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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 129

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 2803, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2803. Definitions.

4 The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them,
5 except where the context clearly indicates a different meaning;

6 (1) "Active roster" shall mean the record of members, associate members, permittees and holders of a
7 certificate of authorization.

8 (2) "Adjunct member" shall mean an adjunct member of the Association, as defined in § 2806(d) of this title.

9 (3) "Administrative order" means an order issued by an investigating committee, with the prior approval of
10 the Council pursuant to § 2824(b)(1)g.1. of this title, which attempts to resolve a complaint of a violation under §
11 2823 of this title. Administrative orders become final 14 days from the day the order is received by the accused but
12 only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service.

13 (4) "Affiliate member" shall mean an affiliate member of the Association, as defined in § 2806(c) of this title.

14 (5) "Applicant" shall mean a person who applies to become licensed as a professional engineer, applies to
15 become certified as engineer intern, applies to become an adjunct member of the association, or applies for a certificate
16 of authorization or permit.

17 (6) "Associate member" shall mean an associate member of the Association, as defined in § 2806(b) of this
18 title.

19 (7) "Association" shall mean the Delaware Association of Professional Engineers.

20 (8) "Bylaw" shall mean a bylaw of the Association.

21 (9) "Certificate of authorization" shall mean an authorization issued by the Council to engage in the practice
22 of engineering.

23 (10) "Committee" shall mean a committee appointed by the Council.

24 (11) "Consent order" means a voluntary agreement between parties attempting resolution of a complaint of a
25 violation under § 2823 of this title or a complaint of unlicensed practice under § 2825 of this title. To become a final
26 order, a consent order must be approved by Council pursuant to § 2824(b)(1)g.2. of this title.

27 (12) "Continuing professional competency" shall mean and refer to compliance with or satisfaction of a
28 published set of guidelines and requirements for the maintenance of professional competency in the practice of
29 engineering.

30 (13) "Council" shall mean the Council of the Association.

31 (14) "Engineer" shall mean a person who, by reason of special knowledge and use of the mathematical,
32 physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by an
33 engineering education, through graduation with a baccalaureate degree from a Council-approved 4-year educational
34 program in engineering, in engineering technology or in science related to engineering, is qualified to begin the path to
35 licensure.

36 (15) "Engineering corporations or partnerships" are corporations or partnerships who practice engineering to
37 provide engineering services to the public.

38 (16) "Engineer intern" shall mean a person certified as an engineer intern by the Council.

39 (17) "Examination" shall mean any qualifying examination or examinations required by this chapter.

40 (18) "Hearing committee" means a committee of Council members to which the Council has delegated
41 authority to adjudicate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under §
42 2825 of this title.

43 (19) "Incompetence" shall mean the failure to exercise appropriate professional judgment or the failure to
44 utilize skill to a degree which shows a lack of general competence.

45 ~~(19)~~ (20) "Investigating committee" means a committee of the Council to which the Council has delegated
46 authority to investigate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under
47 § 2825 of this title.

48 ~~(20)~~ (21) "Licensed" means licensure as a professional engineer under this chapter.

49 ~~(21)~~ (22) "Licensee" shall mean a person licensed as a professional engineer under this chapter.

50 ~~(22)~~ (23) "Member" shall mean a member of the Association, as defined in § 2806(a) of this title.

51 (24) "Negligence" shall mean an act or omission that deviates from accepted standards of practice or standard
52 of care in the engineering community

53 ~~(23)~~ (25) “Practice of engineering” or “to practice engineering” includes any professional service performed
54 for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of
55 construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment,
56 processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or
57 involved when such professional service requires the application of engineering principles and data, but it does not
58 include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it
59 include engineering services performed by an employee of a firm or corporation that does not offer professional
60 engineering services to the general public.

61 ~~(24)~~ (26) “Professional engineer” shall mean a person who has been duly licensed as a professional engineer
62 by the Council.

63 ~~(25)~~ (27) “Responsible charge” means a professional engineer’s supervision of, control over, and possession
64 of detailed professional knowledge of an engineering work. A professional engineer is only considered to be in
65 responsible charge of an engineering work if the professional engineer makes independent professional decisions
66 regarding the engineering work without requiring instruction or approval from another authority and maintains control
67 over those decisions by the professional engineer’s physical presence at the location where the engineering work is
68 performed or by electronic communication with the individual executing the engineering work.

69 ~~(26)~~ (28) “Retired member” shall mean a person who has elected to claim retired status as defined in §
70 2806(g) of this title.

71 ~~(27)~~ (29) “Substantially related” shall mean the nature of the criminal conduct, for which the person was
72 convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily
73 related to the practice of engineering.

74 (30) “Successor professional engineer” shall mean a professional engineer as defined in § 2803() of this
75 chapter who reuses, adopts, or amends all or part of any final drawings, specifications, reports and documents
76 involving the practice of engineering as defined in this chapter that have been previously sealed by another engineer.
77 “Successor Professional Engineer” as used in this chapter is not to be construed to pertain to the design or engineering
78 performed for retrofits or repairs, or for components or minor elements. For these applications, the designs must stand
79 on their own, have a clear limit of responsibility and only one engineer in responsible charge identified for that work.

80 Section 2. Amend § 2817(a)(7)g., Title 24 of the Delaware Code by making deletions as shown by strikethrough
81 and insertions as shown by underline as follows:

82 g. Applicants with 4 failures of the Principles and Practice of Engineering examination may only apply to retake
83 the examination after completing the following:

84 1. Present 3 new references to the Council, at least 2 of whom must be registered or licensed professional
85 engineers in this or any other state or territory or possession of the United States, the District of Columbia,
86 or any province or territory of Canada, pursuant to paragraph (7)a. of this section; and

87 2. A. Successful completion of 6 college-level semester credit hours that are preapproved by Council to
88 assure that the courses adequately address the subject matter weaknesses outlined in the diagnostic report
89 resulting from the preceding failure of the Principles and Practice of Engineering Examination. Applicants
90 must provide official transcripts of the courses that were taken demonstrating that a grade of "C minus" or
91 higher was achieved; or

92 B. Submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant
93 has acquired at least 2 years of additional engineering experience, including a brief summary explaining
94 how that experience has better prepared the applicant to pass the examination; or

95 C. submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant
96 has acquired sufficient educational and engineering experience, including a brief summary explaining
97 how that educational and engineering experience has better prepared the applicant to pass the
98 examination.

99 3. On the fifth and all subsequent attempts, applicants must reapply and meet the requirement stipulated in
100 paragraphs (7)g.1. and 2. of this section above.

101 Section 3. Amend § 2823(a)(2), Title 24 of the Delaware Code by making deletions as shown by strikethrough
102 and insertions as shown by underline as follows:

103 § 2823. Grounds for discipline; appeals.

104 (a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to
105 disciplinary penalties set forth in § 2824(c) of this title, if, after a hearing, the person is found to violate any of the
106 following:

107 (2) Any negligence, gross negligence, pattern of negligence, incompetence, or misconduct in the practice
108 of engineering;

109 Section 4. Amend Chapter 28, Title 24 of the Delaware Code by making deletions as shown by strikethrough and
110 insertions as shown by underline as follows:

111 § 2832 Successor professional engineer’s reuse or adoption of the work of another engineer.

112 (a) A successor professional engineer seeking to reuse, adopt, or amend all or part of any final drawings,
113 specifications, reports and documents involving the practice of engineering as defined in this chapter that were previously
114 signed and sealed by another engineer shall complete all of the following:

115 (1) Date, sign, and seal the final drawings, specifications, reports and documents involving the practice of
116 engineering as defined in this chapter in compliance with § 2830 of this chapter.

117 (2) Certify in writing on the final drawings, specifications, report or documents that the successor
118 professional engineer is adopting the underlying engineering work of the preceding engineer as the successor
119 professional engineer’s own and has performed the necessary due diligence to verify that the proposed changes,
120 revisions, or amendments do not impact the existing design outside of the changes, revisions, or amendments made
121 by the successor professional engineer.

122 (3) Remove, or cause to be removed, the signature and seal of the preceding engineer from the final
123 drawings, specifications, reports and documents.

124 (4) Provide reasonable notice by certified mail or other verifiable means to the preceding engineer, their
125 successors, or assigns of the successor professional engineer’s intention to reuse, adopt, or amend all or part of the
126 preceding engineer’s work, however, the preceding engineer’s approval is not required for the successor
127 professional engineer to adopt the preceding engineer’s sealed work as his or her own pursuant to § 2832(a)(2).

128 (b) Failure to comply with any part of this section is misconduct and shall be grounds for discipline pursuant to §
129 2823 of this chapter.

130 (c) A professional engineer’s reliance upon and legal use of another professional engineer’s work in the normal
131 course of providing original service is not the reuse or adoption of the other professional engineer’s work as set forth in this
132 section and the engineer relying upon such work is not a “successor professional engineer” as defined in this chapter.

133 (d) This section does not impact, or cause the transfer of, any contractual right, property right, intellectual property
134 right, or other right that the preceding professional engineer may have in the original engineering work.

SYNOPSIS

This Act modifies Section 2803 to add definitions for negligence, misconduct and incompetence. These new definitions will provide greater clarity and guidance for the Council of the Delaware Association of Professional Engineers in determining whether a licensee is subject to discipline. Section 2817(a)(7) has been amended by striking the requirement that an applicant who fails the Principles and Practice of Engineering examination four times must go through additional steps before taking the examination another time. Eliminating this requirement will remove unnecessary barriers to licensure. Further, Section 2823 has been amended to add “negligence” and “pattern of negligence” as grounds for

discipline. These changes will ensure that discipline is imposed for conduct that poses a risk to the public. This Act adds a definition for “successor professional engineer” and a new Section 2832 to delineate the acceptable parameters for a successor engineer’s reuse or adoption of work performed by another engineer. These revisions will both inform licensees of the permissible use of another engineer’s work and ensure that the recipient of services can identify the responsible engineer.