

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 784

An Act to amend and reenact § 54.1-300, as it is currently effective and as it shall become effective, §§ 54.1-2200 through 54.1-2203, 54.1-2206, 54.1-2207 and 54.1-2208 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2206.1 and 54.1-2206.2, relating to the Department of Professional and Occupational Regulation; Board for Professional Soil Scientists and Wetland Professionals; penalty.

[S 61]

Approved April 8, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-300, as it is currently effective and as it shall become effective, §§ 54.1-2200 through 54.1-2203, 54.1-2206, 54.1-2207 and 54.1-2208 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 54.1-2206.1 and 54.1-2206.2 as follows:

§ 54.1-300. (Effective until July 1, 2003) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation which is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists *and Wetland Professionals*, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery Board, Real Estate Appraiser Board, Real Estate Board and Virginia Board for Asbestos and Lead.

§ 54.1-300. (Effective July 1, 2003) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

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"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists *and Wetland Professionals*, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery

Board, Real Estate Appraiser Board, Real Estate Board and Virginia Board for Asbestos, Lead, and Home Inspectors.

§ 54.1-2200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board for Professional Soil Scientists *and Wetland Professionals*.

"Department" means the Department of Professional and Occupational Regulation.

"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become certified.

"Eligible wetland professional" means a person who possesses the qualifications specified in this chapter to become certified.

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Practice of wetland delineation" means the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Virginia certified professional soil scientist" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who has been granted certification by the Board.

"Virginia certified professional wetland delineator" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.

"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

"Wetland professional" means a person having special knowledge of wetland science and the methods and principles of wetland delineation as acquired by education and experience in the formation, description and mapping of wetlands.

"Wetland science" means the science dealing with the physical, chemical, and biological properties of wetland systems integrated through ecological and morphological relationships.

"Wetlands" means the same as that term is defined in §§ 62.1-44.3 and 28.2-1300.

§ 54.1-2201. Exceptions.

A. The certification ~~program~~ *programs* set forth in this chapter ~~is~~ *are* voluntary and shall not be construed to prohibit:

1. The practice of soil evaluation *or wetland delineation* by individuals who are not certified soil scientists *or certified professional wetland delineators* as defined in this chapter;

2. The work of an employee or a subordinate of a certified soil scientist or of an individual who is practicing soil evaluation without being certified; ~~or~~

3. *The work of an employee or a subordinate of a certified professional wetland delineator or of an individual who is practicing wetland delineation without being certified;*

4. *The work of any professional engineer, certified landscape architect, or land surveyor as defined by § 54.1-400 in rendering any of the services that constitute the practice of wetland delineation or the practice of soil evaluation; or*

~~3.~~ 5. The practice of any profession or occupation which is regulated by another regulatory board within the Department of Professional and Occupational Regulation.

B. *Nothing in this chapter shall authorize an individual to engage in the practice of engineering, the practice of land surveying or to use the title of landscape architect, unless such individual is licensed or certified pursuant to Chapter 4 (§ 54.1-400 et seq.) of this title.*

§ 54.1-2202. Board; membership; quorum.

Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists *and Wetland Professionals* shall be composed of ~~five~~ *seven* members as follows: ~~four~~ *three* certified professional soil scientists, *three* certified professional wetland delineators and one citizen member. ~~Of the professional members, one shall have experience in soil mapping and classification, one shall have experience in soil~~

suitability and land use, one shall have experience in teaching and research in soil science and one shall have experience with environmental protection regulations. The terms of the members shall be four years. The professional soil scientist members shall have experience in at least one of the following areas (i) soil mapping and classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv) environmental protection regulations. Of the wetland professional members, one shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science and one shall have experience with natural resource regulations. For the initial appointments of the wetland professionals the terms shall be as follows: one member shall serve a term of two years, one member shall serve a term of three years, and one member shall serve a term of four years. Initial appointments of wetland professional members to the Board shall not be certified professional wetland delineators but shall have a record of at least ten years of experience in wetland delineation. Subsequent terms of the members shall be for four years.

The Board shall annually elect a chairman from its membership. ~~Three members of the Board, two of whom shall be soil scientists,~~ Four board members, consisting of two soil scientists and two professional wetland delineators, shall constitute a quorum.

The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.

The Governor may select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor may notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.

§ 54.1-2203. Eligibility for certification.

A. Any person practicing or offering to practice as a soil scientist in ~~this~~ the Commonwealth may submit to the Board evidence of qualification to be certified as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

B. Any person practicing or offering to practice as a wetland professional in the Commonwealth may submit to the Board evidence of qualification to be a certified professional wetland delineator as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

C. Any individual who allows his certification to lapse by failing to renew the certificate or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of satisfactory evidence that he is practicing in a competent manner and upon payment of the prescribed fee.

§ 54.1-2206. Waiver of examination.

A. The Board may waive the requirement for examination pursuant to § 54.1-2205 (i) upon written application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in the suspension or revocation of his certificate, if such other state, territory or possession recognizes the certificates issued by the Board; and (ii) upon written application from an individual who has not been examined in the principles and practice of soil evaluation as required by § 54.1-2205 when such individual has a record of at least ten years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist.

B. The Board shall waive the requirement for examination pursuant to § 54.1-2206.2 upon the written application from an individual who (i) holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States or has been provisionally certified under the U.S. Army Corps of Engineers Wetland Delineator Certification Program of 1993 and is not the subject of any disciplinary proceeding before such regulatory body, which could result in the suspension or revocation of his certificate or (ii) has a record of at least ten years of experience in wetland delineation the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator. This provision shall expire two years after initiation of the program.

§ 54.1-2206.1. Requirements for application for professional wetland delineator certification.

The Board may certify any applicant as a Virginia certified professional wetland delineator who has submitted satisfactory evidence verified by affidavits that the applicant:

1. Is eighteen years of age or older;
2. Is of good moral character; and
3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

§ 54.1-2206.2. Requirements for professional wetland delineator certification.

A. In order to be certified as a professional wetland delineator, an applicant shall achieve a score acceptable to the Board on an examination, which may include a field practicum, in the principles and practice of wetland delineation, provide three written references from wetland professionals with at least one from a certified professional wetland delineator, and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the Board; have successfully completed a course of instruction, in state and federal wetland delineation methods, that has been approved by the Board; and have at least four years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator;

2. Have a record of at least six years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator; or

3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator.

B. Notwithstanding the requirements of subsection A, the requirement for a reference from and supervision by a certified professional wetland delineator shall be waived for the first two years of the program.

§ 54.1-2207. Unprofessional conduct.

Any professional soil scientist or wetland delineator who is certified as provided in this chapter shall be considered guilty of unprofessional conduct and subject to disciplinary action by the Board, if he:

1. Obtains his certification through fraud or deceit;
2. Violates or cooperates with others in violating any provision of this chapter, the Code of Professional Ethics and Conduct or any regulation of the Board;
3. Performs any act likely to deceive, defraud or harm the public;
4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation or wetland delineation; or
5. Is convicted of a felony.

§ 54.1-2208. Unlawful representation as a certified professional soil scientist or wetland delineator.

A. No person shall represent himself as a certified professional soil scientist unless he has been so certified by the Board. Any person practicing or offering to practice soil evaluation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional soil scientist without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

B. No person shall represent himself as a certified professional wetland delineator unless he has been so certified by the Board. Any person practicing or offering to practice wetland delineation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional wetland delineator without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

2. That the provisions of the first enactment of this act shall become effective on July 1, 2004, except that the provisions of § 54.1-2202 shall become effective in due course.

3. That the provisions of this act shall not affect current members of the Board for Professional Soil Scientists whose terms have not expired as of July 1, 2002.

4. That the Governor shall appoint one wetland professional in accordance with § 54.1-2202 to replace a current member of the Board for Professional Soil Scientists whose term has expired as of July 1, 2002.

5. That the provisions of § 54.1-2202 of this act requiring two wetland professionals for the purposes of establishing a quorum for meetings of the Board for Professional Soil Scientists and Wetland Professionals shall not become effective until the Governor appoints the initial wetland professionals to the Board.