SPONSOR: Rep. Gray & Rep. Carson & Sen. Hansen & Sen. Pettyjohn
Reps. K. Johnson, Ramone; Sens. Hocker, Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 129
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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:

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

§ 2803. Definitions.

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

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

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

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

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

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

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

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

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

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(9) “Certificate of authorization” shall mean an authorization issued by the Council to engage in the practice of engineering.

(10) “Committee” shall mean a committee appointed by the Council.

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

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

(13) “Council” shall mean the Council of the Association.

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

(15) “Engineering corporations or partnerships” are corporations or partnerships who practice engineering to provide engineering services to the public.

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

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

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

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

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

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

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

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

( ) “Misconduct” shall mean that conduct which is recognized to be unsafe or improper by the ethical and competent members of the profession. The term also includes general conduct that is dishonorable or unprofessional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2823. Grounds for discipline; appeals.

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

(2) Any <u>negligence,</u> gross negligence, <u>pattern of negligence,</u> incompetence, or misconduct in the practice of engineering;