

CHAPTER 966

S.B. No. 605

AN ACT

relating to the regulation of the practice of engineering; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (d), Section 4, The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The Board by majority vote may limit the participation of general public members in the evaluations of applications for *registration* [~~licensure~~] except in those instances in which the evaluations take place at an official meeting of the Board.

SECTION 2. Section 8, The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. **POWERS AND DUTIES OF BOARD; VIOLATIONS OF RULES AND REGULATIONS; ACTIONS AND PROCEEDINGS.** (a) *In addition to any other powers and duties, the [The] Board shall have the authority and power to make and enforce all rules and regulations and bylaws consistent with this Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the*

practice of engineering in this state and may [to] establish standards of conduct and ethics for engineers in keeping with the purposes and intent of this Act and [or] to insure strict compliance with and [an] enforcement of this Act. The violation by any engineer of any provision of this Act or any rule or regulation of the Board shall be a sufficient cause [reason or ground] to suspend or revoke the certificate of registration of or to issue a formal or informal reprimand to such engineer. In addition to any other action, proceeding or remedy authorized by law, the Board shall have the right to institute an action in its own name in a district court of Travis County against any individual person to enjoin any violation of any provision of this Act or any rule or regulation of the Board and in order for the Board to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The Board shall not be required to give any appeal bond in any cause arising under this Act. The Attorney General shall represent the Board in all actions and proceedings to enforce the provisions of this Act.

(b) The Board may promulgate rules restricting competitive bidding. The Board may not promulgate rules restricting advertising by *registrants [licensees]* except to prohibit false, misleading, or deceptive practices by *registrants [licensees]*. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his personal voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

(c) The Board may recognize, prepare, or administer continuing education programs for persons regulated by the Board under this Act. Participation in the programs is voluntary.

~~[(d) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.]~~

SECTION 3. Section 11, The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. ROSTER OF REGISTERED ENGINEERS. A roster showing the names and places of business of all registered professional engineers shall be prepared and published by the Board each biennium at a time determined by the Board. Copies of this roster shall be furnished without charge to any engineer *registered [licensed]* by the Board on the written request of the engineer, placed on file with the Secretary of State, and furnished to any person upon written request who tenders a reproduction fee set by the Board.

SECTION 4. Subsections (b) and (c), Section 14, The Texas Engineering Practice Act, as amended, (Article 3271a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Within 30 days after the day on which *an [a licensing]* examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the [licensing] examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 5. Section 15, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. CERTIFICATES, SEALS. (a) The Board shall issue a certificate of registration upon payment of registration fee as provided for in this Act, to any applicant, who, in the opinion of the Board, has satisfactorily met all the requirements of this Act. In case of a registered engineer, the certificate shall authorize the practice of professional engineering. Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the Chairman and the Secretary of the Board under seal of the Board. The issuance of a certificate of registration by this Board shall be evidence that the person named therein is entitled to all rights and privileges of a registered professional engineer, while the said certificate remains unrevoked or unexpired.

(b) Each registrant hereunder shall upon registration obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend "Registered Professional Engineer". Plans, specifications, plats, and reports issued by a registrant *must include the registrant's seal affixed to the document.* ~~It shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it~~ shall be unlawful for any one to ~~affix a [stamp or] seal on any document if [documents with said seal after]~~ the certificate of the registrant named thereon has expired or has been *suspended or* revoked, unless said certificate shall have been renewed or reissued.

(c) *This Act applies to all engineering practiced in this state that is not exempted under this Act. A public official of this state or of a political subdivision of this state who is charged with the enforcement of laws, ordinances, codes, or regulations that affect the practice of engineering may only accept plans, specifications, and other related documents prepared by registered engineers, as evidenced by the seal of the engineer. A public official shall report violations of this Act to the proper authorities.*

SECTION 6. Section 16, The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. EXPIRATIONS AND RENEWALS. (a) It shall be the duty of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate *to the last address provided by the registrant to the Board.*

(b) A person may renew an unexpired *certificate of registration [license]* by paying to the Board before the expiration date of the *certificate of registration [license]* the required renewal fee.

(c) If a person's *certificate of registration [license]* has been expired for not longer than 90 days, the person may renew the *certificate of registration [license]* by paying to the Board the required renewal fee and a fee that is one-half of the application fee for the *certificate of registration [license]*.

(d) If a person's *certificate of registration [license]* has been expired for longer than 90 days but less than two years, the person may renew the *certificate of registration [license]* by paying to the Board all unpaid renewal fees and a fee that is equal to the application fee for the *certificate of registration [license]*.

(e) If a person's *certificate of registration [license]* has been expired for two years or longer, the person may not renew the *certificate of registration [license]*. The person may obtain a new *certificate of registration [license]* by ~~[submitting to an examination to be determined by the Board and]~~ complying with the requirements and procedures for obtaining an original *certificate of registration that are in effect at the time the person applies [license]*.

SECTION 7. Section 16.1, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16.1. EXPIRATION DATES OF CERTIFICATES OF REGISTRATION[; ~~PRO-RATION OF FEES~~]. The board by rule may adopt a system under which certificates of registration expire on various dates during the year, and the dates for reinstatement shall be adjusted accordingly. ~~[For the year in which the expiration date is changed, certificate renewal fees payable on December 31 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certificate renewal fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.]~~

SECTION 8. Section 20, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. EXEMPTIONS. The following persons shall be exempt from the *registration* provisions of this Act, provided that such persons are not *directly or indirectly* represented or held out to the public *to be legally qualified* ~~[as duly licensed and registered by the Board]~~ to engage in the practice of engineering:

(a) A person not a resident of and having no established place of business in this state *if that person:*

(1) *has filed an application for registration as a professional engineer with the Board and the application is pending Board action;*

(2) *is legally qualified to practice engineering in another jurisdiction whose requirements for practice are at least as strict as those required by this state; and*

(3) *affixes the person's seal from the jurisdiction in which the person is legally qualified to practice on all work completed while the application for registration to practice in this state is pending.*

(b) *A person who has recently become a resident of this state if that person:*

(1) *has filed an application for registration as a professional engineer with the Board and the application is pending Board action;*

(2) *is legally qualified to practice engineering in another jurisdiction whose requirements for practice are at least as strict as those required by this state; and*

(3) *affixes the person's seal from the jurisdiction in which the person is legally qualified to practice on all work completed while the application for registration to practice in this state is pending* ~~[, practicing or offering to practice here the profession of engineering, when such practice does not exceed in the aggregate more than sixty (60) days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.~~

~~[(b) A person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than sixty (60) days in any calendar year the profession of engineering, if he shall have filed with the Board an application for a certificate of registration and shall have paid the fee required by this Act. Such exemption shall continue only for such time as the Board requires for the consideration of the application for registration; provided, that such a person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act].~~

(c) An employee or a subordinate of a person holding a certificate of registration under this Act, or any employee of a person exempted from registration by classes (a) and (b) of this Section; provided, his practice does not include responsible charge of design or supervision.

(d) Officers and employees of the Government of the United States while engaged within this state in the practice of the profession of engineering for said Government.

(e) A person ~~[Nothing in this Act shall be construed to apply to persons]~~ doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical, electronic or communications equipment and apparatus; ~~[nor shall]~~ this Act *may not* be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated~~[-Provided]~~, however, ~~[that nothing in]~~ this *exemption may not* ~~[Act shall]~~ be construed to *permit* ~~[as permitting]~~ any person other than a *registered* ~~[licensed]~~ professional engineer to *affix* ~~[affixing]~~ his signature ~~[as such]~~ to engineering plans, or specifications and *may not be construed to permit a person to use the term "engineer" or "engineering" in any manner prohibited by this Act.*

(f) A person, firm, partnership, joint stock association or private corporation, erecting, constructing, enlarging, altering or repairing, or drawing plans and specifications for: (1) any private dwelling, or apartments not exceeding eight units per building for one story buildings, or apartments not exceeding four units per building and having a maximum height of two stories, or garages or other structures pertinent to such buildings; or (2) private buildings which are to be used exclusively for farm, ranch or agricultural purposes, or used exclusively for storage of raw agricultural commodities; or (3) other buildings, except public buildings included under Section 19 of this Act, having no more than one story and containing no clear span between supporting structures greater than 24 feet on the narrow side and having a total floor area not in excess of five thousand square feet; provided that on unsupported spans greater than 24 feet on such buildings only the trusses, beams, or other roof supporting members need to be engineered or pre-engineered; provided that no representation is made or implied that engineering services have been or will be offered to the public.

(g) Any regular full time employee of a private corporation or other private business entity who is engaged solely and exclusively in performing services for such corporation and/or its affiliates; provided, such employee's services are on, or in connection with, property owned or leased by such private corporation and/or its affiliates or other private business entity, or in which such private corporation and/or its affiliates or other business entity has an interest, estate or possessory right, or whose services affect exclusively the property, products, or interests of such private corporation and/or its affiliates or other private business entity; and, provided further, that such employee does not have the final authority for the approval of, and the ultimate responsibility for, engineering designs, plans or specifications pertaining to such property or products which are to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

(h) Any regular full time employee of a privately owned public utility or cooperative utility and/or affiliates who is engaged solely and exclusively in performing services for such utility and/or its affiliates; provided, that such employee does not have the final authority for the approval of, and the ultimate responsibility for engineering designs, plans or specifications to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

(i) Qualified scientists engaged in scientific research and investigation of the physical or natural sciences, including the usual work and activities of meteorologists, seismologists, geologists, chemists, geochemists, physicists and geophysicists.

(j) Nothing in this Act shall be construed or applied so as to prohibit or in any way restrict any person from giving testimony or preparing exhibits or documents for the sole

purpose of being placed in evidence before any administrative or judicial tribunal of competent jurisdiction.

(k) Nothing in this Act shall apply to any agricultural work being performed in carrying out soil and water conservation practices.

(l) This Act shall not be construed as applying to operating telephone companies and/or affiliates or their employees in respect to any plans, designs, specifications, or services which relate strictly to the science and art of telephony. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

SECTION 9. Section 21, The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. *REGISTRATION BY NONRESIDENTS [RECIPROCITY].* A ~~[The Board may, upon application therefor, and the payment of a fee, issue a certificate of registration as a professional engineer to any]~~ person who holds a *valid* certificate of ~~[qualification or]~~ registration or license issued to him by proper authority of ~~[the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration, or of]~~ any state or territory or possession of the United States, *the District of Columbia, or any foreign country may apply for registration in this state* ~~[provided that the requirements for the registration of professional engineers under which said certificate of qualification or registration was issued do not conflict with the provisions of this Act and are of a standard not lower than that specified in Section 12 of this Act. The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this State].~~

SECTION 10. Section 22A, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22A. *INFORMATION ABOUT COMPLAINTS.* (a) The Board shall keep an information file about each complaint filed with the Board relating to a *registrant* ~~[licensee]~~.

(b) If a written complaint is filed with the Board relating to a *registrant* ~~[licensee]~~, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

SECTION 11. Section 23, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. *VIOLATIONS AND PENALTIES.* (a) ~~Any [On or after the first day of January, 1938, any]~~ person who shall practice, or offer to practice, the profession of engineering in this State without being registered or exempted *from registration* in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall violate any of the provisions of this Act, *commits an offense. An offense under this subsection is a Class A misdemeanor* ~~[be fined not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or be confined in jail for a period of not exceeding three (3) months, or both. Each day of such violation shall be a separate offense].~~

(b) The Board is charged with the duty of ~~[aiding in the]~~ enforcement of ~~[the provisions of]~~ this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violation of said statutes, subject to the control of the prosecuting officers.

(c) The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective

the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

SECTION 12. (a) The change in law made by Section 11 of this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 13. This Act takes effect September 1, 1987.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 14, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on May 29, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.