

AN ACT

ENTITLED, An Act to revise certain provisions relating to professional and occupational licensing boards.

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

Section 1. That § 36-4-1 be amended to read as follows:

36-4-1. The State Board of Medical and Osteopathic Examiners, hereinafter called the Board of Examiners, consists of nine members to be appointed by the Governor for terms of three years. No member may serve more than three consecutive full terms. However, appointment to an unexpired term is not considered a full term for this purpose. Each member shall hold office until a successor is appointed and qualified. Any vacancy on the board shall be filled by appointment by the Governor. The board shall at all times include six doctors of medicine and one doctor of osteopathy. The Governor may stagger terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

Section 2. That § 36-4-2 be amended to read as follows:

36-4-2. The Board of Examiners shall include six doctors of medicine holding a degree of M.D., and one doctor of osteopathy holding the degree of D.O. The members of the board shall be licensed in the State of South Dakota, and shall be skilled and capable physicians in good standing.

Section 3. That § 36-4-2.1 be amended to read as follows:

36-4-2.1. The membership of the Board of Examiners shall include two lay members who are users of the services regulated by the board. One lay member may be a nonphysician health care professional licensed by the board. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.

Section 4. That § 36-4-34 be amended to read as follows:

36-4-34. If it appears from evidence satisfactory to the Board of Examiners that any person has violated the provisions of this chapter or that any licensee under this chapter has been guilty of unprofessional or dishonorable conduct or is incompetent, the board may apply for an injunction in any court of competent jurisdiction to restrain the person or licensee from continuing to practice medicine, osteopathy, surgery, or obstetrics in any of their branches in this state. Application for an injunction is an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 5. That § 36-4A-3.1 be amended to read as follows:

36-4A-3.1. The board shall appoint a physician assistant advisory committee composed of three physician assistants. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than one member's term expires in one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business. The advisory committee shall assist the board in evaluating standards of physician assistant care and the regulation of physician assistants pursuant to this chapter. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 6. That § 36-4A-37 be amended to read as follows:

36-4A-37. The South Dakota State Board of Medical and Osteopathic Examiners may deny the issuance or renewal of a license or suspend or revoke the license of any physician assistant issued under this chapter upon satisfactory proof, in compliance with chapter 1-26, of such person's:

- (1) Incompetence or unprofessional or dishonorable conduct as defined in § 36-4-30;

- (2) Violation of this chapter in any respect;
- (3) Failure to notify the board, in writing, of the termination of the contract with the person's supervising physician within seven days after the termination;
- (4) Rendering medical services beyond the specific tasks allowed to the physician assistant;
or
- (5) Rendering medical services without supervision of a physician as required by law and the rules of the board.

Section 7. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as follows:

The board shall appoint an advanced life support personnel advisory committee composed of four members as follows:

- (1) One emergency medical technician-intermediate/85;
- (2) One emergency medical technician-intermediate/99;
- (3) One emergency medical technician-paramedic; and
- (4) One emergency room physician.

Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than two members' terms expire in one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business. The advisory committee shall assist the board in evaluating standards of care for advanced life support personnel and the regulation of advanced life support personnel pursuant to this chapter. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 8. That § 36-4B-31 be amended to read as follows:

36-4B-31. The board may deny the issuance or renewal of a license or suspend or revoke the license of any advanced life support personnel issued under this chapter upon satisfactory proof of the person's incompetence, or unprofessional or dishonorable conduct as defined in § 36-4-30 or proof of a violation of this chapter.

Section 9. That § 36-4C-4 be amended to read as follows:

36-4C-4. The board shall appoint a Respiratory Care Practitioners' Advisory Committee composed of five members as follows:

- (1) Two registered respiratory therapists;
- (2) Two certified respiratory therapists; and
- (3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business.

The advisory committee shall assist the board in evaluating the qualifications of applicants for licensure and reviewing the examination results of applicants. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 10. That § 36-4C-16 be amended to read as follows:

36-4C-16. A proceeding for cancellation, revocation, or suspension of a license or temporary permit may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-4C-15 or is guilty of incompetence or unprofessional or

dishonorable conduct.

Section 11. That § 36-5-2 be amended to read as follows:

36-5-2. Any person who practices or attempts to practice chiropractic or who uses the title chiropractor or any word or title having a tendency to induce any person to believe that the person is a chiropractor without first having secured a license from the Board of Chiropractic Examiners or an annual license renewal from the Board of Chiropractic Examiners is guilty of a Class 1 misdemeanor. The state's attorneys shall enforce the provisions of this chapter within their respective counties.

Section 12. That § 36-5-3 be amended to read as follows:

36-5-3. The Board of Chiropractic Examiners shall be composed of one lay person and four members who are chiropractors, and appointed by the Governor for terms of three calendar years. No member may serve more than three consecutive full terms. The Governor shall, by appointment, fill any vacancy occurring in the board. The appointment to an unexpired term is not considered a full term. The Governor may stagger terms to enable the board to have different terms expire each year.

Section 13. That § 36-5-14.1 be amended to read as follows:

36-5-14.1. Each person receiving a license under the provisions of this chapter shall procure from the secretary-treasurer of the board on or before the thirty-first day of December of each year, a renewal of license. The renewal shall be issued by the secretary-treasurer upon payment of the fee to be fixed in a rule, promulgated by the board pursuant to chapter 1-26, not exceeding the sum of three hundred dollars. The renewal license shall be in the form of a receipt acknowledging payment of the required fee and signed by the secretary-treasurer.

Section 14. That § 36-5-16 be amended to read as follows:

36-5-16. The board may, in compliance with chapter 1-26, refuse to grant a license to any person

otherwise qualified, and may revoke the license of any chiropractor who is not of good moral character; who solicits professional patronage by agents; who is guilty of unprofessional conduct, incompetency, habitual intoxication, the use of narcotics, fraud, or deception; who shall be convicted of a felony; or who practices contrary to the provisions of this chapter or the rules of the board. The board shall define by rule the foregoing grounds for revocation and refusal.

Section 15. That § 36-5-18 be amended to read as follows:

36-5-18. The South Dakota Chiropractors Association, composed of the licensed chiropractors in this state electing to participate, shall improve, promote, and further, by educational work, the qualifications of its members and the art, science, and practice of chiropractic.

Section 16. That § 36-6A-2 be repealed.

Section 17. That § 36-6A-4 be amended to read as follows:

36-6A-4. No member of the board may serve more than three consecutive full terms. However, appointment of a person to an unexpired term is not considered a full term for this purpose. The Governor shall make appointments to the board for terms of three years. Each member shall hold office until a successor is appointed and qualified. The Governor shall, by appointment, fill any vacancy for the balance of the unexpired term. The Governor may stagger terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

Section 18. That § 36-7-3 be amended to read as follows:

36-7-3. The State Board of Examiners in Optometry consists of four members appointed by the Governor, three of whom shall be fully qualified and licensed to prescribe and administer diagnostic and therapeutic pharmaceutical agents under this chapter. Each member shall have been a resident of this state actually engaged in the practice of optometry at least five years preceding the

appointment. The term of each member is three years commencing on July first. The Governor shall, by appointment, fill any vacancy. No member may serve more than three consecutive full terms. The appointment of a person to an unexpired term is not considered a full term. No member of any optical school or college, or instructor in optometry, or person connected therewith, or any jobber or jobber's representative, is eligible for the board.

Section 19. That § 36-7-24 be amended to read as follows:

36-7-24. The Board of Examiners, in compliance with chapter 1-26, may revoke the certificate of any registrant for any one, or any combination, of the following causes:

- (1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- (2) Obtaining of, or an attempt to obtain, a certificate of registration by fraudulent misrepresentation;
- (3) Malpractice;
- (4) Continued practice by a person knowingly having an infectious or contagious disease;
- (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (6) Being guilty of unprofessional conduct.

Section 20. That § 36-8-2 be amended to read as follows:

36-8-2. The State Board of Podiatry Examiners shall include three professional members appointed by the Governor, each of whom shall be a resident podiatrist of this state. The term of each shall be three years, commencing on the first day of July. No member may serve more than three consecutive full terms. The Governor shall, by appointment, fill any vacancy. The appointment of a person to an unexpired term is not considered a full term.

Section 21. That § 36-9-9 be amended to read as follows:

36-9-9. The term of office for the members of the Board of Nursing is three years and expires on July first. Each member shall serve until a successor has been appointed and qualified. No member may be appointed to more than three consecutive full terms. However, appointment of a person to an unexpired term is not considered a full term for this purpose.

At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a new board member. The Governor may stagger terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

Section 22. That § 36-9-49 be amended to read as follows:

36-9-49. In compliance with chapter 1-26, the Board of Nursing may deny an application for licensure or certification or may deny, revoke, or suspend a license or certificate and may take other disciplinary or corrective action it considers appropriate in addition to or in lieu of such an action upon proof that the applicant, licensee, or certificate holder has:

- (1) Committed fraud, deceit, or misrepresentation in procuring or attempting to procure licensure or certification;
- (2) Been convicted of a felony. The conviction of a felony means the conviction of any offense which, if committed within the State of South Dakota, would constitute a felony under its laws;
- (3) Engaged in the practice of nursing under a false or incorrect name or under a fictitious or assumed business name which has not been registered pursuant to chapter 37-11 or impersonated another licensee or certificate holder of a like or different name;
- (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs as defined by chapter 34-20B to such an extent as to result in incapacitation from the performance

of professional duties;

- (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health or safety of persons entrusted to his or her care;
- (6) Had a license, certificate, or privilege to practice as a registered nurse, licensed practical nurse, certified registered nurse anesthetist, or clinical nurse specialist denied, revoked, or suspended or had other disciplinary action taken in another state, territory, or foreign country;
- (7) Violated any provisions of this chapter or the rules promulgated under it;
- (8) Aided or abetted an unlicensed or uncertified person to practice nursing;
- (9) Engaged in the practice of nursing during a time his or her license or certificate is lapsed, on inactive status, suspended, or revoked;
- (10) Been guilty of incompetence or unprofessional or dishonorable conduct;
- (11) Exercised influence within the nurse-patient relationship for the purpose of engaging a patient in sexual activity. For the purpose of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity with the nurse; or
- (12) Engaged in gross sexual harassment or sexual contact.

Section 23. That § 36-9A-5.1 be amended to read as follows:

36-9A-5.1. The Board of Nursing shall appoint an advanced practice nurse advisory committee composed of two certified nurse midwives and four certified nurse practitioners. Committee members shall be selected from a list of nominees by the Board of Nursing. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than two members' terms expire in one year. No committee member may be appointed to more than three consecutive terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The

committee shall meet at least annually, or as deemed necessary, to conduct business. The advisory committee shall assist the boards in evaluating standards of advanced practice nursing care and the regulation of nurse practitioners and nurse midwives pursuant to this chapter. The committee shall also make recommendations to the boards regarding rules promulgated pursuant to this chapter.

Section 24. That § 36-9A-30 be amended to read as follows:

36-9A-30. The proceedings for revocation or suspension of a license may be initiated if the boards have information that any person may have been guilty of any misconduct as provided in § 36-9A-29, or is guilty of incompetence or unprofessional or dishonorable conduct.

Section 25. That § 36-10-19 be amended to read as follows:

36-10-19. The board shall appoint a physical therapy committee, composed of three physical therapists, which shall assist the Board of Examiners in conducting examinations of persons applying for a license to practice physical therapy. The committee shall assist the Board of Examiners on all matters pertaining to the licensure, practice, and discipline of all persons licensed to practice physical therapy in the State of South Dakota, or the making or abolishing of rules pertaining to physical therapy. Each committee member shall serve a term of three years. No member may serve more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business.

Section 26. That § 36-10-20 be repealed.

Section 27. That § 36-10-22 be repealed.

Section 28. That § 36-10-39 be amended to read as follows:

36-10-39. The Board of Examiners may cancel, revoke, or suspend the license of any physical therapist or the certificate of any physical therapist assistant issued under this chapter upon satisfactory proof of such a licensee's or certificate holder's incompetence, or unprofessional or

dishonorable conduct, or proof of a violation of this chapter in any respect.

Section 29. That § 36-10-41 be amended to read as follows:

36-10-41. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the Board of Examiners has information that any person, persons, firms, or corporation may have been guilty of any misconduct as provided in § 36-10-40 or is guilty of incompetence or unprofessional or dishonorable conduct.

Section 30. That § 36-10B-4 be amended to read as follows:

36-10B-4. The board shall appoint a nutrition and dietetics advisory committee composed of five members. The members shall be registered dietitians or qualified nutritionists. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term.

The committee may assist the board in evaluating the qualifications of applicants for licensure. The committee may make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 31. That § 36-11-3 be amended to read as follows:

36-11-3. Those registered pharmacists of this state electing to participate shall constitute an association under the name and title of the South Dakota Pharmacists Association. The purpose of the association is to serve as the state professional society of pharmacists which represents the profession of pharmacy, enhances the public's awareness of pharmacy, and serves the best interest of public health and pharmacy. The South Dakota Pharmacists Association shall be conducted as a nonprofit corporation pursuant to the terms of its articles of incorporation. The members of the

association who have secured a current annual certificate of registration to practice pharmacy in this state and who have elected to participate in the association are entitled to all of the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all of the meetings of the association. The association shall hold an annual meeting at such time and place as it determines.

Section 32. That § 36-11-4 be amended to read as follows:

36-11-4. The State Board of Pharmacy shall include three professional members who shall hold their offices for terms of three years or until their successors are appointed and qualified. No member may serve more than three consecutive full terms. The appointment of a person to an unexpired term is not considered a full term. The Governor may remove any member of the board for just cause.

Section 33. That § 36-11-6 be amended to read as follows:

36-11-6. The board may, upon receipt, pay to the South Dakota Pharmacists Association eighty percent of all fees the board receives for renewals of certificates of registration as a pharmacist. The association shall use the funds for the following association activities to benefit the public and the profession: continuing education, matters related to registration standards for pharmacists, professional service standards, and general operating expenses related to the activities enumerated in this section. The association shall also use funds received to pay any legislated assessment to support a diversion program for chemically impaired pharmacists. Expenditures of funds shall be approved by the president and treasurer of the association. The association shall annually file in the office of the board an itemized statement of the receipts of the association and disbursements from the receipts.

Section 34. That § 36-11-9 be amended to read as follows:

36-11-9. The Board of Pharmacy shall report annually to the Governor as provided by law for state officers and boards.

Section 35. That § 36-11-23 be amended to read as follows:

36-11-23. Each pharmacist shall annually by October first each year, pay to the board a registry fee to be fixed by the board in compliance with chapter 1-26, not to exceed one hundred fifty dollars. Upon payment of the fee by a pharmacist, the Board of Pharmacy shall renew the pharmacist's certificate of registration. Any pharmacist who fails to pay the renewal fee by the due date is subject to suspension of certificate by the board in compliance with chapter 1-26. Any suspended certificate may be reinstated if all delinquent fees have been paid, plus a penalty of twenty-five dollars, and the Board of Pharmacy has approved the application for reinstatement.

Section 36. That § 36-12-3 be amended to read as follows:

36-12-3. The Governor shall appoint a State Board of Veterinary Medical Examiners which shall include three veterinarians. Each veterinarian shall be a graduate from a college authorized by law to confer degrees of veterinary medicine with educational standards equal to those approved by the American Veterinary Medical Association, and each veterinarian shall be licensed and registered under this chapter and actively engaged in the practice of veterinary medicine in the state for a period of five years preceding the appointment. Appointments shall be made for the term of three years. No member of this board may serve more than three full terms. The appointment of a person to an unexpired term is not considered a full term.

Section 37. That § 36-12-5 be repealed.

Section 38. That § 36-12-6 be amended to read as follows:

36-12-6. The Governor shall remove any member of the Board of Veterinary Examiners upon proper showing of neglect of duty or for corrupt conduct in office or any other misfeasance or malfeasance in office.

Section 39. That § 36-12-22 be amended to read as follows:

36-12-22. The State Board of Veterinary Medical Examiners may, in compliance with chapter

1-26, either refuse to issue a license or refuse to issue a certificate of registration or suspend or revoke a license and certificate of registration upon any of the following grounds:

- (1) Fraud or deception in procuring the license;
- (2) The publication or use of any untruthful or improper statement, or representation, with a view of deceiving the public, or any client or customer in connection with the practice of veterinary medicine;
- (3) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs; or entry of a plea of guilty to, or nolo contendere to, or conviction of a violation of any federal or state law relating to controlled drugs or substances;
- (4) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;
- (5) Malpractice, including failure to furnish to the board, upon written application by it, any report or information relating thereto;
- (6) The employment of an unlicensed person to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;
- (7) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;
- (8) Failure to keep one's premises in a reasonably clean and sanitary condition and failure to use reasonably sanitary methods in the practice of veterinary medicine;
- (9) The use, prescription, or sale of any veterinary prescription drug in the absence of a valid veterinary client-patient relationship;
- (10) Professional incompetence which constitutes a deviation from the statewide standard of competence, which is that minimum degree of skill and knowledge necessary for the

performance of characteristic tasks of a veterinarian in at least a reasonably effective way.

Section 40. That § 36-13-1 be amended to read as follows:

36-13-1. The Abstracters' Board of Examiners shall be composed of five members appointed by the Governor. Four members of the board shall be abstracters who have been qualified to do the business of abstracting under § 36-13-8 for five years prior to the date of their appointment. Four of these abstracter members shall be members of the South Dakota Land Title Association. The members may not be all of the same political party, and their terms shall be for three years. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term. No board member may serve more than three consecutive full terms. Members of the board shall qualify by taking the oath of office provided by law for public officers.

The Governor shall, by appointment, fill any vacancy among the professional members of the board for the unexpired term from abstracters qualified as provided in this section. Any appointment to an unexpired term is not considered a full term.

Section 41. That § 36-13-1.1 be amended to read as follows:

36-13-1.1. The membership of the Abstracters' Board of Examiners shall include one lay member who is a user of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed. The term shall be liberally construed to implement the purpose of this section. The Governor shall appoint the lay member. The lay member shall have the same term of office as other members of the board. No lay member of the board may serve more than three consecutive full terms.

Section 42. That § 36-14-2 be amended to read as follows:

36-14-2. The Governor shall appoint a Board of Barber Examiners which shall include three professional members. The term of each shall be three years commencing on the first day of July.

No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. Each of these members shall be a practical barber who has followed the occupation of barber in this state for at least five years immediately preceding the barber's appointment. The Governor may remove a member for cause and shall fill all vacancies. Any member appointed to fill a vacancy shall serve the remainder of the unexpired term. The Governor may stagger the terms to enable the board to have different terms expire each year.

Section 43. That § 36-14-2.1 be amended to read as follows:

36-14-2.1. The membership of the Board of Barber Examiners shall include one lay member who is a user of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed. The term shall be liberally construed to implement the purpose of this section. The Governor shall appoint the lay member. The lay member shall have the same term of office and is subject to the same limits and conditions as other members of the board.

Section 44. That § 36-14-32 be amended to read as follows:

36-14-32. The Board of Barber Examiners may refuse to issue or renew, or may suspend or revoke, any certificate of registration for any of the following causes:

- (1) Conviction of a felony;
- (2) Malpractice or incompetency;
- (3) Continued practice by a person knowingly having an infectious or contagious disease;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Advertising, practicing, or attempting to practice under a trade name other than one's own;
- (6) Drunkenness, or addiction to the use of habit-forming drugs;
- (7) Immoral or unprofessional conduct;

(8) The commission of any of the offenses described in § 36-14-36.

Section 45. That § 36-15-3 be amended to read as follows:

36-15-3. The Cosmetology Commission shall perform all functions exercised by the former State Board of Cosmetology. The Cosmetology Commission consists of five members to be appointed by the Governor for a term of three years. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. Not all of the members may be of the same political party. Three members shall be currently licensed as cosmetologists in this state at the time of their appointment. Two members shall be lay people. The Governor may stagger the terms to enable the commission to have different terms expire each year. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. Each member of the commission shall take the oath of office as provided by law for public officials.

Section 46. That § 36-15-58 be amended to read as follows:

36-15-58. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the cosmetology commission has information that any person may have been guilty of any misconduct as provided in § 36-15-56, or is guilty of incompetence, negligence, or unprofessional or dishonorable conduct.

Section 47. That § 36-16-3 be amended to read as follows:

36-16-3. The State Electrical Commission shall perform all functions exercised by the former State Electrical Board. The State Electrical Commission consists of seven members to be appointed by the Governor for a term of three years. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. Not all of the members shall be of the same political party. The Governor may stagger the

terms to enable the commission to have different terms expire each year. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. One member shall represent an electric utility, one member shall be a licensed electrical contractor, one member shall be a licensed electrician with at least a journeyman level license and one member shall have fire safety expertise.

Section 48. That § 36-16-4 be amended to read as follows:

36-16-4. The Governor shall appoint one member of the State Electrical Commission who shall be involved in the education of electrical engineers. This member shall serve without compensation.

Section 49. That § 36-18A-14 be amended to read as follows:

36-18A-14. The Board of Technical Professions is created to administer the provisions of this chapter. Each member of the board shall receive a certificate of appointment from the Governor and shall file with the secretary of state a written oath for the faithful discharge of the member's official duties. The board shall consist of seven members to be appointed by the Governor for a term of three years. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. The board shall be composed of two professional engineers, two architects, two land surveyors, and one member from the public. The Governor may stagger the terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

Section 50. That § 36-18A-56 be amended to read as follows:

36-18A-56. The board may take action without proof of actual injury on the following violations:

(1) Has violated any statute, rule, or order that the board has issued or is empowered to

enforce;

- (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to professional practice;
- (3) Has engaged in conduct or acts that are negligent, incompetent, reckless, or otherwise in violation of established standards related to that person's professional practice;
- (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether or not the person admits guilt, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the person's ability or fitness to engage in that person's professional practice. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence;
- (5) Has employed fraud or deception in obtaining a license or renewal of a license or in passing all or a portion of the examination;
- (6) Has had that person's professional license, registration, certificate, right to examination, or other similar rights to practice revoked, suspended, canceled, given probation, limited, censured, reprimanded, or not renewed for cause in any state or territory of the United States, the District of Columbia, or in any foreign country;
- (7) Failed to meet any requirement for issuance or renewal of the person's license or certificate;
- (8) Has used or attempted to use as that person's own the certificate or seal of another;
- (9) Has used or attempted to use an expired, suspended, or revoked license;
- (10) Has placed that person's seal or signature to a plan, specification, report, plat, or other technical submission or document not prepared by that person or under that person's responsible charge;

- (11) Aided or assisted another person in violating any provision of this chapter or the rules pertaining to this chapter;
- (12) Failed to promptly and appropriately provide information requested by the board as a result of a formal or informal complaint to the board which would indicate a violation of this chapter;
- (13) Has provided false testimony or information to the board;
- (14) Failed to report known violations of this chapter;
- (15) Has engaged in the use of untruthful or improbable statements in advertisements;
- (16) Failed to complete continuing professional development requirements set by the board;
- (17) Made misleading or untruthful representations in advertisements or published materials;
- (18) Falsely used any title, figures, letters, or descriptions to imply licensure;
- (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;
- (20) Has committed an act, engaged in conduct, or committed practices that may result in an immediate threat to the public; or
- (21) Has provided professional services in technical areas not covered by that person's license or competency.

Section 51. That § 36-19-2 be amended to read as follows:

36-19-2. The State Board of Funeral Service shall include the secretary of health or the secretary's designee and five professional members who shall be licensed to practice funeral service. The Governor shall appoint the professional members of the board. However, no person may be appointed as a professional member of the board who has not been licensed in this state, as an embalmer and funeral director, or to practice funeral service, for at least five years prior to appointment. The term of office of appointed members shall be three years. The Governor shall, by appointment, fill any vacancy.

The State Board of Funeral Service shall also include two lay members who are users of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed. The term shall be liberally construed to implement the purpose of this section. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.

No board member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. The Governor may stagger the terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term.

Section 52. That § 36-19-38 be amended to read as follows:

36-19-38. The State Board of Funeral Service, acting in compliance with chapter 1-26, may refuse to grant, may suspend, or revoke any license if the license holder or the license applicant:

- (1) Obtained the license by fraud or misrepresentation either in applying for the license or in passing the examination for the license;
- (2) Uses intoxicants or drugs to such a degree as to render the person unfit to practice funeral service or funeral directing;
- (3) Has been convicted of a felony or crime involving moral turpitude. However, upon the conviction of a holder of a valid license, of a felony or crime involving moral turpitude, the conviction shall immediately and automatically revoke the license;
- (4) Is not a person of good moral character;
- (5) Is guilty of malpractice in the business of funeral service or funeral directing;
- (6) Is guilty of willful violation of any section of this chapter, or any rule of the board, or any rule of the state or any municipal board or department of health governing the disposition,

shipment, or transportation of dead human bodies; or willfully fails to make any report required by law or by the rules of the board;

- (7) Signs a certificate stating that the person embalmed or prepared a dead human body for shipment or burial, whereas in fact, someone, other than the person signing the certificate, embalmed or prepared the dead human body for shipment or burial;
- (8) Pays or causes to be paid, directly or indirectly, a commission for the securing of business; or, directly or indirectly solicits such business. However the soliciting of members or the selling of stock in any cooperative burial association is not a violation of this subdivision.

If the license as funeral director is held by a firm, corporation, association, or organization, the provisions of this section apply to the members of the board of directors, officers, and employees, as well as to the firm, corporation, association, or organization.

Section 53. That § 36-20B-4 be amended to read as follows:

36-20B-4. The South Dakota Board of Accountancy, which has responsibility for the administration and enforcement of this chapter, consists of six members, all of whom shall be residents of this state. Five members shall be appointed by the Governor for three-year terms. Four of the appointed members shall be holders of active certificates and three of these shall be in the practice of public accountancy. One appointed member shall be a lay member who is not a holder of a certificate under this chapter but shall have had professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons and firms subject to regulation under this chapter. The auditor general shall serve as an ex officio member. The Governor shall, by appointment, fill any vacancy occurring during a term for the remainder of the unexpired term. Any member of the board whose certificate is revoked or suspended shall automatically cease to be a member of the board. The

Governor may remove any member of the board for cause. The Governor may stagger the terms to enable the board to have different terms expire each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose.

Section 54. That § 36-20B-40 be amended to read as follows:

36-20B-40. The board may, in accordance with chapter 1-26, revoke any certificate, license, or permit issued pursuant to this chapter or corresponding provisions of prior law or revoke or limit privileges under this chapter; suspend any such certificate, license, or permit, or refuse to renew any such certificate, license, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding one thousand dollars, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:

- (1) Fraud or deceit in obtaining a certificate or permit;
- (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or permit to engage in the practice of public accountancy in any other state for any cause;
- (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter or registration under this chapter, or of a certificate, license or permit issued by another state, to maintain compliance with the requirements for issuance or renewal of such certificate, license, permit, or registration or to report changes to the board;
- (4) Revocation or suspension of the right to practice before any state or federal agency;
- (5) Dishonesty, fraud, or repeated acts of negligence in the performance of services as a licensee or individual granted privileges under this chapter or in the filing or failure to file

one's own income tax returns;

- (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant to chapter 1-26, or violation of professional standards;
- (7) Violation of any rule of professional conduct promulgated by the board pursuant to chapter 1-26;
- (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- (9) Performance of any fraudulent act while holding a certificate, license, or permit or privilege issued under this chapter or prior law;
- (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under this chapter;
- (11) Making any false or misleading statement or verification, in support of an application for a certificate, registration, or permit filed by another; and
- (12) Dishonesty or repeated acts of negligence in the performance of peer reviews.

In lieu of or in addition to any remedy specifically provided in this section, the board may require of a licensee a peer review conducted in the manner as the board may specify or satisfactory completion of the continuing professional education programs as the board may specify, or both.

In any proceeding in which a remedy provided by this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 55. That § 36-21A-14 be amended to read as follows:

36-21A-14. Each member of the commission shall be appointed for a term of three years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005,

shall serve a three-year term. No member may serve more than three consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's term shall serve for the unexpired portion of the term. The appointment to an unexpired term is not considered a full term.

Section 56. That § 36-24-4 be amended to read as follows:

36-24-4. The members of the board enumerated in § 36-24-3 shall be appointed by the Governor. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.

Section 57. That § 36-24-5 be amended to read as follows:

36-24-5. Board members shall be appointed for a term of three years. Each member shall serve until a successor has been appointed.

Section 58. That § 36-24-6 be amended to read as follows:

36-24-6. No member of the board may serve more than three consecutive full terms or be reappointed to the board until at least one year after the expiration of the member's third term of office. The appointment to an unexpired term is not considered a full term. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duty.

Section 59. That § 36-25-3 be amended to read as follows:

36-25-3. Members of the State Plumbing Commission shall be appointed for terms of three years. The Governor may stagger the terms to enable the commission to have different terms expire each year. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose.

Section 60. That § 36-26-3 be amended to read as follows:

36-26-3. The South Dakota Board of Social Work Examiners, consists of seven members, two of whom shall be lay members, three of whom shall be certified social workers licensed under the provisions of this chapter to engage in private independent practice, two of whom shall be social worker professionals licensed under the provisions of this chapter each with a minimum of two years practice in the State of South Dakota. The Governor shall appoint all of the members.

Section 61. That § 36-26-4 be repealed.

Section 62. That § 36-26-5 be amended to read as follows:

36-26-5. Appointments to the board shall be for terms of three years, beginning on July first. No member of the board may serve for more than three successive full terms. However, appointment to an unexpired term is not considered as a full term.

Section 63. That § 36-27A-3 be amended to read as follows:

36-27A-3. The Board of Examiners of Psychologists consists of seven members, two of whom shall be lay members. The remaining five members are to be psychologists licensed pursuant to this chapter at the doctoral level for a minimum of two years and broadly representing a cross section of the profession of psychology. The credentials of each psychologist on the board shall be documented and shall be public record as provided in chapter 1-27. The Governor shall appoint all of the members.

Section 64. That § 36-27A-4 be repealed.

Section 65. That § 36-27A-5 be repealed.

Section 66. That § 36-27A-7 be amended to read as follows:

36-27A-7. The Governor may remove a member of the Board of Examiners of Psychologists for cause. If there is a vacancy on the board caused by the death, resignation, or removal from the state of a member or for any other reason, the Governor shall appoint a new member to serve the

unexpired term. No member of the board may serve for more than three successive full terms. The appointment to an unexpired term is not considered a full term.

Section 67. That § 36-28-2 be amended to read as follows:

36-28-2. The South Dakota State Board for Nursing Facility Administrators consists of eleven members. The members of the board shall be appointed by the Governor and shall include one licensed physician and one registered nurse, neither of whom may be an administrator or an employee of a nursing facility nor have any direct financial interest in nursing facilities; one practicing hospital administrator who is also licensed as a nursing facility administrator; two practicing administrators of proprietary nursing facilities; two practicing administrators of nonprofit nursing facilities; a designee of the secretary of health; a designee of the secretary of social services; and, two members of the general public who are not administrators or employees of a nursing facility and who have no direct financial interest in nursing facilities. The terms of all members shall be three years. No member may serve more than three consecutive full terms. The designees of the health and social services departments shall serve without compensation and reimbursement as provided in § 36-28-25, except that their travel expenses shall be paid by their respective agencies pursuant to § 3-9-2. The appointment to an unexpired term is not considered a full term.

Section 68. That § 36-29-8 be amended to read as follows:

36-29-8. The board shall appoint an athletic training committee composed of three residents of this state who are licensed to practice athletic training in the state, one of whom shall be a registered physical therapist. This committee shall meet at least annually or as deemed necessary to conduct business. The committee shall assist the Board of Medical and Osteopathic Examiners in conducting exams and shall assist the board in all matters pertaining to the licensure, practice and discipline of those licensed to practice athletic training in this state and the establishment of rules pertaining to athletic training. Each person appointed to the committee after the initial members shall serve for

a period of three years. No committee member may be appointed to more than three consecutive full terms. If a vacancy arises due to death, retirement, or removal from the state, the vacancy shall be filled in the same manner as original appointments. The member shall serve the remainder of the unexpired term. The appointment to an unexpired term is not considered a full term.

Section 69. That § 36-29-19 be amended to read as follows:

36-29-19. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the Board of Medical and Osteopathic Examiners has written information that any person may have been guilty of any misconduct pursuant to § 36-29-18 or is guilty of incompetence or unprofessional or dishonorable conduct.

Section 70. That § 36-31-2 be amended to read as follows:

36-31-2. The board shall appoint an occupational therapy committee composed of three registered occupational therapists or two registered occupational therapists and one certified occupational therapy assistant. The committee shall assist the Board of Examiners in approving qualifications of persons applying for a license to practice occupational therapy in South Dakota, or the promulgation of rules pertaining to occupational therapy, including guidelines for continuing competency. The committee shall meet a minimum of two times per year. All persons appointed to the board after the first members shall serve for a period of three years. No member may serve more than three consecutive full terms. Each person nominated to serve on such committee shall have the following qualifications:

- (1) The person shall be a resident of South Dakota;
- (2) The person shall be licensed to practice occupational therapy in South Dakota; and
- (3) The person shall have practiced occupational therapy a minimum of three years.

If any vacancy arises on the committee, the vacancy shall be filled in the same manner as original appointments. The member shall serve the remainder of the unexpired term. The appointment to an

unexpired term is not considered a full term.

Section 71. That § 36-31-15 be amended to read as follows:

36-31-15. A proceeding for cancellation, revocation, or suspension of a license may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-31-14, or is guilty of incompetence or unprofessional or dishonorable conduct.

Section 72. That § 36-32-2 be amended to read as follows:

36-32-2. The South Dakota Board of Counselor Examiners, consists of nine members, three of whom shall be lay members and six of whom shall be professionals actively engaged in professional counseling or marriage and family therapy and broadly representing a cross section of the licensed disciplines governed by this board. The Governor shall appoint all of the members.

Section 73. That § 36-32-3 be amended to read as follows:

36-32-3. In order to be eligible for appointment to the board as a professional member, a person shall be licensed pursuant to this chapter or chapter 36-33.

Section 74. That § 36-32-4 be amended to read as follows:

36-32-4. Appointments to the board shall be for terms of three years and begin on July first. No member of the board may serve for more than three successive full terms. Appointment to an unexpired term is not considered a full term.

Section 75. That § 36-33-3 be repealed.

Section 76. That § 36-34-2 be amended to read as follows:

36-34-2. The South Dakota Certification Board for Alcohol and Drug Professionals consists of nine members, three of whom shall be lay members and six of whom shall be professionals certified pursuant to this chapter. Each professional member shall be active within the chemical dependency profession and broadly represent a cross section of the profession of chemical dependency counseling and prevention services. This board replaces the functions previously performed by the

South Dakota Chemical Dependency Counselor Certification Board, a private nonprofit entity doing business as the Certification Board for Alcohol and Drug Professionals.

Section 77. That § 36-34-3 be amended to read as follows:

36-34-3. The Governor shall appoint the members to the board for terms of three years which shall begin on the first day of July. Any board member appointed prior to July 1, 2005, shall complete the member's unexpired term. Thereafter, appointment shall be for a term of three years beginning upon expiration of the term.

Section 78. That § 36-34-4 be amended to read as follows:

36-34-4. The Governor may remove any member of the board for cause. If there is a vacancy on the board the Governor shall appoint a new member to serve the unexpired term. No member of the board may serve for more than three successive full terms. The appointment to an unexpired term is not considered a full term.

Section 79. The effective date of sections 11, 13, and 15 of this Act is December 30, 2006.

Section 80. The effective date of sections 31, 33, and 35 of this Act is September 30, 2006.

An Act to revise certain provisions relating to professional and occupational licensing boards.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1212

Chief Clerk
=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1212

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State