

SECOND REGULAR SESSION

# SENATE BILL NO. 798

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time January 4, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4157S.011

## AN ACT

To repeal sections 327.011, 327.111, 327.181, 327.201, 327.291, 327.441, 327.633, and 621.045, RSMo, and to enact in lieu thereof seven new sections relating to architects, professional engineers, and land surveyors, with penalty provisions.

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

Section A. Sections 327.011, 327.111, 327.181, 327.201, 327.291, 327.441, 2 327.633, and 621.045, RSMo, are repealed and seven new sections enacted in lieu 3 thereof, to be known as sections 327.011, 327.076, 327.077, 327.078, 327.181, 4 327.441, and 621.045 to read as follows:

327.011. As used in this chapter, the following words and terms shall have 2 the meanings indicated:

3 (1) "Accredited degree program from a school of architecture", a degree 4 from any school or other institution which teaches architecture and whose 5 curricula for the degree in question have been, at the time in question, certified 6 as accredited by the National Architectural Accrediting Board;

7 (2) "Accredited school of landscape architecture", any school or other 8 institution which teaches landscape architecture and whose curricula on the 9 subjects in question are or have been at the times in question certified as 10 accredited by the Landscape Architecture Accreditation Board of the American 11 Society of Landscape Architects;

12 (3) "Accredited school of engineering", any school or other institution 13 which teaches engineering and whose curricula on the subjects in question are or 14 have been, at the time in question certified as accredited by the engineering 15 accreditation commission of the accreditation board for engineering and 16 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.**

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

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

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

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

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

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

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

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

38 [(11)] (12) "Person", any person, corporation, firm, partnership,  
39 association or other entity;

40 [(12)] (13) "Professional engineer", any person authorized pursuant to  
41 the provisions of this chapter to practice as a professional engineer in Missouri,  
42 as the practice of engineering is defined in section 327.181;

43 [(13)] (14) "Professional land surveyor", any person authorized pursuant  
44 to the provisions of this chapter to practice as a professional land surveyor in  
45 Missouri as the practice of land surveying is defined in section 327.272.

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

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

12           (1) Engages in or offers to render or engage in the practice of  
13 architecture, professional engineering, land surveying, or landscape  
14 architecture;

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

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

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

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

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

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

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

35           3. When reviewing complaints against unlicensed persons, the  
36 board may initiate an investigation and take all measures necessary to  
37 find the facts of any potential violation, including issuing subpoenas to  
38 compel the attendance and testimony of witnesses and the disclosure  
39 of evidence, and may request the attorney general to bring an action to  
40 enforce the subpoena.

41           4. After the filing of such complaint, the proceedings shall be  
42 conducted in accordance with the provisions of chapter 621,  
43 RSMo. Upon a finding by the administrative hearing commission that  
44 the grounds provided in subsection 2 of this section for disciplinary

45 action are met, the board may, either singularly or in combination with  
46 other provisions of this chapter, impose a civil penalty as provided for  
47 in section 327.077 against the person named in the complaint.

327.077. 1. In disciplinary actions against licensed or unlicensed  
2 persons, the board may issue an order imposing a civil penalty.

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

8 (1) Whether the amount imposed will be a substantial deterrent  
9 to the violation;

10 (2) The circumstances leading to the violation;

11 (3) The severity of the violation and the risk of harm to the  
12 public;

13 (4) The economic benefits gained by the violator as a result of  
14 noncompliance;

15 (5) The interest of the public.

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

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

28 5. An action to enforce an order under this section may be joined  
29 with an action for an injunction.

30 6. Any offer of settlement to resolve a civil penalty under this  
31 section shall be in writing, state that an action for imposition of a civil  
32 penalty may be initiated by the attorney general representing the  
33 board under this section, and identify any dollar amount as an offer of  
34 settlement, which shall be negotiated in good faith through conference,

35 **conciliation, and persuasion.**

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

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

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

6 **2. All moneys collected under this section shall be deposited in**  
7 **the fund established in section 327.081 and shall be used by the board**  
8 **to defray its expenses in connection with disciplinary investigations**  
9 **and hearings.**

**327.181. 1. Any person practices in Missouri as a professional engineer**  
2 **who renders or offers to render or holds himself or herself out as willing or able**  
3 **to render any service or creative work, the adequate performance of which**  
4 **requires engineering education, training, and experience in the application of**  
5 **special knowledge of the mathematical, physical, and engineering sciences to such**  
6 **services or creative work as consultation, investigation, evaluation, planning and**  
7 **design of engineering works and systems, engineering teaching of advanced**  
8 **engineering subjects or courses related thereto, engineering surveys, the**  
9 **coordination of services furnished by structural, civil, mechanical and electrical**  
10 **engineers and other consultants as they relate to engineering work and the**  
11 **inspection of construction for the purpose of compliance with drawings and**  
12 **specifications, any of which embraces such service or work either public or**  
13 **private, in connection with any utilities, structures, buildings, machines,**  
14 **equipment, processes, work systems or projects and including such architectural**  
15 **work as is incidental to the practice of engineering; or who uses the title**  
16 **"professional engineer" or "consulting engineer" or the word "engineer" alone or**  
17 **preceded by any word indicating or implying that such person is or holds himself**  
18 **or herself out to be a professional engineer, or who shall use any word or words,**  
19 **letters, figures, degrees, titles or other description indicating or implying that**

20 such person is a professional engineer or is willing or able to practice engineering.

21 **2. Any person using the word "engineer", "engineers", or**  
22 **"engineering", alone or preceded by any word, or in combination with**  
23 **any words, may do so without being subject to disciplinary action by**  
24 **the board so long as such use is reflective of that person's profession**  
25 **or vocation and is clearly not indicating or implying that such person**  
26 **is holding himself or herself out as being a professional engineer or is**  
27 **willing or able to practice engineering as defined in this section.**

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

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

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

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

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

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

27 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation  
28 or dishonesty in the performance of the functions or duties of any profession

29 licensed or regulated by this chapter;

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

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

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

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

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

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

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

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

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

53 3. After the filing of such complaint, the proceedings shall be conducted  
54 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
55 administrative hearing commission that the grounds, provided in subsection 2 of  
56 this section, for disciplinary action are met, the board may, singly or in  
57 combination, censure or place the person named in the complaint on probation on  
58 such terms and conditions as the board deems appropriate for a period not to  
59 exceed five years, or may suspend, for a period not to exceed three years, **or**  
60 **order a civil penalty under section 327.077**, or revoke the license or  
61 certificate of authority of the person named in the complaint.

621.045. 1. The administrative hearing commission shall conduct  
2 hearings and make findings of fact and conclusions of law in those cases when,  
3 under the law, a license issued by any of the following agencies may be revoked

4 or suspended or when the licensee may be placed on probation or when an agency  
5 refuses to permit an applicant to be examined upon his qualifications or refuses  
6 to issue or renew a license of an applicant who has passed an examination for  
7 licensure or who possesses the qualifications for licensure without examination:

8 Missouri State Board of Accountancy  
9 Missouri Board of Registration for Architects, Professional Engineers and  
10 Land Surveyors  
11 Board of Barber Examiners  
12 Board of Cosmetology  
13 Board of Chiropraxy and Podiatry  
14 Board of Chiropractic Examiners  
15 Missouri Dental Board  
16 Board of Embalmers and Funeral Directors  
17 Board of Registration for the Healing Arts  
18 Board of Nursing  
19 Board of Optometry  
20 Board of Pharmacy  
21 Missouri Real Estate Commission  
22 Missouri Veterinary Medical Board  
23 Supervisor of Liquor Control  
24 Department of Health and Senior Services  
25 Department of Insurance  
26 Department of Mental Health.

27 2. If in the future there are created by law any new or additional  
28 administrative agencies which have the power to issue, revoke, suspend, or place  
29 on probation any license, then those agencies are under the provisions of this law.

30 **3. The administrative hearing commission is authorized to**  
31 **conduct hearings and make findings of fact and conclusions of law in**  
32 **those cases brought by the Missouri board of registration for architects,**  
33 **professional engineers, and land surveyors against unlicensed persons**  
34 **under section 327.076, RSMo.**

35 4. Notwithstanding any other provision of this section to the contrary,  
36 after August 28, 1995, in order to encourage settlement of disputes between any  
37 agency described in subsection 1 or 2 of this section and its licensees, any such  
38 agency shall:

39 (1) Provide the licensee with a written description of the specific conduct

40 for which discipline is sought and a citation to the law and rules allegedly  
41 violated, together with copies of any documents which are the basis thereof and  
42 the agency's initial settlement offer, or file a contested case against the licensee;

43 (2) If no contested case has been filed against the licensee, allow the  
44 licensee at least sixty days, from the date of mailing, to consider the agency's  
45 initial settlement offer and to contact the agency to discuss the terms of such  
46 settlement offer;

47 (3) If no contested case has been filed against the licensee, advise the  
48 licensee that the licensee may, either at the time the settlement agreement is  
49 signed by all parties, or within fifteen days thereafter, submit the agreement to  
50 the administrative hearing commission for determination that the facts agreed  
51 to by the parties to the settlement constitute grounds for denying or disciplining  
52 the license of the licensee; and

53 (4) In any contact pursuant to this subsection by the agency or its counsel  
54 with a licensee who is not represented by counsel, advise the licensee that the  
55 licensee has the right to consult an attorney at the licensee's own expense.

56 [4.] 5. If the licensee desires review by the administrative hearing  
57 commission pursuant to subdivision (3) of subsection [3] 4 of this section at any  
58 time prior to the settlement becoming final, the licensee may rescind and  
59 withdraw from the settlement and any admissions of fact or law in the agreement  
60 shall be deemed withdrawn and not admissible for any purposes under the law  
61 against the licensee. Any settlement submitted to the administrative hearing  
62 commission shall not be effective and final unless and until findings of fact and  
63 conclusions of law are entered by the administrative hearing commission that the  
64 facts agreed to by the parties to the settlement constitute grounds for denying or  
65 disciplining the license of the licensee.

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

11 misdemeanor.]

2 [327.201. Any person who practices professional  
3 engineering in Missouri as defined in section 327.181, who is not  
4 exempt pursuant to the provisions of section 327.191 and who is  
5 not the holder of a currently valid license or certificate of authority  
6 to practice professional engineering in Missouri, or who pretends  
7 or attempts to use as such person's own the license or certificate of  
8 authority or the seal of another professional engineer, or who  
9 affixes such person's or another professional engineer's seal on any  
10 plans, specifications, drawings or reports which have not been  
11 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  
3 surveyor in Missouri as defined in section 327.272, who is not a  
4 holder of a currently valid license or certificate of authority to  
5 practice professional land surveying in Missouri, or who pretends  
6 or attempts to use as such person's own the license or certificate of  
7 authority or the seal of another professional land surveyor or who  
8 affixes such person's or another professional land surveyor's seal  
9 on any map, plat, survey or other document which has not been  
10 prepared by such person or under such person's immediate  
personal supervision is guilty of a class A misdemeanor.]

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

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