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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 40-1-85 SO AS TO PROVIDE
13 FOR THE DISCLOSURE OF CERTAIN INFORMATION
14 RELATING TO PROCEEDINGS BEFORE A PROFESSIONAL
15 OR OCCUPATIONAL LICENSING BOARD UNDER THE
16 DEPARTMENT OF LABOR, LICENSING AND
17 REGULATION, AMONG OTHER THINGS; BY ADDING
18 SECTION 40-1-215 SO AS TO PROVIDE ADMINISTRATIVE
19 CITATIONS, PENALTIES, AND APPEALS FOR A
20 VIOLATION; TO AMEND SECTION 40-1-50, RELATING TO
21 THE AUTHORITY OF THE DEPARTMENT, SO AS TO
22 DELETE CERTAIN REQUIREMENTS THE DIRECTOR OF
23 THE DEPARTMENT SHALL FOLLOW WHEN HIRING
24 CERTAIN PERSONNEL OF A PROFESSIONAL OR
25 OCCUPATIONAL LICENSING BOARD, AND TO PROVIDE
26 THE DEPARTMENT MAY PROMULGATE CERTAIN
27 REGULATIONS; TO AMEND SECTION 40-1-70, RELATING
28 TO POWERS AND DUTIES OF THESE BOARDS, SO AS TO
29 PROVIDE THESE BOARDS MAY DELEGATE ANY DUTY,
30 RIGHT, OR RESPONSIBILITY OF THE BOARD TO THE
31 DEPARTMENT; TO AMEND SECTION 40-1-80, RELATING
32 TO INVESTIGATIONS BY THESE BOARDS, SO AS TO
33 PROVIDE A PERSON FILING A WRITTEN COMPLAINT
34 WITH A BOARD OR THE DIRECTOR MAY REQUEST HIS
35 IDENTITY BE WITHHELD FROM THE LICENSEE AGAINST
36 WHOM THE COMPLAINT IS MADE FOR A GOOD CAUSE,
37 AND TO PROVIDE THAT THE APPROPRIATE BODY MUST
38 HOLD A HEARING ON THE MOTION AND RENDER A
39 DECISION ON THE MOTION WITHIN THIRTY DAYS
40 AFTER THE MOTION IS FILED; TO AMEND SECTION
41 40-1-90, RELATING TO DISCIPLINARY ACTION
42 PROCEEDINGS BEFORE A BOARD, SO AS TO PROVIDE AN

1 ALTERNATE MEANS OF SERVING NOTICE TO A
2 LICENSEE, AND TO PROVIDE THAT IN THE ABSENCE OF
3 A QUORUM OF THE BOARD IN A DISCIPLINARY
4 HEARING DUE TO RECUSALS OF BOARD MEMBERS, THE
5 DIRECTOR OR HIS DESIGNEE MAY APPOINT AN
6 IMPARTIAL TRIBUNAL TO REACH A FINAL
7 DETERMINATION OF THE PENDING DISCIPLINARY
8 MATTER; TO AMEND SECTION 40-1-100, RELATING TO
9 IMMUNITIES OF THE DIRECTOR AND THE MEMBERS OF
10 THE BOARD, SO AS TO PROVIDE THE DIRECTOR OR
11 INDIVIDUAL BOARD MEMBERS MAY NOT BE
12 INDIVIDUALLY LIABLE FOR ACTIONS THEY TAKE IN
13 THEIR OFFICIAL CAPACITIES EXCEPT UPON A SHOWING
14 OF ACTUAL MALICE; AND TO AMEND SECTION 40-1-115,
15 RELATING TO JURISDICTION OF A BOARD, SO AS TO
16 PROVIDE A BOARD MAY FINE A LICENSE APPLICANT
17 FOR UNAUTHORIZED PRACTICE AS A CONDITION OF
18 LICENSURE OR RENEWAL OF A LICENSE IF THE
19 APPLICANT HAS PRACTICED WITHOUT A LICENSE OR
20 WITH A LAPSED, SUSPENDED, OR REVOKED LICENSE.

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

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

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

38 (2) Information may be disclosed to a person involved with
39 and having a direct interest in the complaint, investigation, or other
40 proceeding to the extent necessary for the proper disposition of the
41 complaint, investigation, or other proceeding. The name of the
42 initial complainant and a copy of the complaint must be provided
43 to the licensee who is the subject of the complaint, investigation, or

1 proceeding unless the board, hearing officer, or panel determines
2 good cause to withhold that information exists.

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

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

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

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

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

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

40 (G) Nothing in this chapter may be construed to prohibit a
41 respondent or his counsel from exercising the right of the
42 respondent to due process under the law or as prohibiting him
43 access to evidence relevant to the formal charges, documents to be

1 presented at the hearing, and statements of witnesses who will be
2 called at the hearing.”

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

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7 “Section 40-1-215. (A) A board referred to in Section
8 40-1-40(B) may promulgate regulations to allow administrative
9 citations for a violation of a particular practice act. These
10 regulations must provide a schedule of fines.

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

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

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

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

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

42 (3) The director shall establish compensation for personnel
43 assigned to the boards as the director considers necessary and

1 appropriate for the administration of this article. Compensation
2 and necessary expenses incurred in the performance of duties by
3 personnel assigned to the board must be paid as an expense of the
4 board in the administration of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (2b) project future activity and related costs of the program-
40 by reviewing historical volume information and adjusting trends to
41 reflect changes in the industry, changes in the program, indicators
42 from the board members to the staff, and general economic
43 indicators, project program activity including, but not limited to,

1 renewals and new applicants for the upcoming two to three years.
2 Based on these population projections, forecast program revenues
3 using the current fee structure. With input from the board and the
4 staff, analyze related program direct board costs for the upcoming
5 two to three years, based on historical trends, changes in program
6 requirements, changes to expenditure centers, and changes in
7 staffing requirements. To these direct costs, add the program's
8 proportionate share of other related costs of the program including,
9 but not limited to, administration of exams, agency administration,
10 and information systems to arrive at the total program cost;

11 (3c) determine the projected financial position of the
12 program, propose changes where necessary, and compare the total
13 projected revenue at the current fees to the total projected costs of
14 the program over the next two to three years. If the current fees
15 and the projected program activity do not support the projected
16 program's expenses, develop alternative fee structures which
17 would ensure the program's continuing financial stability as
18 required by law;

19 (4d) present findings to the director and staff for
20 discussion, revision, evaluation, and adoption. While developing
21 fee analyses, maintain communications with staff and agency
22 management to ensure all necessary factors are evaluated and cost
23 savings, efficiencies, and alternative cost reduction scenarios are
24 pursued. Present fee analyses to board staff and management for
25 discussion and revision where necessary. Propose alternatives to
26 the director for consideration when preparing to adopt proposed
27 fee schedules to achieve a structure sufficient to support the
28 program.

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

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

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

42 (2) A board may elect to delegate to the department the
43 authority to deny an authorization to practice to an applicant who

1 has committed an act that would be grounds for disciplinary action
2 under this article or the licensing act of the board, who has failed
3 to comply with a final order of a board, or who has failed to
4 demonstrate the basic qualifications or standards for practice
5 authorization contained in the board's licensing act. The applicant
6 may appeal the denial to the board which has final regulatory
7 decision-making authority for reconsideration. The board may
8 uphold the denial, order issuance of the authorization to practice,
9 or order issuance of the authorization to practice upon conditions
10 set by the board. If the administrative decision is upheld, the
11 applicant may reapply at the end of a twelve-month period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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31 “Section 40-1-80. (A) If The director may initiate an
32 investigation if he:

33 (1) has reason to believe that:

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

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

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

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

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

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

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

36 (B) For the ~~purpose~~ purposes of a proceeding under this article,
37 the department may administer oaths and issue subpoenas for the
38 attendance and testimony of witnesses and the production and
39 examination of books, papers, and records on behalf of the board
40 or, upon request, on behalf of a party to the case. Upon failure to
41 obey a subpoena or to answer questions propounded by the board
42 or its hearing officer or panel, the board may apply to ~~an~~

1 ~~administrative law judge~~ the Administrative Law Court for an
2 order requiring the person to comply with the subpoena.

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

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

12
13 SECTION 7. Section 40-1-100 of the 1976 Code is amended to
14 read:

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

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

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

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

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

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

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“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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