

**SOUTH CAROLINA BUILDING CODES COUNCIL  
110 CENTERVIEW DRIVE ROOM 105  
COLUMBIA, SOUTH CAROLINA  
WEDNESDAY, NOVEMBER 9, 2005**

**MEMBERS PRESENT**

Frank Hodge, Chair  
Gregory P. Parsons, Vice Chair  
Kenneth Padgett  
Lloyd Schumann  
Earnest F. Dorsey  
James A. Ham, Jr.  
Frank Hill  
Wendell Davis  
Gable D. Stubbs  
Thomas Brock  
Douglas Darby

**MEMBERS ABSENT**

William McDowell  
Van M. McAlister  
Richard Sendler  
Mike Thomas

**STAFF PRESENT**

Gary Wiggins  
Jennie Meade  
Sharon Dantzler

**OTHERS PRESENT**

J. Stan Owen  
Phyllis Green  
Verel Martin  
Richard A Spruce  
Shannon Poteat  
Clay Pendarvis  
Georgia Toney

James Barnes  
Theodore R. Reed  
Robert M Patterson  
Michael Platt  
Steve Martin  
Michael Moore  
Buddy Skinner

Dona Caldwell  
Mallachi Martin  
Lawrence Gardner  
Ronald L Brewer  
Jeff Barone  
Gerald Poss  
John Reich

**NOTE:** The Notice and Agenda for the November 9, 2005 meeting of the South Carolina Building Codes Council were posted in accordance with Section 30-4-80 of the 1976 amended Code, relating to the Freedom of Information Act.

**1. Call to Order**

The November 9, 2005 meeting of the S. C. Building Codes Council was called to order at 9:02 AM by Chairman Frank Hodge.

**2. Approval of Agenda**

Chairman Hodge asked if there were any changes to the Agenda. Mr. Frank Hill made the motion to approve the agenda as written. Mr. Ernest Dorsey seconded the motion and the vote was unanimous.

**3. Approval of Minutes**

Chairman Hodge asked if there were any corrections to the minutes of the August 24, 2005 meeting. Mr. Hill made the motion to accept the minutes as written and seconded by Mr. Kenneth Padgett. The vote was unanimous.

#### **4. Approval/Disapproval for Absent Members**

Staff was notified that Mr. Michael Thomas was unable to attend for medical reasons and Mr. Van McAlister and Mr. Richard Sendler were out of the country therefore unable to attend. Chairman Hodge stated that these are approved absences.

#### **5. Old Business**

**A. Recommendation to increase the requirements for the Plans Examiner Registration Classification** - Chairman Hodge recognized Mr. Gary Wiggins. Mr. Wiggins said, at the last Council meeting, staff had requested that the Plans Examiner classification qualifications be increased to include a certification for each of the disciplines for which the plans examiner will be performing review, based on the employing jurisdiction's position description. He said, presently, to qualify, as a plans examiner a person only has to have the building plans examiner certification. Mr. Wiggins went on to say that staff is requesting to place the Plans Examiner classification into a similar category as to the General and Residential Combination classifications, which require certifications for each of the disciplines that the individuals are working in. He continued to say that the Council was concerned about the number of existing registrants that might be affected. Mr. Wiggins reported that staff reviewed all Plans Examiner licenses and found seven registrants who have only one certification. All others have either the General Combination or Building Official certifications. Mr. Wiggins stated staff has prepared, at Council's request, a proposal (attached) that the qualifications for the Plans Examiner classification be changed, effective January 1, 2006, for all newly hired or reclassified Plans Examiners. Council reviewed the written recommendation. After some discussion, a motion to accept the recommendation was made by Mr. Parsons and seconded by Mr. Ernest Dorsey. The motion carried with eight votes in favor, one against and one abstention (Mr. Frank Hill).

**B. Proposed Amendment to the Engine Act** - Chairman Hodge recognized Mr. Gary Wiggins. Mr. Wiggins stated that at its last meeting, Council was asked to review the proposed amendments to the engine act. He said at that meeting, Council requested additional time to digest the proposed amendments. He went on to say that since the last meeting, the amendments have been revised (revised document attached) to address Council's concerns. Mr. Wiggins stated that staff was requesting Council endorse the amendments. After discussion the motion was made by Mr. Hill to endorse the proposed amendments to the Engine Act. Mr. Wendell Davis seconded the motion and the vote was unanimous.

#### **7. New Business**

**A. Pyrotechnic Safety Board Request for moratorium of IFC Section 3308.11** - Chairman Hodge recognized Mr. Jerry Wingard of the Pyrotechnic Safety Board. Mr. Wingard stated that there have been several interpretations of the above stated section made by various Fire Officials. He said because of the varying interpretations, the Pyrotechnic Safety Board decided to request the Council place a moratorium on this section, until the section can be clarified. After some discussion, Mr. Wiggins stated that the Council could not place a moratorium on any section of the code without going through the statutory process, which would require a minimum of two years. Mr. Parsons

made a motion to deny the request with the second from Mr. Thomas Brock. The vote was unanimous.

**B. License Re-activation Requests** - Chairman Hodge recognized Mr. Wiggins. Mr. Wiggins stated that all Code Enforcement Officers who are registered must reapply for registration by the last day of June of each odd numbered year. He went on to say registrants have a maximum thirty-day grace period to register. Mr. Wiggins said after the grace period, issuance of a registration is then at the discretion of the Council.

**(1) Lawrence Gardner, City of Cayce** - Chairman Hodge asked Mr. Gardner if he had fulfilled the continuing education requirement. Mr. Gardner stated that he had. Mr. Steve Martin, Mr. Gardner's supervisor, stated that the registration renewal application was submitted to the jurisdiction and was not processed in a timely manner. After discussion, Mr. Hill made the motion to reinstate the registration for Lawrence Gardner. Mr. Padgett seconded the motion and the vote was unanimous.

**(2) J. Stan Owen, City of Clinton** - Mr. Owen stated that he returned to work the middle of June (medical leave) and did not remember to renew his registration. Chairman Hodge verified that Mr. Owens continuing education was acceptable. Mr. Hill made the motion to reinstate the registration for J. Stan Owen. Mr. Dorsey seconded the motion and the vote was unanimous.

**C. Update on NEC adoption process** - Chairman Hodge recognized Mr. Wiggins. Mr. Wiggins stated that the first six-month period of the adoption process has passed. Staff has received one request scheduled to go before the study committee on December 14, 2005. The findings of the committee will be reported back to Council at the February 22, 2006 meeting.

**D. Investigative Review Committee Recommendations** - Chairman Hodge recognized Mr. Wiggins. Mr. Wiggins stated that three cases involving Code Enforcement Officers were reviewed by the Investigative Review Committee (report attached). He stated that in all three cases, cease and desist orders were issued and the recommendation to Council is to officially close the cases. After discussion the motion was made by Mr. Brock to close the cases. Mr. Hill seconded the motion and the vote was unanimous.

## **8. Public Comments**

Chairman Hodge stated that he had been assured by ICC that staff would be in receipt of copies of the 2006 International Code Series prior to the next meeting and the issue would be on the next agenda.

## **9. Date of Next Meeting**

February 22, 2006.

## **10. Adjournment**

The motion to adjourn was made by Mr. Hill and seconded by Mr. Thomas. The meeting adjourned at 10:10 am.

### **EXHIBIT 1 (Tab 1)**

At its last meeting, staff requested that Council consider requiring individuals registered as plans examiners, to obtain certifications for each of the four major construction disciplines for which they perform plans review. The request raised issues of concern that needed some clarification. Staff, therefore, volunteered to clarify the request and resubmit it for consideration at the November meeting.

#### **BACKGROUND (Submitted at the August Meeting)**

The Code Enforcement Officer's Registration Program presently has three registration classifications, G2 (General Combination Inspector), G3 (Residential Combination Inspector) and PE (Plans Examiner), which affect two or more construction disciplines. To qualify for registration in the G2 and G3 classifications, an individual must be certified in the disciplines for which he or she is required to perform inspections, based on the job description.

G2 (General Combination Inspector) requires certification in two or more of the following disciplines, based on the job description.

- Commercial Building Inspector
- Commercial Electrical Inspector
- Commercial Mechanical Inspector
- Commercial Plumbing Inspector

G3 (Residential Combination Inspector) requires certification in two or more of the following disciplines, based on the job description.

- Residential Building Inspector
- Residential Electrical Inspector
- Residential Mechanical Inspector
- Residential Plumbing Inspector

To qualify for the PE classification, however, an individual need only hold one certification as a Building Plans Examiner. Performance of a plan review requires the examiner to be proficient in the building, plumbing, electrical and mechanical disciplines.

#### **SUPPLEMENTARY INFORMATION**

G1 (Building Official) requires certification as a building official or equivalent. A G1 registration qualifies a person to administer a building inspection department and allows the holder to perform all of the technical functions therein.

SI (Specialty Inspector) requires certification in one of the four (building, plumbing, electrical, mechanical) major construction disciplines. A SI performs inspections in a single specialty only.

LPE (Limited Plans Examiner) commonly referred to as a "grandfathered registration" requires no certifications if the CEO was in position when the law went into effect and meets all criteria for reregistration.

PPE (Provisional Plans Examiner) allows a specified time period for new CEOs entering the

profession without certification, to obtain certification in the position for which he/she was hired. The provisional certificate is a one time issue and cannot be renewed.

## **CURRENT PRACTICE**

It is common for a code enforcement officer (CEO) to be assigned more than one technical function, by the local jurisdiction. Recognizing the fact that it is not logical to create a registration category for every conceivable combination of duties that a CEO could be assigned by a local jurisdiction, the state law and existing registration classifications permit multiple and overlapping duties. The Council, therefore, will register a CEO in only one classification, based on the majority of duties assigned by his/her position description. All CEOs are registered within a classification based on the following criteria.

If the primary responsibility of a position description for a local jurisdiction requires a CEO to perform building plans examination, that individual will be registered as a PE. A PE is permitted to perform other duties for the department, with the exception of inspections.

If the primary responsibility of a position description for a local jurisdiction requires a CEO to perform inspections in a single discipline, that individual will be registered as a SI. A SI is permitted to perform plans review in the discipline that he/she is registered in and other duties for the department.

If the primary responsibility of a position description for a local jurisdiction requires a CEO to perform inspections in two or more disciplines for single and two family residences, that individual will be registered as a G3. A G3 is permitted to perform plans review for single and two family residences in the disciplines that he/she is registered in and other duties for the department.

If the primary responsibility of a position description for a local jurisdiction requires a CEO to perform inspections in two or more disciplines for all types of construction in all occupancy classifications, that individual will be registered as a G2. A G2 is permitted to perform plans review in the disciplines that he/she is registered in and other duties for the department.

If the primary responsibility of a position description for a local jurisdiction requires a CEO to perform as an administrator of a building inspection department, that individual will be registered as a G1. A G1 is permitted to perform all functions (including plan review) for the department.

If a CEO passes additional examinations that would qualify for a higher classification, staff will recognize the achievement and issue a new certificate for the higher level.

EXAMPLE – If a CEO registered as a PE passes the examinations required for a G2 registration, a new registration certificate will be issued designating the G2 classification. The CEO will still be recognized by title as the plans examiner for the local jurisdiction, but will hold registration (and be qualified to function) as a general combination inspector.

## **PROPOSED ADDITIONAL BASE CRITERIA**

If the position description of a local jurisdiction establishes plans examination in two of the major construction disciplines, as the primary responsibility of a CEO registered in the

provisional classification, that individual must obtain certification in one discipline within 12 months of the date of employment, and the remaining certification within 12 months of the first anniversary for the date of employment.

If the position description of a local jurisdiction establishes plans examination in three or four of the major construction disciplines, as the primary responsibility of a CEO registered in the provisional classification, that individual must obtain certification in one discipline within 12 months of the date of employment, and one certification within 12 months of the first anniversary for the date of employment. When two certifications are obtained, the CEO will be removed from provisional status and issued a PE registration. The CEO must then obtain the third certification within 12 months of the second anniversary for the date of employment and the remaining certification within 12 months of the third anniversary for the date of employment.

### **COMMENTS RECEIVED**

The major concern in all of the comments received by staff focused on the degree of difficulty involved in obtaining certifications in various disciplines for plans examination. One building official stated that it would be easier and less expensive for him to require his plans reviewers to obtain the CBO certification and perform plans review under the G1 classification instead of qualifying by certification for the PE classification.

### **STAFF'S RESPONSE TO CONCERNS**

As is the case with all of the registration classifications, the degree of difficulty is directly proportionate to the knowledge required to perform the tasks for the position. Of the three registrations that involve multi disciplines (G2, G3 and PE), two (G2 and G3) require multi certifications to coincide with the tasks performed. The result is a disparity that is arbitrary and, in staff's opinion, must be corrected.

To better manage the funds allotted for the education of CEOs, staff made an administrative decision, effective this fiscal year, to require an individual to obtain all certifications that are necessary for registration before payment will be authorized for additional certifications. That decision will also eliminate the issue of a person qualifying for a CBO registration prior to qualifying for the position for which he/she was hired.

### **POINTS TO CONSIDER**

- \* Local jurisdictions are not required to have plans examiners on staff. Determining building inspection department positions and qualifications is an administrative function for which the local jurisdiction is exclusively responsible.
- \* Plans examiners can review plans in one or more disciplines, based on the duties and responsibilities that are designated by the position description established by the local jurisdiction.
- \* Only nine CEOs in the state are registered in the PE classification (all other CEOs functioning as plans examiners are registered in the SI, G2 or G1 classifications).
- \* Of the CEOs registered in the PE classification, two are provisional, three are limited and four are certified in the building discipline only.
- \* The requested modification will not affect any of the existing PE, LPE or PPE registrants.

### **RECOMMENDATION**

It is staff's recommendation that the Council:

- \* Sanction the "current practice" as stated above;
- \* Require certification as a plans examiner in each discipline for which a CEO performs plan review (based on position description), as the base criteria for registration in the PE classification;
- \* Require inclusion of the plans examiner certifications on the face of each PE certificate;
- \* Allow the CEOs currently registered in the PE classification to continue in their present capacity and under their present conditions in all disciplines for which they are performing plans review; and,
- \* Implement the new criteria on January 1, 2006.

## **EXHIBIT 2 (Tab 2)**

Shortly after LLR was created, statutory language was adopted by the legislature to provide general administrative requirements for all of the boards within the department. The Act became known as the "Engine." The intent of the engine is to provide language that addresses and standardizes elements and applications, which are common to all of the boards.

For the engine to continue to be effective, however, updating is necessary from time. LLR is, therefore, proposing amendments to the engine to update its content, remove obsolete language, address current regulatory issues and to provide uniform elements for authorization for individuals to practice in a profession. Those amendments are contained in House Bill 3781.

Staff is requesting that the Council endorse H3781. It is important to note that the engine does not usurp or affect any of the specific provisions contained in the practice act, other statutes or regulations in effect for any of the Building Codes Council's Programs.

### **Summary of Legislation:**

#### **Public protection:**

\* To recognize that lesser degrees of regulation than occupational or professional licensing may better serve the public need, the bill is built around the concept of "persons authorized to practice" whether that authorization is a certification or registration rather than a license. Qualified practitioners will now be referred to as persons "authorized to practice." Simplified and standardized procedures for renewals, lapsed licensees, and civil penalties are proposed for all classes of authorization.

\* New language stipulates, "...no board member may serve as an officer or director of an association whose members are regulated by the board on which the member serves." This provision seeks to help clarify the line between the protection of the public interest and the enhancement of the profession or occupation.

\* Privileged communications section has been enhanced and clarified in an effort to minimize the negative impact upon victims, complainants, and witnesses in proceedings

to discipline persons authorized to practice an occupation or a profession by the State of South Carolina.

**Public access:**

- \* A minimum requirement for at least two public board members has been added.
- \* Language specifying public access to records and proceedings has been added.

**Governor's authority:**

- \* Unifies board appointment procedures for all POL boards to be ..."by the governor and serve at the pleasure of the governor..."
- \* Improves the administration of professional and occupational authorization to practice programs by moving ministerial and administrative functions to the Department of Labor, Licensing and Regulation, a cabinet agency. Confirms the limited roles of the Boards as quasi-judicial bodies that hear contested cases involving granting or disciplining authorizations to practice and as quasi-legislative bodies which promulgate regulations setting professional standards for persons with such authorizations.

**Fiscal accountability:**

- \* Fee structures have been simplified so that the Governor can be assured that the Director is fiscally accountable for the operational expenses of the POL Division programs by requiring that "initial fees for programs must be established to cover the anticipated costs of the program." Steps for accomplishing this procedure have been added.
- \* Measures to utilize enforcement provisions of the Setoff Debt Collection Act have been added as well as how all fines and costs collected will be remitted to the State Treasurer.

**Enforcement measures:**

- \* New definitions have been added that are currently used in the disciplinary process.
- \* Mandate has been added regarding suspension of the authorization to practice if "...a person is found to be in violation of the Child Support Laws of South Carolina...as it relates to child support enforcement requirements or a child support enforcement agency in any other state."
- \* Specific suspension procedures and penalties related thereto have been added.
- \* A new section regarding "Access to criminal background records" has been added.
- \* Relinquishment of an authorization to practice option has been added.

**Board authority and proceedings:**

- \* Board members will be required to meet at least two times per year.



- \* Quorum requirements for a board decision have been added.
- \* Expanded options for boards in addressing and resolving disciplinary matters.
- \* Guidelines for the issuance of temporary restraining orders and the ramifications thereof are enumerated.

**Technical changes:**

- \* Technical formatting text revisions have been made so that any future amendments may be accommodated.
- \* The list of POL boards has been updated to include new boards as well as striking now defunct boards.

**Proposed Modifications to the Engine Act**

**H.3781**

**Section 40-1-10.** (A) The right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public.

(B) No statute or regulation may be imposed under this [article](#) [chapter](#) upon a profession or occupation except for the exclusive purpose of protecting the public interest when the:

(1) unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public and the potential for harm is recognizable and not remote or dependent upon tenuous argument;

(2) practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;

(3) practice of the profession or occupation requires specialized skill or training and the public needs and will benefit by assurances of initial and continuing professional and occupational ability; and

(4) public is not effectively protected by other means.

(C) If the General Assembly determines that a particular profession or occupation should be regulated or that a different degree of regulation should be imposed on the regulated profession or occupation, it shall consider the following degrees of regulation in the order provided and only shall regulate the profession or occupation to the degree necessary to fulfill the need for regulation:

(1) If existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the General Assembly first may consider making statutory changes to provide stricter causes for civil action and criminal prosecution.

(2) If it is necessary to determine the impact of the operation of a profession or occupation

on the public, the General Assembly may consider implementing a system of registration.

(3) If the public requires a substantial basis for relying on the professional services of the practitioner, the General Assembly may consider implementing a system of certification.

(4) If adequate regulation cannot be achieved by means less than licensing, the General Assembly may establish ~~licensing~~ other practice authorization procedures.

(D) In determining the proper degree of regulation, if any, the General Assembly shall determine:

(1) whether the practitioner, if unregulated, performs a service to individuals involving a hazard to the public health, safety, or welfare;

(2) what the opinion of a substantial portion of the people who do not practice the particular profession, trade, or occupation is on the need for regulation;

(3) the number of states which have regulatory provisions similar to those proposed;

(4) whether there is sufficient demand for the service for which there is no regulated substitute, and this service is required by a substantial portion of the population;

(5) whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics;

(6) whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that the ~~practitioner~~ person has met minimum qualifications;

(7) whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous, or irresponsible members of the profession or occupation;

(8) whether current laws which pertain to public health, safety, and welfare generally are ineffective or inadequate;

(9) whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety, and welfare;

(10) whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

**Section 40-1-20.** As used in this title unless the context requires a different meaning:

(1) 'Administrator' means the individual to whom the director has delegated authority to administer ~~the programs of a specific board or of a professional or occupational group for which the department has regulatory authority or has delegated authority to administer the programs of a specific board~~ a program regulating a profession or occupation;

(2) '~~Authorization to practice' or 'Practice authorization'~~ means ~~the approval to practice the specified profession, engage in the specified occupation, or use a title protected under this article, which has been granted by the applicable board. This authorization is granted in the form of a license, permit, certification, or registration~~;

~~(3)~~ 'Board' or 'Commission' means the group of individuals charged by law with the responsibility of ~~licensing or otherwise~~ regulating an occupation or profession within the State. Except as otherwise indicated, 'board' is used in this ~~article~~ chapter to refer to both boards and commissions;

~~(4)~~<sup>(3)</sup> 'Department' means the Department of Labor, Licensing and Regulation;

~~(5)~~<sup>(4)</sup> 'Director' means the Director of the South Carolina Department of Labor, Licensing and Regulation or the director's official designee;

~~(6)~~<sup>(5)</sup> '~~Licensee'~~ means ~~a person granted an authorization to practice pursuant to this article and refers to a person holding a license, permit, certification, or registration granted~~

pursuant to this article 'Lapsed practice authorization' means the termination of a person's practice authorization due to the person's failure to renew the practice authorization before a specified expiration date;

~~(7)(6) 'Licensing act' means the individual statute or regulations, or both, of each regulated profession or occupation which include, but are not limited to, board governance, the qualifications and requirements for authorization to practice, prohibitions, and disciplinary procedures~~ 'Letter of caution' means a written caution or warning about past or future conduct issued after it is determined that no misconduct has been committed or that it was only a minor infraction not warranting the imposition of a sanction;

~~(8)(7) 'Person' means an individual, partnership, or corporation~~ or other authorized entity;

~~(9)(8) 'Person authorized to practice' means a person who has been granted a license, permit, certification, or registration pursuant to this chapter;~~

(9) 'Practice act' means the individual statute or regulations, or both, of each regulated profession or occupation which include, but are not limited to, board governance, the qualifications and requirements for a practice authorization;

(10) 'Practice authorization' or 'authorization to practice' means the approval to practice the specified profession, engage in the specified occupation, or use a title protected under this title. This authorization is granted in the form of a license, permit, certification, or registration;

(11) 'POL' is an abbreviation for the Division of Professional and Occupational Licensing of the South Carolina Department of Labor, Licensing and Regulation. POL is responsible for administering all professional and occupational regulatory programs that are cited in Section 40-1-40;

(12) 'Probation' means the conditional issuance of or retention of a practice authorization with terms and conditions;

(13) 'Profession' or 'occupation' means a profession or occupation regulated ~~or administered, or both, by the department~~ pursuant to this ~~article title~~;

(14) 'Program' means the governmental activities undertaken to achieve the purpose of public protection by regulation of the profession or occupation;

(15) 'Public reprimand' means a publicly available statement of a board that a violation was committed by a person authorized to practice;

(16) 'Revocation' means the cancellation or withdrawal of a practice authorization or other authorization issued by a board or the department. A person whose practice authorization has been permanently revoked by a board, never may be eligible for any kind of practice authorization from that board;

(17) 'Suspension' means the temporary withdrawal of a practice authorization for either a definite or indefinite period of time and or until specified conditions are met;

(18) 'Voluntary surrender' means the relinquishment of a practice authorization by the subject of an initial or formal complaint pending further order of a board. It anticipates other formal action by a board and allows a suspension subsequently imposed to include this time served.

**Section 40-1-30. (A)** It is unlawful for a person to engage in a profession or occupation regulated by a board or commission administered by the ~~Department of Labor, Licensing and Regulation department~~ without holding a valid practice authorization ~~to practice~~ as required by statute or regulation. \_

**(B)** An A practice authorization ~~to practice~~ issued pursuant to this title, is ~~valid for up to two years and is~~ renewable on renewal dates as established by the ~~Director of Labor, Licensing~~

and Regulation with the consent of each applicable regulatory board department.

(1) A practice authorization, subject to renewal, must be renewed by the date set by the department. If the application for the practice authorization renewal is not received by the date set by the department, the practice authorization lapses. The applicant bears the burden of submitting the practice authorization renewal application whether or not notice of renewal has been received.

(2) A lapsed practice authorization must not be reinstated without payment of an appropriate fee to cover all costs for processing the reinstatement application.

(3) A person who practices during the period that a practice authorization has lapsed must be penalized by a civil penalty not to exceed five hundred dollars unless another amount is specified in a practice act.

(4) Except as otherwise provided, a practice authorization must not be renewed if it has been lapsed for five years or more.

**Section 40-1-40.** (A) The purpose of the POL Division ~~of Professional and Occupational Licensing, South Carolina Department of Labor, Licensing and Regulation,~~ is to protect the public through the ~~regulation of professional and occupational licensees and the administration of boards programs~~ charged with the regulation of ~~professional and occupational practitioners~~ professions or occupations. The following programs are administered by the POL Division, which also shall administer other programs regulating professions or occupation that may be established or transferred by the General Assembly:

~~(B) The following boards and the professions and occupations they license or otherwise regulate must be administered by the Department of Labor, Licensing and Regulation pursuant to this article:-~~

Board of Accountancy

Board of Architectural Examiners

Athletic Commission

Auctioneers Commission

Board of Barber Examiners

~~Accessibility Committee of the Building Codes Council-~~

Building Accessibility

Building Code Council

Board of Chiropractic Examiners

Perpetual Care and Cemetery Board

Contractors' Licensing Board

Board of Cosmetology

Board of Dentistry

Engineers and Land Surveyors Board

Environmental Certification Board

Board of Registration for Foresters

Board of Funeral Service

Board of Registration for Geologists

Liquified Petroleum Gas Board

Long Term Health Care Administrators Board

Manufactured Housing Board

Massage and Bodywork Panel

Board of Medical Examiners

Modular Buildings ~~Board of Appeals~~

Board of Nursing ~~Long Term Health Care Administrators Board~~

Board of Occupational Therapy

Board of Examiners in Opticianry

Board of Examiners in Optometry

Board of Pharmacy

Board of Physical Therapy Examiners

Pilotage Commission

Board of Podiatry Examiners

Board of Examiners for Licensure of Professional Counselors and Marital and Family Therapists and Psycho-educational Specialists

Board of Examiners in Psychology

Board of Pyrotechnic Safety

Real Estate Appraisers Board

Real Estate Commission

Residential Builders Commission

Board of Social Work Examiners

Board of Examiners in Speech-Language Pathology and Audiology

Board of Veterinary Medical Examiners

~~(C) Each regulatory board within the department is a separate board.~~

~~(D)~~ (B) The ~~Department of Labor, Licensing and Regulation~~ department is a member of the Governor's executive cabinet and must be headed by a director who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to Section 1-3-240(B). The director shall supervise the department under the direction and control of the Governor and shall exercise other powers and perform other duties as the Governor requires.

**Section 40-1-45.** ~~(A) The department, in consultation with currently serving board members, the Office of the Governor, members of professional and industry associations, and the general public shall encourage public and consumer membership and participation on all boards and panels associated with the department. Public and consumer membership may not include current or former, active or inactive members of the profession or occupation being regulated. Public and consumer members have the same rights and responsibilities as professionally or occupationally-related board members and shall participate fully in all discussions, deliberations, decisions, and votes of the board or panel on which they serve unless otherwise prohibited by statute or regulation. Effective July 1, 2005, all boards administered by the department as listed in Section 40-1-40 (A) must include two or more public members.~~

(B) Public membership may not:

(1) include current or former, active or inactive, members of the profession or occupation being regulated;

(2) be associated by legal contract with a member of the profession or occupation that a board regulates except as a consumer of the services provided by a person authorized to practice within the profession or occupation;

(3) have a direct financial interest in the profession or occupation that a board regulates;

(4) have an immediate family member in the profession or occupation. As used in this section, 'immediate family' is defined in Section 8-13-100.

(C) Public members have the same rights and responsibilities as professionally or occupationally-related board members and shall participate fully in all discussions,



deliberations, decisions, and votes of a board or panel on which they serve, unless otherwise prohibited by statute or regulation.

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

~~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 chapter. 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 remove an employee of the department is vested with the Director of the Department of Labor, Licensing and Regulation. These personnel are subject to Title 8, Public Officers and Employers. The director or his designee shall enter into contracts or agreements the director considers necessary or incidental to provide for all services authorized by this chapter or by a practice act.~~

~~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.~~

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

~~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.~~

~~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).~~

~~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.~~

~~The director may perform any additional administrative functions requested by the boards.~~

(B) ~~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 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.

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. 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. The department shall promulgate regulations, pursuant to Title 1, adopting rules of procedure for hearings before the boards concerning applications for practice authorization and disciplinary matters.

~~(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 may not exceed the cost of printing and distribution of the roster.~~ Board members and other persons authorized and approved by a board and the department to engage in business for a board 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 on behalf of a 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 or other person in the performance of a board member or other person's official duties.

~~(D) Initial fees for revenue-funded boards must be established by each board and shall 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.~~ Fees for ~~revenue-funded boards~~ programs must be assessed, collected, and adjusted on behalf of each ~~board~~ program by the department in accordance with this ~~article~~ chapter. Fees may be adjusted ~~biennially~~ to ensure that they are sufficient but not excessive to cover expenses including the total of the direct and indirect costs ~~to the State for the~~ of operations ~~of each respective board~~. ~~Fees must be deposited in accounts established for each respective board.~~

~~The following steps must be used in the development and analysis of fee structures:~~

~~(1) 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) 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) 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) 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.

Fees for a board funded by general appropriations must be set by the General Assembly and deposited into the general fund. All fees are 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. Initial fees for programs must be established to cover the anticipated costs of the program.

~~(F) 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.~~

~~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.~~ The director shall adjust fees to accommodate anticipated expenditures and program changes. The following steps must be used by the department in the development and analysis of fee structures:

(1) determine current financial position of a program. Annually, the department's administrative section shall prepare statements reflecting annual revenue collection activity and related program expenses;

(2) project future activity and related costs of a 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 a board and the staff, analyze related program



direct 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, department administration, and information systems to arrive at the total program cost;

(3) determine the projected financial position of a 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 program's projected expenses, develop alternative fee structures, which would ensure the program's continuing financial stability as required by law;

(4) 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 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.

~~(G) The department shall suspend the issue a 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 to an applicant whose proof of qualifications meets the~~  
statutory and regulatory requirements.

(1) The director may perform additional administrative functions requested by a board.

(2) The department shall keep a record of the proceedings of each board and shall maintain a registry of all authorizations to practice. The department may prepare and make available by each respective program a roster of persons authorized to practice.

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

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

(5) The department shall suspend the practice authorization issued by a board administered by this chapter 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. An applicant shall pay a penalty to the department as provided in Sections 34-11-60 and 34-11-70 each time a negotiable instrument is denied. The suspension becomes effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension of the person authorized to practice. Upon notification of suspension, the person may reinstate the practice authorization upon payment of the fee and penalties required under statute or regulation. This suspension is exempt from the Administrative Procedures Act.

(6) The department shall suspend the practice authorization of a person found to be in violation of Sections 20-7-940 through 20-7-949, the Child Support Laws of South Carolina,

as it relates to child support enforcement requirements or a child support enforcement agency in any other state. -

~~(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. It is the duty of the director to 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.~~

**Section 40-1-60.** (A) ~~A board annually shall elect from among its members a chairman, vice-chairman, and other officers as the board determines necessary. The board shall adopt rules and procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings.~~ Board members are appointed by the Governor and serve at the pleasure of the Governor. A board member may not serve as an officer or director of an association whose members are regulated by the board on which the member serves.

~~(B) A board shall meet at least two times a year and at other times upon the call of the chairman or a majority of the board.~~ A board may elect from among its members officers as it considers necessary. A board may adopt procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings. The chairman of a board must be the official representative and spokesperson of a board and shall approve and sign documents on a board's behalf. A board may delegate in writing any other duty, responsibility, or function to the chairman or to the director or his designee. When a board is not in session, the chairman or other designee of a board is authorized to act on behalf of a board to the extent necessary for the performance of its duties.

~~(C) A majority of the members of a board constitutes a quorum; however, if there is a vacancy on the board, a majority of the members serving constitutes a quorum.~~ A board shall meet at least two times a year and at other times upon the call of the chairman or a majority of a board.

~~(D) A board member is required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the board as provided for in Section 1-3-240.~~ A majority of the members of a board constitutes a quorum; however, if there is a vacancy on a board, a majority of the members serving constitutes a quorum. If a majority of the members of a board are unable to meet and conduct a hearing, the hearing must be heard and ruled on by the chairman or his designee.

(E) A board member is required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from a board as provided for in Section 1-3-240.

(F) Members of boards are subject to Title 8.

**Section 40-1-70.** (A) The powers and duties of regulatory boards include, but are not limited to:

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

~~(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 assuring that examination for applicants seeking a practice authorization provide reasonable measures which demonstrate minimum competence for practice;

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

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

(5) evaluating and approving continuing ~~education course hours and programs~~ competency requirements for authorized practitioners;

(6) conducting hearings on alleged violations of this ~~article chapter, the practice act,~~ and regulations promulgated ~~under~~ pursuant to this article chapter and practice act;

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

~~(8) disciplining persons licensed under this article in a manner provided for in this article~~ authorized to practice pursuant to this chapter or practice act or a regulation promulgated pursuant to this chapter or practice act;

~~(9)(8) promulgating regulations which have been submitted to the director, at least thirty days in advance of~~ preparing proposed regulations that must be reviewed by the director who then shall file them with Legislative Council pursuant to Title 1-;

(9) creating committees and appointing persons to serve on these committees as it considers necessary in order to perform its duties, responsibilities, or functions.

(B) When evaluating examinations for a practice authorization, a board must give preference to available nationally recognized examinations which facilitate cross-border practice. If no nationally recognized examination is available, a board shall consider procedures for development of the examination, validity of examinations and examination security.

(C) A board may elect to delegate in writing to the director or his designee the authority to deny a practice authorization to an applicant who has committed an act that would be grounds for disciplinary action pursuant to this chapter or the practice act of a 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 a board's practice act. The applicant may appeal the denial to the board. A board may uphold the denial, order issuance of the practice authorization, or order issuance of the practice authorization upon conditions set by a board. The applicant bears the burden of demonstrating qualification and fitness to practice the regulated profession or occupation.

(D) A board may elect to delegate in writing to the director or his designee or other persons the authority to grant a practice authorization to an applicant who meets all requirements of law in accordance with policies and procedures approved by the board.

(E) A board may elect to delegate in writing to the director or his designee or other persons authority to perform such functions or tasks as it deems appropriate in order to efficiently and effectively carry out its duties, responsibilities, or functions.

**Section 40-1-80.** (A) ~~if~~ Notwithstanding another provision of law, if the director or his designee has reason to believe that a person has violated a provision of this article chapter or the practice act or a regulation promulgated ~~under~~ pursuant to this article chapter or the licensing practice act ~~or regulation of a board~~ or that a ~~licensee~~ person authorized to practice

has become unfit to practice the profession or occupation or if a person files a written complaint with ~~the a~~ board or the director charging a person with the violation of a provision of this ~~article chapter or practice act~~ or a regulation promulgated ~~under this article pursuant to this chapter or practice act~~, the director ~~or his designee~~ 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 having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the director, the director may apply to an administrative law judge for an order requiring the person to comply.

**Section 40-1-90.** (A) The results of an investigation must be ~~presented reported~~ to the ~~appropriate~~ 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 profession or occupation:~~

(B) ~~A~~ 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 A~~ board ~~or the director~~ may designate a hearing officer or hearing panel to conduct ~~contested case~~ hearings or take other action as may be necessary ~~under pursuant to~~ this section. ~~In a disciplinary action where the parties consent or upon application of a party or upon its own motion, a board may direct that the matter be heard before a hearing officer or hearing panel. A board may refer an entire disciplinary matter to a hearing officer or panel and an appeal of an order from the hearing officer or a panel must be to the Administrative Law Court pursuant to Section 1-23-380(B).~~

(C) ~~For the purposes of a proceeding pursuant to this chapter or a practice act or a regulation promulgated pursuant to this chapter or a practice act, the director or his designee may accomplish service of documents addressed to persons who hold or have held authorizations to practice in South Carolina by postage-prepaid, first class mail directed to the address of record with a board or by personal delivery. The failure of a person authorized to practice to appear at a hearing, unless for good cause shown, must be considered a waiver of all rights except the right to be served with a copy of the order of a board by postage-prepaid, first class mail directed to the address of record filed with a board.~~

~~(B)(D)~~ For the purpose of a proceeding ~~under pursuant to~~ this ~~article chapter or practice act~~ or a regulation promulgated pursuant to this chapter or practice act, the ~~department director~~ or his designee 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 a~~ 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 a~~ board or its hearing officer or panel, a board may apply to an administrative law judge for an order requiring the person to comply with the subpoena.

(E) ~~In disciplinary actions, the department bears the burden of proving by the preponderance of the evidence that a violation of this chapter, the practice act, or a regulation promulgated pursuant to this chapter or the practice act has occurred.~~

**Section 40-1-100.** (A) When the ~~board~~ department 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~~ practicing or intends to practice without authorization by a program administered pursuant to this chapter or a practice act, in addition to all other remedies, it may order the person immediately to cease and desist from engaging in the ~~conduct~~ practice. ~~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 Judge Division, to an administrative law judge for a temporary restraining order.~~

~~No~~ A board member or the ~~Director~~ director of the ~~Department~~ department of Labor, ~~Licensing and Regulation~~ or another employee of the department ~~may~~ must not be held liable for damages resulting from a wrongful temporary restraining order.

(B) ~~The board may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this article or a regulation promulgated under this article.~~ A board or the department may apply in accordance with the rules of the Administrative Law Court for:

(1) an injunction to restrain a person who is practicing or intending to practice a profession or occupation without being authorized pursuant to this chapter or the practice act or regulation promulgated pursuant to this chapter or the practice act; or

(2) a temporary restraining order for a person who is authorized to practice pursuant to this chapter or a practice act and is violating or intending to violate a board order, a provision of this chapter or a practice act or regulation promulgated pursuant to this chapter or a practice act.

(C) The notice, hearing, and duration requirements of Rule of Civil Procedure 65(b) must apply to these proceedings. Rule of Civil Procedure 65(e) may not apply to these proceedings.

(D) A board or the department may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or the practice act or regulation promulgated pursuant to this chapter or the practice act.

(E) A board member or the director or another employee of the department must not be held liable for damages resulting from a wrongful temporary restraining order or cease and desist order issued pursuant to lawful authority.

(F) A member of a board, its committees, special examiners, representatives, or the department or its employees must not be held liable for acts performed in the course of official duties except where actual malice is shown.

(G) An action filed with the Administrative Law Court by a board or the department seeking emergency relief pursuant to this section must be heard by the assigned administrative law judge within four days of its filing with the Administrative Law Court.

**Section 40-1-110.** (A) In addition to other grounds contained in this ~~article~~ chapter and the respective ~~board's chapter:~~ practice act, A a board may cancel, fine, suspend, revoke, or restrict the practice authorization ~~to practice of an individual of a person~~ who:

~~(a)~~ (1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining ~~licensure under this article~~ practice authorization pursuant to this chapter;

~~(b)~~ (2) has had a ~~license to~~ practice authorization for a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;

~~(c)~~ (3) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted



in the violation or conspiracy to violate this ~~article~~ chapter or a regulation promulgated ~~under this article pursuant to this chapter or practice act;~~

~~(d)~~(4) has intentionally used a fraudulent statement in a document connected with the practice of the ~~individual's~~ person's profession or occupation;

~~(e)~~(5) has obtained fees or assisted in obtaining fees under fraudulent circumstances;

~~(f)~~(6) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

~~(g)~~(7) lacks the professional or ethical competence to practice the profession or occupation;

~~(h)~~(8) has been convicted of or has pled guilty to or nolo contendere ~~to or entered an Alford plea~~ to a felony or a crime involving drugs or moral turpitude;

~~(i)~~(9) has practiced the profession or occupation while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render ~~him~~ the person unfit to practice ~~his~~ the respective profession or occupation;

~~(j)~~(10) has sustained a physical or mental disability which renders further practice dangerous to the public;

~~(k)~~(11) violates a provision of this ~~article or of a regulation promulgated under this article chapter or practice act or a regulation or order of the department or board;~~

~~(l)~~(12) violates ~~the a~~ code of professional ethics adopted ~~by the applicable licensing board for the regulated profession or occupation or adopted by the department with the advice of the advisory panel for the professions and occupations it directly regulates~~ in regulation.

(B) Each incident is considered a separate violation.

**Section 40-1-115.** A board has jurisdiction over the actions committed or omitted by current and former ~~licensees~~ persons authorized to practice during the entire practice authorization period ~~of licensure~~. ~~The A~~ board has jurisdiction to act on any matter which arises during the practice authorization period.

**Section 40-1-120.** (A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions ~~the a~~ board is authorized to take pursuant to its respective licensing practice act, ~~the a~~ board may:

(1) issue a public reprimand;

(2) impose a fine not to exceed five hundred dollars per violation unless otherwise specified by statute or regulation of ~~the a~~ board;

(3) place a ~~licensee~~ person authorized to practice on probation or restrict or suspend the ~~individual's license~~ person's practice authorization for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs;

(4) ~~permanently~~ revoke the license practice authorization permanently.

(B) A decision by a board to discipline a ~~licensee as authorized under~~ person authorized to practice, pursuant to this section must ~~be by~~ have a majority vote ~~of by~~ the total membership ~~of the board~~ serving at the time the vote is taken.

(C) A final order of a board disciplining a ~~licensee under~~ person authorized to practice pursuant to this section is public information. A preliminary restriction of a person's practice authorization and any subsequently related action is public information pursuant to the South Carolina Freedom of Information Act.

(D) Upon a board determination ~~by a board~~ that discipline is not appropriate, ~~the a~~ board may dismiss or issue a nondisciplinary letter of caution.

(E) A board may establish a procedure to allow a licensee person who has been issued a public reprimand or a nondisciplinary letter of caution to petition ~~the a~~ board for expungement ~~of the reprimand from the licensee's record~~. However, information in the investigative or inspectional files or disciplinary proceedings must not be required to be expunged pursuant to another provision of law.

**Section 40-1-130.** ~~(A) A board may 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 respective board.~~ A board must deny authorization ~~to practice~~ to an applicant who has failed to demonstrate the qualifications or standards for ~~licensure a~~ practice authorization contained in the respective board's ~~licensing practice~~ act. The applicant shall demonstrate to the satisfaction of a board that the applicant meets all the requirements for the issuance of a ~~license practice authorization~~.

(B) A board may deny a practice authorization to an applicant who has committed an act that would be grounds for disciplinary action pursuant to this chapter or the practice act of the respective board.

**Section 40-1-140.** A person may not be refused ~~an a practice~~ authorization ~~to practice,~~ ~~pursue,~~ or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the practice authorization ~~to practice~~ is sought. However, a board may refuse ~~an a~~ practice authorization ~~to practice~~ if, based upon all information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation. \_

**Section 40-1-145.** (A) In addition to other requirements established by law and for the purpose of determining the applicant's eligibility for a practice authorization, the department may require a criminal history background check. The applicant may be required to furnish a full set of fingerprints and additional information required to enable a criminal history background check to be conducted by the State Law Enforcement Division or the State Identification Bureau of another state and the Federal Bureau of Investigation, if no pertinent information is identified at the state level. All costs of conducting a criminal history background check must be borne by the applicant. The department shall keep all information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

(B) In an investigation or disciplinary proceeding concerning a person authorized to practice a profession or occupation in South Carolina, the department may require a criminal history background check. The person authorized to practice may be required to furnish a full set of fingerprints and additional information required to enable a criminal history background check to be conducted by the State Law Enforcement Division or the State Identification Bureau of another state and the Federal Bureau of Investigation, if no pertinent information is identified at the state level. All costs of conducting a criminal history background check must be borne by the department and may be recovered as administrative costs associated with an investigation or hearing under this chapter, unless ordered by a board as a cost in a disciplinary proceeding. The department shall keep all information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

**Section 40-1-150.** (A) A ~~licensee~~ person authorized to practice, who is under investigation for a violation provided for in Section 40-1-110 or the ~~licensing practice~~ act of the applicable board for which disciplinary action may be taken, may voluntarily surrender practice authorization ~~to practice~~ to ~~the~~ a board. The voluntary surrender invalidates the practice authorization ~~to practice~~ at the time of its ~~relinquishment, and no~~ surrender. A person whose ~~authorization to practice~~ authorization is surrendered voluntarily ~~may~~ must not practice the profession or occupation unless ~~the~~ a board, ~~by a majority vote,~~ reinstates the ~~license practice authorization~~. A person practicing a regulated profession or occupation during the period of voluntary surrender is considered ~~an illegal practitioner to be practicing illegally~~ and is subject to the penalties provided by this ~~article chapter and the practice act~~. The surrender of ~~an authorization to practice~~ authorization ~~may~~ must not be considered an admission of guilt in a proceeding ~~under this article pursuant to this chapter~~ and does not preclude ~~the~~ a board from taking disciplinary action against the ~~licensee person authorized to practice~~ as provided for in this ~~article chapter~~ or ~~the~~ a board's ~~licensing practice~~ act including, but not limited to, imposing conditions that must be met before ~~the~~ a board reinstates the ~~license practice authorization~~.

(B) A person authorized to practice may relinquish that authorization at any time in writing, by oral statement, or by action such as returning the document indicating authorization to a board or the department. If the relinquishment occurs after notification that the department has begun investigation of a complaint, a board may approve the relinquishment instead of further proceedings.

**Section 40-1-160.** A person aggrieved by a final action of a board may appeal the decision to the Administrative Law ~~Judge-Division~~ Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law ~~Judge-Division~~ Court. Service of a petition requesting a review does not stay ~~the~~ a board's decision pending completion of the appellate process.

**Section 40-1-170.** (A) In an order issued in resolution of a disciplinary proceeding before a board, ~~a licensee~~ the person authorized to practice found in violation of the applicable ~~licensing practice~~ act may be directed to pay a sum not to exceed the reasonable costs of ~~the any inspection,~~ investigation, and prosecution of the case ~~in addition to other sanctions~~.

(B) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the director, or the director's designee, is prima facie evidence of reasonable costs.

(C) Failure to make timely payment in accordance with the order results in the collection of costs in accordance with Section 40-1-180.

~~(D) The board may conditionally renew or reinstate for a maximum of one year the license of an individual who demonstrates financial hardship and who enters into a formal agreement to reimburse the board within that one-year period for the unpaid costs.~~

~~(E) This section does not apply to a regulated profession or occupation if a specific provision in the applicable licensing act provides for recovery of costs in an administrative disciplinary proceeding.~~

**Section 40-1-180.** (A) All costs and fines imposed pursuant to this ~~article chapter~~ and the respective boards' ~~licensing practice~~ acts are due and payable immediately upon imposition or at the time indicated by final order of ~~the~~ a board. Unless the costs and fines are paid



within sixty days after the order becomes final, the order becomes a judgment and may be filed and executed upon in the same manner as a judgment in the court of common pleas, ~~and the board~~ At that time the department may collect costs and attorneys' fees incurred in executing the judgment. Interest at the legal rate accrues on the amount due from the date imposed until the date paid.

~~(B) All fines and costs collected under this section must be remitted by the department to the State Treasurer and deposited in a special fund established for the department to defray the administrative costs associated with investigations and hearings under this article. In the alternative, all costs and fines are subject to the collections and enforcement provisions of the Setoff Debt Collection Act.~~

(C) All fines and costs collected pursuant to this section must be remitted by the department to the State Treasurer and deposited in a special fund established for the department to defray the administrative costs associated with investigations, inspections, and hearings.

**Section 40-1-190.** ~~(A) A communication, whether oral or written, made by or on behalf of a person, to the director or board or a person designated by the director or board to investigate or hear matters relating to discipline of a licensee, whether by way of complaint or testimony, is privileged and no action or proceeding, civil or criminal, may be brought against the person, by or on whose behalf the communication is made, except upon proof that the communication was made with malice. An initial complaint, whether oral or written, made by or on behalf of a person, to the director or board or a person designated by the director to investigate or by a board to hear matters relating to misconduct or discipline of a licensee is privileged and confidential.~~

~~(B) Nothing in this article may be construed as prohibiting the respondent or the respondent's legal counsel from exercising the respondent's constitutional right of due process under the law or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law. Communications to the director or board or staff relating to misconduct or incapacity and testimony given in proceedings pursuant to this title absolutely must be privileged and a civil lawsuit predicated on these communications may not be instituted against complainant or witness. Confidential and personal information gathered by the department during an investigation of any initial complaint and testimony in any action or proceeding before a board is privileged from disclosure.~~

~~(C) Notwithstanding the provisions of this section, a final order of a board disciplining a licensee is public information as provided for in Section 40-1-120. Investigative files are privileged from disclosure and confidential and must not be made part of the public record of a disciplinary proceeding unless disclosed in the course of a hearing or otherwise determined by two thirds vote of a board to be public information.~~

(D) Nothing in this article may be construed as prohibiting the respondent or the respondent's legal counsel from exercising the respondent's constitutional right of due process under the law or as prohibiting the respondent from normal access to the non-privileged evidence relevant to the formal charges, documents to be presented at the hearing, and statements of witnesses who will be called at the hearing. The department may promulgate regulations to provide for normal access by respondents in disciplinary proceedings and the disclosure of public information regarding disciplinary proceedings as appropriate for the nature of the regulated profession or occupation, notwithstanding previously enacted provisions in the respective practice act.

(E) Notwithstanding the provisions of this section, an order restraining the practice

authorization and a final order of a board disciplining a licensee are public information as provided in Section 40-1-120. A preliminary restriction of a person's practice authorization and any subsequently related action is public information pursuant to the South Carolina Freedom of Information Act.

(F) Whenever the department receives information indicating a violation of state or federal law, the department may provide that information, to the extent that the department considers necessary, to the appropriate city, county, state or federal law enforcement or regulatory entity.

(G) The department or a board may disclose information to the appropriate disciplinary authority in any other jurisdiction in which the person is authorized to practice or has applied for authorization to practice a regulated profession or occupation.

**Section 40-1-200.** A person who practices, ~~or~~ offers to practice, or aids and abets the practice of a regulated profession or occupation ~~in this State~~ in violation of this ~~article chapter or practice act~~ or who knowingly submits false information for the purpose of obtaining a ~~license~~ practice authorization is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars.

**Section 40-1-210.** The department, in addition to instituting a criminal proceeding, may ~~institute a civil action through~~ file a request for hearing with the Administrative Law ~~Judge-Division Court~~, in the name of the State, for injunctive relief against a person violating this ~~article chapter or practice act~~, a regulation promulgated ~~under this article~~ pursuant to this chapter or practice act, or an order ~~of the board~~ issued pursuant to this chapter or practice act. For each violation the administrative law judge may impose a fine of no more than ten thousand dollars.

**Section 40-1-220.** If a provision of this ~~article chapter~~ or the application of a provision of this ~~article chapter~~ to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this statute are severable."