

2021 South Dakota Legislature

House Bill 1014**AMENDMENT 1014C FOR THE HOUSE COMMERCE AND ENERGY BILL**

1 **An Act to establish uniform complaint and declaratory ruling procedures for**
2 **agencies regulating certain professions and occupations.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **36-1C-1. Definitions.**

6 Terms used in this Act mean:

- 7 (1) "Administrator," the executive director, executive secretary, or other person
8 designated as being responsible for a professional or occupational licensing's
9 board, commission, or agency operation;
- 10 (2) "Agency," a professional or occupational licensing board, commission, or agency
11 set forth in title 36;
- 12 (3) "Complaint," an allegation of a violation of the laws or rules of a professional or
13 occupational licensing board, commission, or agency set forth in title 36;
- 14 (4) "Investigative committee," one or more persons employed or contracted by a
15 professional or occupational licensing board, commission, or agency set forth in
16 title 36 to review and investigate complaints;
- 17 (5) "License," any certification, license, permit, or other authorization related to the
18 practice of any profession or occupation regulated under title 36.

19 **Section 2.** That a NEW SECTION be added:

20 **36-1C-2. Complaints--Jurisdiction.**

21 Any person claiming that a licensee or an applicant for a license under title 36 has
22 engaged in or is engaging in conduct constituting grounds for disciplinary action, as
23 enumerated in the laws or rules of the agency, may file with the agency a written
24 complaint. The agency shall require the complaining party to file a complaint stating the

1 name of the applicant or licensee against whom the complaint is made and setting out, in
2 full detail, the conduct that is alleged to be in violation and may prescribe the form on
3 which a written complaint is made.

4 The administrator shall request the complainant provide additional information if
5 the complaint does not state a claim within the jurisdiction of the agency.

6 Failure of the complainant to comply with this section is basis for the administrator
7 to reject the complaint without further action.

8 **Section 3.** That a NEW SECTION be added:

9 **36-1C-3. Receipt of complaint--Time to respond--Failure to respond.**

10 Upon receipt of a properly submitted complaint within the agency's jurisdiction, the
11 administrator shall serve a copy of the complaint by mail or electronic mail upon the
12 applicant or licensee complained against.

13 The applicant or licensee complained against shall send a response to the complaint
14 to the administrator of the agency within twenty business days after service of the
15 complaint on the applicant or licensee. Upon receipt of the response of the applicant or
16 licensee, or upon expiration of the time for the applicant or licensee complained against
17 to respond, the administrator shall assign an investigative committee to determine if the
18 complaint has probable cause and constitutes grounds for disciplinary action or lacks
19 probable cause and should be dismissed.

20 The twenty business days may be extended by the administrator for good cause.

21 Failure to respond to the complaint is grounds for disciplinary action.

22 **Section 4.** That a NEW SECTION be added:

23 **36-1C-4. Investigation--Dismissal permitted.**

24 Upon completion of the investigation, the investigating committee shall
25 recommend to the agency whether the complaint should be dismissed for lack of probable
26 cause, resolved by informal disposition, or settled by a formal hearing. The failure of an
27 applicant or licensee to comply with the investigation is grounds for denial of the
28 application or disciplinary action.

29 An agency may allow the investigative committee to dismiss a complaint. Any
30 dismissal by the investigative committee must be reported to the agency at its next
31 scheduled meeting or within thirty days, whichever is shorter.

32 An investigative committee includes the agency's legal counsel.

1 **Section 5.** That a NEW SECTION be added:

2 **36-1C-5. Option to authorize limited administrative fines for specified**
3 **violations.**

4 The agency may authorize the administrator to impose an administrative fine upon
5 proof of a violation of specified statutes or rules without additional prior approval. Any
6 action taken pursuant to this section shall be reported to the agency at its next scheduled
7 meeting or within thirty days, whichever is shorter.

8 Any administrative fine issued under this section may be appealed by requesting a
9 contested case under chapter 1-26. Notice of appeal must be submitted to the
10 administrator within twenty calendar days of service of the fine.

11 Any fine issued under this section may not exceed five hundred dollars.

12 **Section 6.** That a NEW SECTION be added:

13 **36-1C-6. Informal disposition--Notice.**

14 The agency may accept an informal disposition regarding a violation of the laws or
15 rules under the agency's jurisdiction. The agreed upon disposition must be in writing and
16 is subject to the approval of the agency.

17 Failure to comply with the terms of an informal disposition is grounds for
18 disciplinary action or allows the agency to institute or reinstitute formal proceedings.

19 The administrator shall notify, in writing, any complaining party of the results of
20 the informal disposition of a complaint and the action taken, if any.

21 **Section 7.** That a NEW SECTION be added:

22 **36-1C-7. Formal complaint.**

23 If an alleged violation has probable cause constituting grounds for disciplinary
24 action, the legal counsel for the agency may commence formal proceedings by serving a
25 formal complaint by mail or electronic mail upon the applicant or licensee complained
26 against.

27 The formal complaint must include the name of the applicant or licensee
28 complained against, and a statement of facts setting forth the nature of the violations
29 being charged that constitute grounds for disciplinary action.

30 **Section 8.** That a NEW SECTION be added:

1 **36-1C-8. Response to formal complaint.**

2 The applicant or licensee shall file an answer with the administrator within twenty
3 calendar days after service of the complaint admitting, denying, qualifying, or explaining
4 all facts alleged in the formal complaint and all defenses of the applicant or licensee or
5 mitigating factors.

6 **Section 9.** That a NEW SECTION be added:

7 **36-1C-9. Notice of hearing.**

8 After the receipt of the response in § 36-1C-8, the agency's counsel shall file a
9 notice of hearing pursuant to § 1-26-17. The notice of hearing must be served no later
10 than twenty calendar days prior to the hearing date.

11 The agency may continue the date of the hearing as necessary. The agency's
12 counsel shall serve notice of any new date by electronic mail to the applicant or licensee's
13 address on file with the agency. If the applicant or licensee does not have electronic mail,
14 communication shall be sent to the mailing address on file with the agency.

15 **Section 10.** That a NEW SECTION be added:

16 **36-1C-10. Appearance required of applicant or licensee.**

17 The applicant or licensee appearing before the agency at a formal hearing shall
18 appear in person unless otherwise waived by the agency. If an applicant or licensee fails
19 to appear, the hearing may proceed without the applicant or licensee.

20 **Section 11.** That a NEW SECTION be added:

21 **36-1C-11. Board or commission member disqualified.**

22 If an alleged violation against an applicant or licensee is filed by a member of the
23 agency's board or commission, or if a member of the agency's board or commission
24 participates in the investigation of a violation by an applicant or licensee, that agency's
25 board or commission member is disqualified from participating in the final decision
26 rendered by the agency board or commission.

27 **Section 12.** That a NEW SECTION be added:

28 **36-1C-12. Written waiver of procedures.**

29 An applicant for a license or licensee may, in writing, waive any procedure granted
30 to the applicant or licensee under this chapter.

1 Notwithstanding any other provision of law, nothing in this chapter shall be
 2 construed to limit an agency's authority for emergency action under § 1-26-29.

3 **Section 13.** That a NEW SECTION be added:

4 **36-1C-13. Promulgation of rules.**

5 The Departments of Agriculture, Health, Labor and Regulation, and Social Services
 6 shall promulgate rules, pursuant to chapter 1-26, to make any ~~modification or consistent~~
 7 addition to the procedures in this chapter in order to comply with any federal statutes, ~~or~~
 8 ~~any~~ rules, and regulations regarding a profession or occupation within their respective
 9 department.

10 **Section 14.** That a NEW SECTION be added:

11 **36-1C-14. Petition for declaratory ruling.**

12 A person seeking a ruling as to the applicability to that person of a law, rule, or
 13 order of an agency under title 36 may file with the agency a petition for declaratory ruling
 14 in substantially the following form:

15 Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of
 16 petitioner), am (title or capacity of petitioner), and do hereby petition the professional or
 17 occupational board or commission of (state name of body) for its declaratory ruling in
 18 regard to the following:

- 19 (1) The statutes or rules or order in question is: (here identify and quote the pertinent
 20 statute, rule, or order.):
- 21 (2) The facts and circumstances that give rise to the issue to be answered by the
 22 professional or occupational board or commission's declaratory ruling:
- 23 (3) The precise issue to be answered by the professional or occupational board or
 24 commission's declaratory ruling:

25

26 Dated at (city and state), this _____ day of _____, _____.

27

28

29 _____
(Signature of Petitioner)

30 **Section 15.** That a NEW SECTION be added:

1 **36-1C-15. Action on petition.**

2 Upon receipt of the petition, the administrator may request from the petitioner any
3 information that may be required for the issuance of its ruling. At the agency's next
4 regularly scheduled meeting following the receipt of the petition or following receipt of
5 requested information, or within ninety days, whichever is shorter, the agency shall issue
6 its declaratory ruling and serve a copy of it by mail or electronic mail upon the petitioner.

7 **Section 16.** That a NEW SECTION be added:

8 **36-1C-16. Appeal of declaratory ruling.**

9 Any person seeking a declaratory ruling hereunder, is considered aggrieved if,
10 within thirty days of the agency's declaratory ruling, a request is made for the agency to
11 conduct a formal hearing. The hearing must be held at the earliest convenience of the
12 agency following the receipt of the request. A hearing under this section is a contested
13 case under chapter 1-26.

14 **Section 17.** That § 36-4A-42 be AMENDED.

15 **36-4A-42. Promulgation of rules by board.**

16 The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees,
17 licensure of physician assistants, and supervision requirements, ~~and disciplinary~~
18 ~~proceedings.~~

19 **Section 18.** That § 36-4C-23 be AMENDED.

20 **36-4C-23. Investigation of violations.**

21 The board shall investigate every alleged violation of this chapter ~~and~~ pursuant to
22 the procedures set forth in chapter 36-1C. If the alleged violation is committed by a
23 nonlicensee, the board shall report it to the proper law enforcement officials of the county
24 wherein the alleged violation has occurred.

25 **Section 19.** That § 36-5-20 be AMENDED.

26 **36-5-20. Disciplinary committee--Immunity from liability--Conditions--**
27 **Official immunity unaffected.**

28 ~~The~~ Notwithstanding any provision of chapter 36-1C, the Board of Examiners may
29 act as a disciplinary committee or may appoint other chiropractors licensed to practice in
30 this state to perform such functions to maintain the professional standards of the board.

1 No monetary liability on the part of, and no cause of action for damages may arise against
2 any member of a duly appointed disciplinary committee for any act or proceeding
3 undertaken or performed within the scope of the functions of the committee, if the
4 committee member acts without malice, has made a reasonable effort to obtain the facts
5 of the matter on which the member acts, and acts in a reasonable effort to obtain the
6 facts. The provisions of this section do not affect the official immunity of an officer or
7 employee of a public corporation.

8 The board may promulgate rules pursuant to chapter 1-26 governing the
9 administration and enforcement of this section and the conduct of licensees, including:

- 10 (1) ~~Purpose~~ The purpose of the disciplinary committee;
11 (2) ~~Composition~~ The composition of the disciplinary committee; and
12 (3) ~~Qualifications~~ The qualifications of the disciplinary committee;
13 (4) ~~Procedure governing the conduct of investigations and hearings by the disciplinary~~
14 ~~committee.~~

15 **Section 20.** That § 36-9-21 be AMENDED.

16 **36-9-21. Promulgation of rules.**

17 The board shall promulgate rules pursuant to chapter 1-26 pertaining to:

- 18 (1) Licensing and licenses;
19 (2) The practice of nursing;
20 (3) Scope of nursing practice;
21 (4) Except as otherwise provided in § 36-9-28, the delegation of nursing functions to
22 unlicensed assistive personnel under the supervision of a licensed nurse;
23 (5) Except as otherwise provided in § 36-9-28, the training, registration, and
24 supervisory requirements for unlicensed personnel performing delegated nursing
25 functions under the supervision of a licensed nurse;
26 (6) ~~Disciplinary proceedings;~~
27 (7) ~~Fees; and~~
28 (8) ~~(7)~~ Approval of nursing education and clinical enrichment programs.

29 **Section 21.** That § 36-9A-41 be AMENDED.

30 **36-9A-41. Promulgation of rules.**

31 The board may promulgate rules pursuant to chapter 1-26 pertaining to: licensure
32 and licenses, practice, prescriptive authority, ~~disciplinary proceedings,~~ and approval of
33 education programs.

1 **Section 22.** That § 36-9C-32 be AMENDED.

2 **36-9C-32. Promulgation of rules.**

3 The board shall promulgate rules pursuant to chapter 1-26 pertaining to:

- 4 (1) Licensing and licenses;
- 5 (2) The practice and scope, pursuant to § 36-9C-13, of certified professional midwives
- 6 and certified professional midwife students;
- 7 (3) ~~Disciplinary proceedings;~~
- 8 (4) ~~—Fees;~~
- 9 (5)(4) Approval of certified professional midwife education programs; and
- 10 (6)(5) Criteria for low-risk pregnancy and delivery.

11 **Section 23.** That § 36-10-49 be AMENDED.

12 **36-10-49. Investigation of violations--Employment of counsel to assist in**

13 **prosecution.**

14 The Board of Examiners ~~and/or~~ or the physical therapy committee, or both, shall

15 investigate every ~~supposed~~ alleged violation of this chapter, ~~and pursuant to the~~

16 procedures set forth in chapter 36-1C. If the alleged violation is committed by a

17 nonlicensee, the board shall report the same violation to the proper law enforcement

18 officials wherein the act is committed. The board ~~is authorized to~~ may employ special

19 counsel subject to the supervision, control and direction of the attorney general, ~~to~~ assist

20 in the prosecution of violations of this chapter, ~~and to~~ expend the necessary funds for such

21 purpose.

22 **Section 24.** That § 36-11-11 be AMENDED.

23 **36-11-11. Promulgation of rules .**

24 The Board of Pharmacy may promulgate rules pursuant to chapter 1-26 ~~as follows:~~

- 25 (1) Pertaining to the practice of pharmacy;
- 26 (2) Relating to the sanitation of persons and establishments licensed under the
- 27 provisions of this chapter;
- 28 (3) Pertaining to establishments licensed under the provisions of this chapter wherein
- 29 any drug is compounded, prepared, dispensed or sold;
- 30 (4) Providing for minimum equipment and standards of establishments licensed under
- 31 the provisions of this chapter;
- 32 (5) Pertaining to the sale of drugs by or through any mechanical device;

- 1 (6) In cooperation with other governmental agencies where there exists a joint
- 2 responsibility for protecting the public health and welfare;
- 3 (7) Pertaining to the sale of nonprescription drugs;
- 4 (8) To adopt such publications or supplements thereto as shall from time to time be
- 5 deemed necessary to describe the drugs, medicines, prescription drugs, dispensing
- 6 physician or other terms ~~used~~ defined in § 36-11-2;
- 7 (9) Pertaining to the posting of prescription prices on the premises of a pharmacy
- 8 department to provide consumers with comparative pricing information;
- 9 (10) Pertaining to registration of drug wholesalers and manufacturers;
- 10 (11) Pertaining to home health care and service;
- 11 (12) Pertaining to computerized pharmacy;
- 12 (13) Pertaining to the registration of registered pharmacy technicians ~~and the suspension~~
- 13 ~~or revocation of registration~~; an annual registration fee not to exceed thirty dollars;
- 14 and tasks that may not be delegated by a licensed pharmacist to a registered
- 15 technician;
- 16 (14) Redispensing of pharmaceuticals; and
- 17 (15) Pertaining to the dispensing of biological products.

18 **Section 25.** That § 36-18A-22 be AMENDED.

19 **36-18A-22. Board to promulgate rules--Scope of rules--Existing rules**
20 **remain in effect.**

21 The board shall, pursuant to chapter 1-26, promulgate rules ~~which~~ that may be
22 reasonably necessary for the performance of its duties, the regulation of proceedings
23 before it, and the licensure of the professions it regulates. The existing rules promulgated
24 under the previous chapter 36-18 remain in effect until replaced. The board shall
25 promulgate rules, pursuant to chapter 1-26, for the licensure of professional engineers,
26 architects, land surveyors, landscape architects, and petroleum release assessors and
27 remediators in the following areas:

- 28 (1) Forms such as applications, renewals, licenses or certificates, and receipts for
- 29 applicants, licensed professionals, and business entities;
- 30 (2) Fees for applications, examinations, renewals, late penalties, lists and labels of
- 31 licensees, returned checks, reinstatement, inactive status, ability to allow a vendor
- 32 to collect fees for examinations, waiver of fees;
- 33 (3) Criteria for types of education degrees, approval of accredited programs, intern
- 34 programs, type of experience, length of experience, national and state specific

- 1 examinations, use of computer examinations, criteria from other countries,
 2 procedure to evaluate foreign degrees, eligibility of applicants, dual licenses;
 3 (4) Continuing professional education and development content, hours, carryovers, and
 4 requirements;
 5 (5) How, when, and where to seal plans and documents; type of seal; required services
 6 to be provided; and criteria to define complete plans, minimum standards of
 7 practice, and guidelines;
 8 (6) Description of and criteria for construction administration, including a designation
 9 of who is to perform construction administration and criteria for a prime professional
 10 or a coordinating professional;
 11 (7) Requirements for compliance with local building code; and
 12 (8) The adoption of a code of professional conduct;
 13 ~~(9) Procedures for disciplinary proceedings; and~~
 14 ~~(10) Procedures for contested cases pursuant to chapter 1-26.~~

15 **Section 26.** That § 36-19-9 be AMENDED.

16 **36-19-9. Officers of board--Scope of rules--Bond required of treasurer.**

17 The State Board of Funeral Service ~~shall have the power to~~ may elect, out of its
 18 own number, a president, a vice-president, and secretary-treasurer, and, pursuant to
 19 chapter 1-26, promulgate the rules as may be reasonable and proper to:

- 20 (1) Establish the minimum physical standards of licensees' funeral establishments;
 21 (2) Regulate the inspection of each funeral establishment;
 22 (3) Establish the educational, training, reciprocity and renewal requirements for
 23 licensure; and
 24 (4) However, the board may not regulate the method and manner of providing funeral
 25 service; ~~and~~
 26 ~~(5) Conduct investigations and implement disciplinary proceedings.~~

27 The treasurer of ~~such the~~ board shall give bond in the sum of five thousand dollars
 28 with sufficient sureties to be approved by ~~such the~~ board, conditioned for the honest and
 29 faithful discharge of ~~his~~ the treasurer's duties.

30 **Section 27.** That § 36-20B-41 be AMENDED.

1 **36-20B-41. Investigations--Probable cause determination--Subpoena power**
2 **of board.**

3 The board may, upon receipt of a complaint or other information suggesting
4 violations of this chapter or of the rules of the board, conduct investigations in accordance
5 with chapter 36-1C to determine whether there is probable cause to institute proceedings
6 under chapter 1-26 or of this chapter against any person or firm for such violation.
7 However, no investigation under this section may be a prerequisite to ~~such~~ the
8 proceedings ~~in the event that~~ if a determination of probable cause can be made without
9 investigation. In aid of such investigations, the board or the chair thereof may issue
10 subpoenas to compel witnesses to testify and to produce evidence.

11 **Section 28.** That § 36-20B-42 be AMENDED.

12 **36-20B-42. Investigating officer--Confidentiality of information.**

13 ~~The board may designate a member, or any other person of appropriate~~
14 ~~competence, to serve as investigating officer to conduct an investigation. Upon completion~~
15 ~~of an investigation, the investigating officer shall file a report with the board. The board~~
16 ~~shall find probable cause or lack of probable cause upon the basis of the report or shall~~
17 ~~return the report to the investigating officer for further investigation. Unless there has~~
18 ~~been a determination of probable cause, If an investigation committee determines a~~
19 ~~complaint or other information suggesting a violation under § 36-20B-41 lacks probable~~
20 ~~cause, the report of the investigating officer committee, the complaint, if any, the~~
21 ~~testimony and documents submitted in support of the complaint or gathered in the~~
22 ~~investigation, and the fact of pendency of the investigation shall must be treated as~~
23 ~~confidential information and may not be disclosed to any person except law enforcement~~
24 ~~authorities and, to the extent ~~deemed~~ considered necessary in order to conduct the~~
25 ~~investigation, the subject of the investigation, ~~persons~~ the person whose ~~complaints are~~~~
26 ~~complaint is being investigated, and ~~witnesses~~ any witness questioned in the course of~~
27 ~~the investigation.~~

28 **Section 29.** That § 36-20B-43 be AMENDED.

29 **36-20B-43. Findings of investigation--Effect.**

30 ~~Upon a finding of probable cause, At the conclusion of the investigation under §~~
31 ~~36-1C-4, if the subject of the investigation is a licensee or an individual with practice~~
32 ~~privileges under the provisions of § 36-20B-66 or 36-20B-67, the board staff shall proceed~~
33 ~~in accordance with chapter 1-26. If the subject of the investigation is not a licensee or an~~

1 individual with privileges under this chapter, the board shall take appropriate action under
2 this chapter. Upon a finding of no probable cause, the board shall close the matter and
3 shall thereafter release information relating thereto only with the consent of the person
4 or firm under investigation.

5 **Section 30.** That § 36-20B-45 be AMENDED.

6 **36-20B-45. Issuance of complaint--Administrative hearing--Service of**
7 **complaint and notice of hearing.**

8 If probable cause with respect to a violation by a ~~licensee or~~ an individual with
9 practice privileges granted under the provisions of § 36-20B-66 or 36-20B-67 has been
10 determined by the board, or upon receipt of notice of a decision by the board of another
11 state furnishing grounds for a determination of probable cause, the board may issue a
12 complaint setting forth appropriate charges and set a date for hearing before the board
13 on such charges. If a complaint is issued and a hearing date set, the board shall, not less
14 than thirty days prior to the date of the hearing, serve a copy of the complaint and notice
15 of the time and place of the hearing upon the ~~licensee or an~~ individual with practice
16 privileges granted under the provisions of § 36-20B-66 or 36-20B-67, together with a
17 copy of the ~~board's rules governing proceedings under this section, either by personal~~
18 ~~delivery or by mailing a copy thereof by registered mail to the licensee at the licensee's~~
19 ~~address, last known to the board. In the case of an individual exercising practice privileges~~
20 ~~under the provisions of § 36-20B-66 or 36-20B-67, service contested case proceedings~~
21 under chapter 1-26. Service shall be by certified or registered mail to the address last
22 known to the board, or pursuant to chapter 1-26.

23 **Section 31.** That § 36-20B-46 be AMENDED.

24 **36-20B-46. Respondent to have access to investigatory report and evidence.**

25 A ~~licensee or an~~ An individual with practice privileges under the provisions of § 36-
26 20B-66 or 36-20B-67 against whom a complaint has been issued under this section may,
27 reasonably in advance of the hearing, examine and copy the report of investigation, if
28 any, and any documentary or testimonial evidence and summaries of anticipated evidence
29 in the board's possession relating to the subject matter of the complaint. The board shall
30 adopt rules, promulgated pursuant to chapter 1-26, governing proceedings under this
31 section to specify the manner in which such right may be exercised.

32 **Section 32.** That § 36-20B-47 be AMENDED.

1 **36-20B-47. Appearance at hearing--Examination and presentation of**
2 **witnesses and evidence--Subpoenas.**

3 The respondent licensee ~~or an~~ shall appear at the hearing as required by § 36-1C-
4 10. An individual with practice privileges granted under the provisions of § 36-20B-66 or
5 36-20B-67 may appear at the hearing in person or, in the case of a firm, through a partner,
6 officer, director, shareholder, member, or manager, and by counsel, examine witnesses
7 and evidence presented in support of the complaint, and present evidence and witnesses
8 on the licensee's or an individual's own behalf. The licensee or an individual granted
9 practice privileges under the provisions of § 36-20B-66 or 36-20B-67 is entitled, on
10 application to the board, to the issuance of subpoenas to compel the attendance of
11 witnesses and the production of documentary evidence.

12 **Section 33.** That § 36-21A-89 be AMENDED.

13 **36-21A-89. Administration and enforcement of chapter--Promulgation of**
14 **rules.**

15 The commission may promulgate rules pursuant to chapter 1-26 relating to the
16 administration and enforcement of the provisions of this chapter in the following areas:

- 17 (1) Procedures for conducting the commission's business;
- 18 (2) Procedures and qualifications for application, minimum requirements for
19 examination, procedures for the examination and the administration of the
20 examination, the required score for passing the examination, and procedures for
21 replacement of a license;
- 22 (3) Requirements for dividing a commission with a broker in another state,
23 requirements for application for licensure by reciprocity and the practice of a
24 nonresident licensee in the state;
- 25 (4) Procedures for application to provide classroom instruction or correspondence work
26 for prelicensing education, qualifications of the instructors and facilities, and
27 procedures for approving classroom instruction and correspondence work and for
28 withdrawing the approval;
- 29 ~~(5) Procedures for disciplinary proceedings, including requirements for filing a~~
30 ~~complaint, dismissal of a complaint, informal and formal resolution of a complaint,~~
31 ~~formal complaint and answer requirements, final action and review, disqualification~~
32 ~~of a commission member from a hearing and authorization for per diem and~~
33 ~~mileage;~~
- 34 ~~(6) Procedures for declaratory rulings, petitions for rules and contested cases;~~

- 1 ~~(7)~~—Requirements for a real estate auction, use of unlicensed persons to call or take
2 bids, and the requirements, duties and responsibilities of an auctioneer;
- 3 ~~(8)~~(6) Requirements for mortgage brokers, including areas such as trust accounts, record-
4 keeping, written contracts, full disclosure and restrictions on chargeable costs and
5 expenses;
- 6 ~~(9)~~(7) Requirements for continuing education including procedures for granting a
7 certificate of accreditation; notification of a material change in an approved course
8 offering; suspension, revocation and denial of course approval; notice to students
9 regarding the course and opportunity for comment; auditing; certificates of
10 attendance; preregistration and limits on correspondence courses;
- 11 ~~(10)~~(8) Requirements for property managers, including areas such as trust accounts,
12 auditing, contracts, disclosure, disciplinary matters, financial obligations and
13 records, and property management accounting; and
- 14 ~~(11)~~(9) Requirements for establishing and maintaining teams and the requirements,
15 duties, and responsibilities of team leaders.

16 **Section 34.** That § 36-21B-3 be AMENDED.

17 **36-21B-3. Promulgation of rules.**

18 The secretary of the Department of Labor and Regulation may promulgate rules
19 pursuant to chapter 1-26 relating to appraisers and appraisals in the following areas:

- 20 (1) Certification, licensing, and registration of appraisers;
- 21 (2) Definition of terms;
- 22 (3) Uniform standards of professional appraisal practice;
- 23 (4) Application for and issuance of certificates;
- 24 (5) Examinations and examination procedures;
- 25 (6) Pre-certification education criteria and continuing education;
- 26 (7) Qualifications for and upgrading of a certificate;
- 27 (8) Transactions requiring certified, licensed, or registered appraisers;
- 28 (9) Renewal and late renewal procedures;
- 29 (10) Certificate by reciprocity;
- 30 (11) Temporary practice and permits;
- 31 (12) ~~Complaints and grounds~~ Grounds for disciplinary actions including denial,
32 revocation, suspension, censure, and reprimand;
- 33 (13) Conflict of interest and investigation;
- 34 (14) Advertising by certified, licensed, or registered appraisers;

- 1 (15) Retention and inspection of records, and rosters of appraisers;
- 2 (16) Appraiser membership, competency, and independence;
- 3 (17) Review of appraisals and contracting for investigations;
- 4 (18) Inspection, examination, and photocopy of appraisal records for audit purposes;
- 5 (19) Inactive status; and
- 6 (20) Exemptions and standards allowing appraisers to perform an evaluation for a
- 7 federally insured depository institution.

8 **Section 35.** That § 36-21C-6 be AMENDED.

9 **36-21C-6. Promulgation of rules for licensing and registration.**

10 The commission shall promulgate rules pursuant to chapter 1-26 for licensed and
11 registered home inspectors in the following areas:

- 12 (1) Standards and requirements for prelicense and continuing education, including
13 qualifications of instructors, procedures for granting a certificate of accreditation,
14 notification of a material change in an approved course offering, suspension,
15 revocation, and denial of course approval, certification of attendance,
16 preregistration, and hours required to renew a license or registration;
- 17 (2) A code of ethics and standards of practice;
- 18 (3) Fees for applications, examinations, registration, licensure, and renewals, not to
19 exceed two hundred dollars for application and one hundred dollars for renewal;
20 and
- 21 (4) Procedures and qualifications for application, minimum requirements for
22 examination, procedures for the examination and the administration of the
23 examination, the required score for passing the examination, and procedures for
24 replacement of a license;
- 25 ~~(5) Procedures for disciplinary proceedings, including requirements for filing a~~
26 ~~complaint, dismissal of a complaint, informal and formal resolution of a complaint,~~
27 ~~formal complaint and answer requirements, final action and review, disqualification~~
28 ~~of a commission member from a hearing, and authorization for per diem and~~
29 ~~mileage; and~~
- 30 ~~(6) Procedures for declaratory rulings, petitions for rules, and contested cases.~~

31 **Section 36.** That § 36-21D-4 be AMENDED.

1 **36-21D-4. Promulgation of rules regarding companies and services.**

2 The secretary of the Department of Labor and Regulation may promulgate rules
3 pursuant to chapter 1-26 relating to appraisal management companies and appraisal
4 management services ~~as follows~~ in the following areas:

- 5 (1) Registration of appraisal management companies;
6 (2) Definition of terms;
7 (3) Responsibilities and duties;
8 (4) Application for and issuance of certificate of registration;
9 (5) Renewal and late renewal procedures;
10 (6) ~~Investigation and contracting~~ Contracting for investigations;
11 (7) Complaints and grounds for disciplinary actions, including denial, revocation,
12 suspension, censure, and reprimand;
13 (8) Retention and inspection of records;
14 (9) Roster;
15 (10) Review of appraisal related records;
16 (11) Inspection, examination, and photocopy of records;
17 (12) National registry fee collection and remittance; and
18 (13) Filing of surety bonds or irrevocable letters of credit.

19 **Section 37.** That § 36-26-41 be AMENDED.

20 **36-26-41. Investigation and report of violations--Employment of special**
21 **counsel--Expenses.**

22 The board shall investigate every ~~supposed~~ alleged violation of this chapter, ~~and~~
23 pursuant to the procedures set forth in chapter 36-1C. If the board violation is committed
24 by a nonlicensee, the board shall report the same to the proper law enforcement officials
25 wherein the act is committed. The board is authorized to employ special counsel subject
26 to the supervision, control and direction of the attorney general, to assist in the
27 prosecution of violations of this chapter and to expend the necessary funds for such
28 purpose.

29 **Section 38.** That § 36-27A-34 be AMENDED.

30 **36-27A-34. Investigation and prosecution of violations.**

31 The Board of Examiners of Psychologists shall investigate every alleged violation
32 of this chapter pursuant to chapter 36-1C. The board may employ special counsel, subject
33 to approval, supervision, control, and direction by the attorney general, to assist in the

1 prosecution of violations of this chapter, and to spend the necessary funds for that
2 purpose.

3 **Section 39.** That § 36-29-26 be AMENDED.

4 **36-29-26. Investigation and report of violations.**

5 The Board of Medical and Osteopathic Examiners shall investigate every ~~supposed~~
6 alleged violation of this chapter ~~and pursuant to the procedures set forth in chapter 36-~~
7 1C. If the alleged violation is committed by a nonlicensee, the board shall report the same
8 to the proper law enforcement officials wherein the violation is committed.

9 **Section 40.** That § 36-31-22 be AMENDED.

10 **36-31-22. Investigation and report of violations.**

11 The board shall investigate every ~~supposed~~ alleged violation of this chapter ~~and~~
12 pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed
13 by a nonlicensee, the board shall report the same to the proper law enforcement officials
14 wherein the violation is committed.

15 **Section 41.** That § 36-32-80 be AMENDED.

16 **36-32-80. Complaints--Investigation--Dismissal--Hearing--Appeal.**

17 ~~The board shall receive complaints~~ Complaints regarding any person licensed under
18 this chapter shall be processed pursuant to chapter 36-1C. A record of each complaint
19 shall be maintained ~~by~~ in the board office.

20 ~~An~~ Notwithstanding any provision of chapter 36-1C, an investigation shall ~~may~~ be
21 conducted by a member, agent, or an appointee of the board to determine whether the
22 alleged violation has been committed. The investigator, if a member of the board, may
23 dismiss a complaint if it appears to the member, in consultation with the board president,
24 that no violation has been committed. If the investigator is an agent or an appointee of
25 the board, dismissal of the complaint may only be made by the board president. Any
26 disposition agreed upon between the investigator and the licensee or permit holder shall
27 be made known to and approved by the board.

28 Any disciplinary proceeding ~~shall~~ must be conducted in accordance with chapter 1-
29 26. Any decision of the board entered in a contested proceeding may be appealed to the
30 circuit court within thirty days. A license or permit ~~shall remain~~ remains in effect during
31 the pendency of an appeal, unless suspended under § 36-32-86.

1 **Section 42.** That § 36-32-89 be AMENDED.

2 **36-32-89. Violations reported to law enforcement officials--Prosecution of**
3 **violations.**

4 The board shall investigate ~~and report~~ an alleged violation of any provision of this
5 chapter, pursuant to the procedures set forth in chapter 36-1C, and report the alleged
6 violation. The board may employ special counsel subject to the supervision, control, and
7 direction of the attorney general to assist in the prosecution of alleged criminal violations
8 and may expend the necessary funds for this purpose.

9 **Section 43.** That § 36-33-58 be AMENDED.

10 **36-33-58. Complaints--Investigation--Dismissal--Hearing--Appeal.**

11 The board shall receive complaints regarding the enforcement of the provisions of
12 this chapter pursuant to the procedures set forth in chapter 36-1C. A record of each
13 complaint shall be maintained by the board. ~~An investigation shall be conducted by a~~
14 ~~member, agent, or an appointee of the board to determine whether an alleged violation~~
15 ~~has been committed.~~

16 ~~The~~ Notwithstanding chapter 36-1C, the investigator, if a member of the board,
17 may dismiss a complaint if it appears to the member, in consultation with the board
18 president, that no violation has been committed. If the investigator is an agent or an
19 appointee of the board, dismissal of the complaint may only be made by the board
20 president. Any disposition agreed upon between the investigator and the licensee or
21 permit holder shall be made known to and approved by the board.

22 Any disciplinary proceeding shall be conducted in accordance with chapter 1-26.
23 Any decision of the board entered in a contested proceeding may be appealed to the circuit
24 court within thirty days. A license or permit shall remain in effect during the pendency of
25 an appeal unless suspended under § 36-33-64.

26 **Section 44.** That § 36-34-18 be AMENDED.

27 **36-34-18. Receipt and log of complaints--Investigation--Disciplinary**
28 **proceeding.**

29 The board shall receive complaints concerning a practitioner's professional
30 practices. Each complaint received shall be logged by the secretary-treasurer, or the
31 board's designee, recording the practitioner's name, name of the complaining party, date
32 of the complaint, a brief statement of the complaint, and its ultimate disposition. The

1 board shall investigate each alleged violation of this chapter pursuant to the procedures
2 set forth in chapter 36-1C. All disciplinary proceedings held under the authority of this
3 chapter ~~shall~~ must be conducted in accordance with chapter 1-26.

4 **Section 45.** That § 36-35-20 be AMENDED.

5 **36-35-20. Investigation of complaints--Inspections.**

6 The board ~~may~~ shall receive and investigate any complaint filed with the board
7 alleging a violation of this chapter pursuant to the procedures set forth in chapter 36-1C.
8 The board may inspect the place of business of the licensee named in a complaint during
9 normal business hours or upon written notice.

10 **Section 46.** That § 36-36-12 be AMENDED.

11 **36-36-12. Promulgation of rules.**

12 The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees,
13 licensure, investigations, ~~disciplinary proceedings,~~ and continuing education.

14 **Section 47.** That § 36-38-21 be AMENDED.

15 **36-38-21. Investigation of suspected violations--Prosecution of violations.**

16 The board shall investigate each suspected violation of this chapter ~~and~~ pursuant
17 to the procedures set forth in chapter 36-1C. If the suspected violation is committed by a
18 nonlicensee, the board shall report the violation to the proper law enforcement official
19 where the act is committed. The board is authorized to employ special counsel subject to
20 the supervision, control, and direction of the attorney general to assist in the prosecution
21 of violations of this chapter, and to expend the necessary funds for such purpose.

22 **Section 48.** That section 47 of this Act is repealed on July 1, 2024.