff, a board member, a board employee, a court reporter, a department employee, or an investigator may not mention the existence of the complaint, investigation, or other proceeding, or disclose any information tending to identify the initial complainant, identity of the licensee who is the subject of the complaint or any witness, or discuss testimony or other evidence in the complaint, investigation, or proceeding, except as otherwise provided in this section.

(2) Information may be disclosed to a person involved with and having a direct interest in the complaint, investigation, or other proceeding to the extent necessary for the proper disposition of the complaint, investigation, or other proceeding. The name of the initial complainant and a copy of the complaint must be provided to the licensee who is the subject of the complaint, investigation, or proceeding unless the board, hearing officer, or panel determines good cause to withhold that information exists.

(3) When the board receives information in a complaint, investigation, or other proceeding indicating a violation of state or federal law, the board may provide that information, to the extent the board considers necessary, to the appropriate state or federal law enforcement agency or regulatory body. The board may provide information it considers necessary or appropriate to a substance abuse treatment program facility or monitoring program approved by the board, and this information must continue to be kept confidential and privileged from disclosure, except as provided by law.

(B) An oral or written communication to the board, department, staff, counsel, expert reviewers, witnesses, or any other person acting on behalf of the board or department during the investigation, hearing, or adjudication of the disciplinary matters including, but not limited to, investigative reports concerning interviews and issues under investigation, correspondence, summaries, incident reports, computer printouts, and documents created during peer review proceedings are privileged from disclosure. A person or entity making these communications is immune from liability.

(C) An investigative file of the department is confidential, except as provided for in subsection (A).

(D) When the board authorizes a formal complaint regarding allegations of misconduct, this complaint and any related answer must be available for public inspection and copying ten days after the answer is filed, or if no answer is filed, ten days after the expiration of the time to answer.

(E) Unless and until otherwise ordered by the board, all proceedings and hearings must be confidential and closed to the public unless the respondent requests in writing that they be public. The board has the discretion to open the proceedings but shall not disclose the identity of the initial complainant be disclosed unless he testified as a witness in the formal proceedings.

(F) A final order of the board is public unless otherwise ordered by the board. A final order is any action by the board that ends in the final, written disposition of a formal complaint pursuant to subsection (E).

(G) Nothing in this chapter may be construed to prohibit a respondent or his counsel from exercising the right of the respondent to due process under the law or as prohibiting him access to evidence relevant to the formal charges, documents to be presented at the hearing, and statements of witnesses who will be called at the hearing.”

SECTION 2. Article 1, Chapter 1, Title 40 of the 1976 Code is amended by adding:

“Section 40‑1‑215. (A) A board referred to in Section 40‑1‑40(B) may promulgate regulations to allow administrative citations for a violation of a particular practice act. These regulations must provide a schedule of fines.

(B) An administrative penalty authorized for a violation of this chapter is separate from and in addition to any other civil or criminal penalty.

(C) An entity or individual assessed an administrative penalty may appeal that penalty to the board within ten days after receipt of the citation. If an appeal is filed, the department shall schedule a hearing before the board, and the board shall make a determination in the matter. If no appeal is filed, the citation is considered a final order and any administrative penalties must be paid within thirty days after receipt of the citation or other written demand.”

SECTION 3. Section 40‑1‑50 of the 1976 Code is amended to read:

“Section 40‑1‑50. (A)(1) The department is responsible for all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the boards and commissions enumerated in Section 40‑1‑40.

(2) The director shall employ and supervise personnel necessary to effectuate the provisions of this article for each board provided for in Section 40‑1‑40. ~~When hiring a person charged with evaluating or administering professional qualifications or licensing standards, the director must select from a list of three candidates submitted by the appropriate licensing board. However, a candidate whose name is submitted to the director must be chosen from a list of all candidates found to be qualified by the Human Management Office of the department.~~ The ~~authority to~~ director may remove an employee of the department ~~is vested with the Director of the Department of Labor, Licensing and Regulation~~.

(3) The director shall establish compensation for personnel assigned to the boards as the director considers necessary and appropriate for the administration of this article. Compensation and necessary expenses incurred in the performance of duties by personnel assigned to the board must be paid as an expense of the board in the administration of this article.

(4) The director shall enter into contracts and agreements ~~the director~~ that he considers necessary or incidental to carry out the provisions of this article so as to provide for all services required by each board.

(5) Board members must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the board. The director, within the limits set by the Comptroller General, shall establish reimbursement standards for travel and other expenses incurred by a board member in the performance of the board member’s official duties. Compensation and reimbursements paid to board members under this subsection must be paid as an expense of the board in the administration of this article and the board’s chapter and must be paid from the fees received by the board pursuant to the provisions of this article or in a manner prescribed by the ~~Department of Labor, Licensing and Regulation~~ department by regulation.

(6) The director shall maintain a separate account for funds collected on behalf of a board and shall indicate the expenses allotted to the board. The director shall adjust fees for revenue‑funded boards in accordance with Section 40‑1‑50(D).

(7) The director annually shall prepare a report to the Governor and the General Assembly indicating those regulated trades, occupations, and professions that do not meet the spirit and intent of Section 40‑1‑10.

(8) The director may perform any additional administrative functions requested by the boards.

(B)(1) The department shall keep a record of the proceedings of each board and shall maintain a registry of all applications for licensure, permitting, certification, and registration. The registry ~~shall~~ must include the name, age, and last known address of each applicant, the place of business of the applicant, the education, experience, and other qualifications of the applicant, type of examination required, whether or not an authorization to practice was granted, the date of the action of the department, and other information considered necessary by the board.

(2) Except as otherwise required by law, the record of a board’s proceedings and its registry of applicants must be open to public inspection, and a copy of the registry must be provided upon request and payment of a fee.

(3) Records of a board and its registry are prima facie evidence of its proceedings, and a copy certified by the administrator or the director under seal is admissible as evidence with the same force and effect as the original.

(C) The department may prepare and publish a roster for each respective board containing the names and places of business of persons licensed under this article. A copy of the roster must be provided upon request and upon payment of a fee ~~which~~ that may not exceed the cost of printing and distribution of the roster.

(D)(1) Initial fees for revenue‑funded boards must be established by each board and ~~shall~~ must serve as the base for necessary administrative adjustments. Each board, on at least a biennial basis, shall provide the director with a statement of anticipated expenditures, program changes, and other information as may be used in determining fees for the next biennial period.

(2) ~~Fees~~ A fee for a revenue‑funded ~~boards~~ board must be assessed, collected, and adjusted on behalf of each board by the department in accordance with this article. ~~Fees~~ This fee may be adjusted biennially to ensure that ~~they are~~ it is sufficient but not excessive to cover expenses including the total of the direct and indirect costs to the State for the operations of each respective board. ~~Fees~~ A fee must be deposited in ~~accounts~~ an account established for each respective board.

(3) The following steps must be used in the development and analysis of a fee ~~structures~~ structure:

(~~1~~a) determine current financial position of the program. Each month, the department’s administrative section shall prepare statements reflecting monthly revenue collection activity and related program expenses for each board program. The financial standing of a board program must be reviewed each biennium for boards that renew biennially, annually for boards that renew on an annual basis, and more frequently if indicators evidence a significant financial fluctuation of more than ten percent variance between a program’s revenue and related expenses;

(~~2~~b) project future activity and related costs of the program~~.~~ by reviewing historical volume information and adjusting trends to reflect changes in the industry, changes in the program, indicators from the board members to the staff, and general economic indicators, project program activity including, but not limited to, renewals and new applicants for the upcoming two to three years. Based on these population projections, forecast program revenues using the current fee structure. With input from the board and the staff, analyze related program direct board costs for the upcoming two to three years, based on historical trends, changes in program requirements, changes to expenditure centers, and changes in staffing requirements. To these direct costs, add the program’s proportionate share of other related costs of the program including, but not limited to, administration of exams, agency administration, and information systems to arrive at the total program cost;

(~~3~~c) determine the projected financial position of the program, propose changes where necessary, and compare the total projected revenue at the current fees to the total projected costs of the program over the next two to three years. If the current fees and the projected program activity do not support the projected program’s expenses, develop alternative fee structures which would ensure the program’s continuing financial stability as required by law;

(~~4~~d) present findings to the director and staff for discussion, revision, evaluation, and adoption. While developing fee analyses, maintain communications with staff and agency management to ensure all necessary factors are evaluated and cost savings, efficiencies, and alternative cost reduction scenarios are pursued. Present fee analyses to board staff and management for discussion and revision where necessary. Propose alternatives to the director for consideration when preparing to adopt proposed fee schedules to achieve a structure sufficient to support the program.

(4) ~~Fees~~ A fee for a board funded by general appropriations must be set by the General Assembly and deposited into the general fund. ~~All fees are~~ A fee is nonrefundable.

(E) Where appropriate, the director shall adopt the necessary procedures to implement the biennial renewal of authorizations to practice in a manner as to ensure that the number of renewals is reasonably evenly distributed throughout each two‑year period. During any transition, fees must be proportionate to the biennial fee.

(F)(1) A board may elect to delegate to the department the authority to issue an authorization to practice to an applicant whose proof of qualifications falls within established guidelines set by the board.

(2) A board may elect to delegate to the department the authority to deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the board, who has failed to comply with a final order of a board, or who has failed to demonstrate the basic qualifications or standards for practice authorization contained in the board’s licensing act. The applicant may appeal the denial to the board which has final regulatory decision‑making authority for reconsideration. The board may uphold the denial, order issuance of the authorization to practice, or order issuance of the authorization to practice upon conditions set by the board. If the administrative decision is upheld, the applicant may reapply at the end of a twelve‑month period.

(G) The department shall suspend the practice authorization issued by a board administered by this article to a person who submits a check, money draft, or similar instrument for payment of a fee which is not honored by the financial institution named. The suspension becomes effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to the person’s address. Upon notification of suspension, the person may reinstate the authorization to practice upon payment of the fee and penalties required under statute or regulation. This suspension is exempt from the Administrative Procedures Act.

(H) The department shall revoke the authorization to practice of a person found to be in violation of the Family Independence Act as it relates to child support enforcement requirements.

(I) The department may prepare an annual report for submission to the Governor.

(J) ~~It is the duty of~~ The director ~~to~~ shall notify and seek approval of the board or commission at least thirty days in advance of filing with Legislative Council as required by Section 1‑23‑30 ~~of~~ any proposed changes in any rules or regulations which may affect the practice or service of the respective licensing board or commission.

(K) The department may promulgate regulations related to the administration of this title.”

SECTION 4. Section 40‑1‑70 of the 1976 Code is amended to read:

“Section 40‑1‑70. The powers and duties of regulatory boards include, but are not limited to:

(1) determining the eligibility of applicants for examination and licensure;

(2) examining applicants for licensure including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;

(3) establishing criteria for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;

(4) adopting a code of professional ethics appropriate to the profession or occupation which it licenses or regulates;

(5) evaluating and approving continuing education course hours and programs;

(6) conducting hearings on alleged violations of this article and regulations promulgated under this article;

(7) resolving consumer complaints, where appropriate and possible;

(8) disciplining persons licensed under this article in a manner provided for in this article;

(9) promulgating regulations which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1‑23‑30~~.~~; and

(10) delegating any duty, right, or responsibility of the board to the department.”

SECTION 5. Section 40‑1‑80 of the 1976 Code is amended to read:

“Section 40‑1‑80. (A) ~~If~~ The director may initiate an investigation if he:

(1) has reason to believe that:

(a) a person has violated a provision of this article ~~or~~, a regulation promulgated under this article, or ~~the~~ a licensing act or regulation of a board; or

(b) ~~that~~ a licensee has become unfit to practice the profession or occupation; or

(2) if a person files a written complaint with the board or the director charging a person with ~~the~~ a violation of a provision of this article or a regulation promulgated under this article~~, the director may initiate an investigation~~.

(B) In conducting the investigation, the director may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter ~~which is~~ relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of ~~persons~~ people having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure of a person to obey a subpoena or to answer questions propounded by the director, the director may apply to ~~an administrative law judge~~ the Administrative Law Court for an order requiring the person to comply.

(C) A person filing a written complaint with a board or the director charging a person with a violation of a provision of this article or a regulation promulgated under this article may simultaneously file a written motion to withhold his identity from the licensee that is the subject of the complaint. This motion must set forth specific reasons why good cause for withholding this information exists. The applicable board, panel, hearing officer, or its designee must hear and decide the motion within thirty days after filing.”

SECTION 6. Section 40‑1‑90 of the 1976 Code is amended to read:

“Section 40‑1‑90. (A) The results of an investigation must be presented to the board. If from these results it appears that a violation has occurred or that a licensee has become unfit to practice the profession or occupation, the board, in accordance with the Administrative Procedures Act, may take disciplinary action authorized by Section 40‑1‑120. No disciplinary action may be taken unless the matter is presented to and voted upon by the board. The board may designate a hearing officer or hearing panel to conduct hearings or take other action ~~as may be~~ necessary under this section.

(B) For the ~~purpose~~ purposes of a proceeding under this article, the department may administer oaths and issue subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers, and records on behalf of the board or, upon request, on behalf of a party to the case. Upon failure to obey a subpoena or to answer questions propounded by the board or its hearing officer or panel, the board may apply to ~~an administrative law judge~~ the Administrative Law Court for an order requiring the person to comply with the subpoena.

(C) For the purposes of this article, service of notice upon a licensee who cannot be found at the last known address provided by the licensee may be made by leaving with the director or his designee a copy of the notice, any accompanying documents, and proof of attempted service at the last known address.

(D) If a quorum of the board cannot be achieved due to the recusal of board members, the director or his designee may appoint an impartial tribunal that shall make a final determination of the matter pending before the board.”

SECTION 7. Section 40‑1‑100 of the 1976 Code is amended to read:

“Section 40‑1‑100. (A)(1) When the board has reason to believe that a person is violating or intends to violate a provision of this article or a regulation promulgated under this article, in addition to all other remedies, ~~it~~ the board may order the person immediately to cease and desist from engaging in the conduct. ~~If the person is practicing a profession or occupation without being licensed under this article, is violating a board order, a provision of this article, or a regulation promulgated under this article,~~ The board also may apply, in accordance with the rules of the Administrative Law Court, to ~~an administrative law judge~~ the Administrative Law Court for a temporary restraining order of a person:

(a) practicing a profession or occupation without being licensed pursuant to this article; or

(b) violating a board order, provision of this article, or regulation promulgated pursuant to this article.

(2) ~~No~~ A board member ~~or~~, the director ~~of the Department of Labor, Licensing and Regulation~~, or ~~another~~ other employee of the department may not be held individually liable for damages resulting from a wrongful temporary restraining order or for an action taken by the board or a member of the board in their official capacity absent a showing of actual malice.

(B) The board may seek from ~~an administrative law judge~~ the Administrative Law Court other equitable relief to enjoin the violation or intended violation of this article or a regulation promulgated under this article.”

SECTION 8. Section 40‑1‑115 of the 1976 Code is amended to read:

“Section 40‑1‑115. (A) A board has jurisdiction:

(1) over the actions committed or omitted by current and former licensees during the entire period of licensure~~. The board has jurisdiction~~; and

(2) to act on any matter ~~which~~ that arises during the practice authorization period.

(B) The board may impose a fine for the unauthorized practice of a profession or occupation regulated by this title on an applicant:

(1) for initial licensure in the profession or occupation who has practiced this profession or occupation without a license; and

(2) for renewal of licensure in the profession or occupation who practices the profession or occupation during a period in which this license is lapsed, suspended, or revoked.”

SECTION 9. This act takes effect upon approval by the Governor.

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