

SECOND REGULAR SESSION

HOUSE BILL NO. 924

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEHNEN.

Pre-filed December 30, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3347L.011

AN ACT

To repeal sections 327.011, 327.111, 327.201, 327.291, 327.441, and 327.633, RSMo, and to enact in lieu thereof five new sections relating to architects, professional engineers, and land surveyors, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 327.011, 327.111, 327.201, 327.291, 327.441, and 327.633, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 327.011, 327.076, 327.077, 327.078, and 327.441, to read as follows:

327.011. As used in this chapter, the following words and terms shall have the meanings indicated:

(1) "Accredited degree program from a school of architecture", a degree from any school or other institution which teaches architecture and whose curricula for the degree in question have been, at the time in question, certified as accredited by the National Architectural Accrediting Board;

(2) "Accredited school of landscape architecture", any school or other institution which teaches landscape architecture and whose curricula on the subjects in question are or have been at the times in question certified as accredited by the Landscape Architecture Accreditation Board of the American Society of Landscape Architects;

(3) "Accredited school of engineering", any school or other institution which teaches engineering and whose curricula on the subjects in question are or have been, at the time in question certified as accredited by the engineering accreditation commission of the accreditation board for engineering and technology or its successor organization;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

15 (4) "Architect", any person authorized pursuant to the provisions of this chapter to
16 practice architecture in Missouri, as the practice of architecture is defined in section 327.091;

17 (5) "Board", the Missouri board for architects, professional engineers, professional land
18 surveyors and landscape architects;

19 (6) "Corporation", any general business corporation, professional corporation or limited
20 liability company;

21 (7) "Department", the department of economic development;

22 (8) "Division", the division of professional registration in the department of economic
23 development;

24 (9) "Landscape architect", any person licensed pursuant to the provisions of sections
25 327.600 to 327.635 who is qualified to practice landscape architecture by reason of special
26 knowledge and the use of biological, physical, mathematical and social sciences and the
27 principles and methods of analysis and design of the land, has demonstrated knowledge and
28 ability in such areas, and has been duly licensed as a landscape architect by the board on the basis
29 of professional education, examination and experience in landscape architecture;

30 (10) "**Licensee**", a person licensed to practice any profession regulated under this
31 chapter or a corporation authorized to practice any such profession;

32 (11) "Partnership", any partnership or limited liability partnership;

33 [(11)] (12) "Person", any person, corporation, firm, partnership, association or other
34 entity;

35 [(12)] (13) "Professional engineer", any person authorized pursuant to the provisions of
36 this chapter to practice as a professional engineer in Missouri, as the practice of engineering is
37 defined in section 327.181;

38 [(13)] (14) "Professional land surveyor", any person authorized pursuant to the
39 provisions of this chapter to practice as a professional land surveyor in Missouri as the practice
40 of land surveying is defined in section 327.272.

**327.076. 1. Any person who practices architecture, engineering, land surveying,
2 or landscape architecture, as defined in sections 327.011 to 327.635, or who holds himself
3 or herself out as able to practice such profession and who is not the holder of a currently
4 valid license or certificate of authority in Missouri, and who is not exempt from holding
5 such a license or certificate, is in violation of the requirements of this chapter and is guilty
6 of a class A misdemeanor.**

**7 2. The board may cause a complaint to be filed with the administrative hearing
8 commission, as provided in chapter 621, RSMo, against any unlicensed person for any one
9 or any combination of the following causes:**

10 (1) Engages in or offers to render or engage in the practice of architecture,

11 professional engineering, land surveying, or landscape architecture;

12 (2) Uses or employs titles defined and protected by this chapter, or implies
13 authorization to provide or offer professional services, or otherwise uses or advertises any
14 title, word, figure, sign, card, advertisement, or other symbol or description tending to
15 convey the impression that the person is licensed or holds a certificate of authority to
16 practice architecture, professional engineering, land surveying, or landscape architecture;

17 (3) Presents or attempts to use another person's license, seal, or certificate of
18 authority as his or her own;

19 (4) Attempts to use an expired, suspended, revoked, or nonexistent license or
20 certificate of authority;

21 (5) Gives false or forged evidence of any kind to the board or any member of the
22 board in obtaining or attempting to obtain a certificate of licensure in this state or any
23 other state or jurisdiction;

24 (6) Knowingly aids or abets an unlicensed or unauthorized person who engages in
25 any prohibited activity identified in this subsection;

26 (7) Violates any provision of the code of professional conduct or other rule adopted
27 by the board;

28 (8) Violates any provision of subsection 2 of section 327.441.

29 3. When reviewing complaints against unlicensed persons, the board may initiate
30 an investigation and take all measures necessary to find the facts of any potential violation,
31 including issuing subpoenas to compel the attendance and testimony of witnesses and the
32 disclosure of evidence, and may request the attorney general to bring an action to enforce
33 the subpoena.

34 4. After the filing of such complaint, the proceedings shall be conducted in
35 accordance with the provisions of chapter 621, RSMo. Upon a finding by the
36 administrative hearing commission that the grounds provided in subsection 2 of this
37 section for disciplinary action are met, the board may, either singularly or in combination
38 with other provisions of this chapter, impose a civil penalty as provided for in section
39 327.077 against the person named in the complaint.

327.077. 1. In disciplinary actions against licensed or unlicensed persons, the board
2 may file an order imposing a civil penalty, which shall be filed in circuit court in the city
3 or county where the offense occurred.

4 2. A civil penalty imposed under this section shall not exceed five thousand dollars
5 for each offense. Each day of a continued violation constitutes a separate offense, with a
6 maximum penalty of twenty-five thousand dollars. In determining the amount of penalty
7 to be imposed, the board may consider any of the following:

- 8 **(1) Whether the amount imposed will be a substantial deterrent to the violation;**
9 **(2) The circumstances leading to the violation;**
10 **(3) The severity of the violation and the risk of harm to the public;**
11 **(4) The economic benefits gained by the violator as a result of noncompliance;**
12 **(5) The interest of the public.**

13 **3. Any final order imposing a civil penalty is subject to judicial review upon the**
14 **filing of a petition under section 536.100, RSMo, by any person subject to the penalty.**

15 **4. Payment of a civil penalty shall be made within sixty days of filing the order, or**
16 **if the order is stayed pending an appeal within ten days after the court enters a final**
17 **judgment in favor of the board, the board shall notify the attorney general. The attorney**
18 **general may commence an action to recover the amount of the penalty, including**
19 **reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus**
20 **ten percent per annum on any amounts owed. In such action, the validity and**
21 **appropriateness of the final order imposing the civil penalty shall not be subject to review.**

22 **5. An action to enforce an order under this section may be joined with an action for**
23 **an injunction.**

24 **6. Any offer of settlement to resolve a civil penalty under this section shall be in**
25 **writing, state that an action for imposition of a civil penalty may be initiated by the**
26 **attorney general or a prosecuting attorney representing the board under this section, and**
27 **identify any dollar amount as an offer of settlement which shall be negotiated in good faith**
28 **through conference, conciliation, and persuasion.**

29 **7. Failure to pay a civil penalty by any person licensed under this chapter shall be**
30 **grounds for refusing to renew a license or certificate of authority.**

31 **8. Penalties collected under this section shall be handled in accordance with section**
32 **7 of article IX of the Missouri Constitution and shall be deposited in the state general**
33 **revenue fund. Such penalties shall not be considered a charitable contribution for tax**
34 **purposes.**

2 **327.078. 1. In its determination that a licensee or nonlicensee has violated this**
3 **chapter or a rule promulgated under this chapter, the board may assess the licensee or**
4 **nonlicensee with its reasonable costs and expenses incurred in conducting the investigation**
5 **and administrative hearing.**

6 **2. All moneys collected under this section shall be deposited in the fund established**
7 **in section 327.081 and shall be used by the board to defray its expenses in connection with**
8 **disciplinary investigations and hearings. Notwithstanding the provisions of section**
9 **327.081, such moneys may be expended without legislative appropriation.**

327.441. 1. The board may refuse to issue any license or certificate of authority required

2 pursuant to this chapter for one or any combination of causes stated in subsection 2 of this
3 section. The board shall notify the applicant in writing of the reasons for the refusal and shall
4 advise the applicant of the applicant's right to file a complaint with the administrative hearing
5 commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any license or certificate
8 of authority required by this chapter or any person who has failed to renew or has surrendered
9 such person's license or certificate of authority, for any one or any combination of the following
10 causes:

11 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
12 beverage to an extent that such use impairs a person's ability to perform the work of any
13 profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
16 for any offense reasonably related to the qualifications, functions or duties of any profession
17 licensed or regulated under this chapter, for any offense an essential element of which is fraud,
18 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not
19 sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any license or
21 certificate of authority issued pursuant to this chapter or in obtaining permission to take any
22 examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
24 fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
26 in the performance of the functions or duties of any profession licensed or regulated by this
27 chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a license or certificate of authority, or allowing
31 any person to use his or her license or certificate of authority, or diploma from any school;

32 (8) Disciplinary action against the holder of a license or a certificate of authority, or other
33 right to practice any profession regulated by this chapter granted by another state, territory,
34 federal agency or country upon grounds for which revocation or suspension is authorized in this
35 state;

36 (9) A person is finally adjudged incapacitated or disabled by a court of competent
37 jurisdiction;

38 (10) Assisting or enabling any person to practice or offer to practice any profession
39 licensed or regulated by this chapter who is not licensed and currently eligible to practice
40 pursuant to this chapter;

41 (11) Issuance of a professional license or a certificate of authority based upon a material
42 mistake of fact;

43 (12) Failure to display a valid license or certificate of authority if so required by this
44 chapter or any rule promulgated pursuant to this chapter;

45 (13) Violation of any professional trust or confidence;

46 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to
47 the general public or persons to whom the advertisement or solicitation is primarily directed.

48 3. After the filing of such complaint, the proceedings shall be conducted in accordance
49 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
50 commission that the grounds, provided in subsection 2 of this section, for disciplinary action are
51 met, the board may, singly or in combination, censure or place the person named in the complaint
52 on probation on such terms and conditions as the board deems appropriate for a period not to
53 exceed five years, or may suspend, for a period not to exceed three years, or revoke the license
54 or certificate of authority of the person named in the complaint.

55 **4. The board may issue a letter of concern if the board believes there is sufficient**
56 **evidence to support disciplinary action against the licensee but insufficient evidence for the**
57 **board to notify the licensee of the board's concern.**

2 [327.111. Any person who practices architecture in Missouri as defined in
3 section 327.091, who is not exempt pursuant to the provisions of section 327.101, or
4 who is not the holder of a currently valid license or certificate of authority to practice
5 architecture in Missouri, or who pretends or attempts to use as such person's own the
6 license or certificate of authority or the seal of another architect or who affixes his
7 or her or another's architect's seal on any plans, specifications, drawings, or reports
8 which have not been prepared by such person or under such person's immediate
9 personal supervision, is guilty of a class A misdemeanor.]

2 [327.201. Any person who practices professional engineering in Missouri as
3 defined in section 327.181, who is not exempt pursuant to the provisions of section
4 327.191 and who is not the holder of a currently valid license or certificate of
5 authority to practice professional engineering in Missouri, or who pretends or
6 attempts to use as such person's own the license or certificate of authority or the seal
7 of another professional engineer, or who affixes such person's or another professional
8 engineer's seal on any plans, specifications, drawings or reports which have not been
9 prepared by such person or under such person's immediate personal supervision is
guilty of a class A misdemeanor.]

2 [327.291. Any person who practices as a professional land surveyor in
Missouri as defined in section 327.272, who is not a holder of a currently valid

3 license or certificate of authority to practice professional land surveying in Missouri,
4 or who pretends or attempts to use as such person's own the license or certificate of
5 authority or the seal of another professional land surveyor or who affixes such
6 person's or another professional land surveyor's seal on any map, plat, survey or other
7 document which has not been prepared by such person or under such person's
8 immediate personal supervision is guilty of a class A misdemeanor.]

2 [327.633. Any person violating any of the provisions of sections 327.600 to
327.635 is deemed guilty of a class A misdemeanor.]