

AN ACT

Providing for the licensure of fire-resistant material applicators by a State Fire Proofing Applicator Licensing Board; and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Fireproofing Licensing Law."

Section 2. Declaration of purpose.

In order to protect the health, safety and property of the people of the Commonwealth of Pennsylvania and to promote their welfare, no person shall engage in the application of fire-resistant materials in this Commonwealth except in compliance with the requirements of this act.

Section 3. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Accredited training program." Any program designed to provide training on the application of fire-resistant materials that has been approved and accredited by the board.

"Board." The Fireproofing Applicator Licensing Board established by this act.

"Certificate." The certificate of licensure issued by the board indicating that the individual named therein is a fire-resistant material applicator.

"Fire-resistant material." Cementitious or fibrous materials that are sprayed onto a surface to provide fire-resistant protection of the substrate.

"Fire-resistant material applicator." An individual who applies fire-resistant materials.

Section 4. Creation of board; appointment and term of members and officers.

(a) There is hereby established a Fireproofing Applicator Licensing Board which shall consist of seven voting members; including the Commissioner of Professional and Occupational Affairs or a designee, the Pennsylvania State Fire Commissioner or a designee and five persons, residents of the Commonwealth of Pennsylvania, to be appointed by the governor

for terms of 3 years, 2 of whom shall be fire-resistant material applicators with at least 10 years of practical experience and who are wage earners, 2 of whom shall be fire-resistant material applicators with at least 10 years of practical experience and 1 of whom shall be a representative of the public.

(b) A member appointed for a full term shall not be eligible for more than two consecutive full terms.

(c) Each member of the board shall take and subscribe to the oath of office generally required of State officials.

(d) A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.

(e) The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(f) Four members of the board shall constitute a quorum.

Section 5. Organization of board.

(a) An organizational meeting of the board shall be held annually at which time the board shall elect from its membership a president, a vice president and a secretary, who shall serve for one year or until their successors are duly elected. The board may meet at least four times per year and at other times as the board, in consultation with the Commissioner of Professional and Occupational Affairs, deems desirable. Other meetings of the board may be called in accordance with rules and regulations promulgated by the board. Adequate public notice of the time and place of meetings of the board shall be given.

(b) Should a vacancy in the office of president, vice president or secretary of the board occur, the remaining members of the board shall fill such vacancy by election.

(c) Each professional and public member of the board shall be paid reasonable traveling, hotel and other necessary expenses and per diem compensation at the rate of \$60 for each day of actual service while on board business.

Section 6. Powers of board.

(a) The board may establish reasonable rules and regulations to carry out the provisions of this act.

(b) The board may establish, by regulations consistent with the policy contained in this act, standards of professional conduct for fire-resistant material applicators.

(c) The board shall issue certificates to individuals who have qualified to engage in fire-resistant material application under the provisions of this act. The board may establish such rules and regulations consistent with this act for the issuance and renewal of certificates as it deems appropriate.

(d) The board shall have the power to issue accreditation to educational and training programming in the application of fire-resistant materials.

(e) The board shall establish standards for continuing education reflecting acceptable national standards in the application and use of fire-resistant materials.

(f) The board shall have the power to administer and enforce the laws of the Commonwealth of Pennsylvania relating to fire-resistant material application and to instruct and require its agents to initiate appropriate proceedings for unauthorized and unlawful practice.

(g) The board shall have the power to take disciplinary action as described in this act. In all disciplinary proceedings brought pursuant to this act, the board shall have the power to administer oaths, to summon witnesses, and to compel the production of documents in accordance with law. Upon the failure of any person to appear or produce documents in accordance with the board's order, the board may take appropriate action in accordance with the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," to enforce compliance.

(h) The board shall have the power to take appropriate actions to initiate injunction and criminal prosecution proceedings in connection with the unlawful and unauthorized fire-resistant material application or other violations of this act. Injunction and criminal proceedings shall be instituted in accordance with the "Commonwealth Attorneys Act."

(i) The board shall have the power to appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as may be required under section 12. The board shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by its hearing examiners.

Section 7. Duties of board.

(a) The board shall keep a record of its proceedings and the board shall keep records relating to applications. Records relating to applications shall include the name, age and last known address of each applicant for licensure, information concerning each applicant's education, experience and other qualifications, and such other information as the board deems appropriate. The records of the board shall be prima facie evidence in the proceedings and a certified transcript by the secretary shall be admissible in evidence with the same force and effect as if the original were produced.

(b) The board shall maintain an up-to-date roster showing the names and addresses of the places of business of all fire-resistant material applicators licensed under this act. In the interim years following the publishing of the complete roster, the board shall each year publish a supplemental roster containing the name, license numbers where applicable, and addresses of all fire-resistant material applicators licensed by the board subsequent to the publishing of the last published roster or supplemental roster.

(c) The board shall maintain records relating to all fire-resistant material applicators licensed in the Commonwealth of Pennsylvania.

(d) Annually at the end of its fiscal year, the board shall submit to the Commissioner of Professional and Occupational Affairs a report of its activities and transactions of the preceding year. The board shall also submit to the Commissioner of Professional and Occupational Affairs and to the House and Senate Appropriations Committees, 15 days after the Governor has submitted his budget to the General Assembly, a proposed budget request for its operation for the succeeding fiscal year.

(e) The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

Section 8. Review and qualification of applicants.

(a) Any individual of good character, who is a legal resident of Pennsylvania who has completed training in the application of fire-resistant materials may apply for a certificate under this act.

(b) Each applicant for a certificate shall submit evidence satisfactory to the board that the applicant completed training a program accredited by the board.

Section 9. Issuance and renewal of certificates.

(a) Upon approval of an application for a certificate, the board shall issue the certificate conditional on payment of a fee set by the board.

(b) Each certificate shall contain the name of the individual to whom it was issued and shall be valid for two years.

(c) Every certificate shall expire on the day prescribed by rules and regulations promulgated by the board. A fire-resistant material applicator may renew their certificate after review by the board to ensure the applicant is remains in compliance with regulations set by the board.

(d) A duplicate certificate to replace one which has been lost, destroyed or mutilated may be issued by the board upon payment of a fee as required by the board. The board reserves the right to require fire-resistant material applicators requesting duplicate certificates to furnish documentation satisfactory to the board relative to loss, destruction or mutilation of original certificate.

(e) Certificates issued to fire-resistant material applicators shall not be transferable.

(f) All fees required under the provisions of this act shall be fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that projected revenues will meet or exceed projected expenditures.

Section 10. Unauthorized practice prohibited.

(a) Except as provided in section 9(c) and (d), no individual shall engage in the practice, or offer to engage in the practice of fire-resistant material application in this State unless such individual holds a currently valid certificate issued pursuant to this act.

Section 11. Disciplinary proceedings.

(a) The board may refuse to issue a certificate to an applicant or may refuse, revoke or suspend a certificate, censure a fire-resistant material applicator, issue a letter of reprimand, restrict a certificate holder and attach certain conditions to a certificate for any of the following acts:

(1) Bribery, fraud, misstatement or misrepresentation of fact by an applicant in connection with this application for a certificate.

(2) Engaging in the application of fire-resistant materials in this Commonwealth in violation of any provisions of this act or the rules and regulations promulgated thereunder.

(3) Engaging in the application of fire-resistant materials in this Commonwealth in violation of the standards of professional conduct established by rules and regulations promulgated by the board.

(4) Bribery, fraud, deceit, recklessness, gross negligence or incompetence in the practice of fire-resistant material application.

Section 12. Penalties.

(a) Any person who engages in the application of fire-resistant materials in violation of this act shall, for a first offense, be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding \$500 or suffer imprisonment not exceeding 90 days, or both, and for a second or subsequent offense shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000, or to suffer imprisonment of not less than one year, but not more than two years, or both.

(b) The right of the board to refuse to issue a certificate or to refuse, revoke or suspend a certificate or censure a fire-resistant material applicator or issue a letter of reprimand or restrict a certificate holder or attach conditions to a certificate under this act shall be in addition to the penalties set forth in this section.

(c) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current licensee who violates any provision of this act or on any person who practices the profession of fire-resistant material applicator without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

Section 13. Complaint procedure and hearings.

(a) Any person may refer charges against a person licensed under the provisions of this act by submitting a written statement of charges, sworn to by the complainant, to the board. In addition, the board may, on its own motion, investigate the conduct of an applicant or a licensee, and shall, in appropriate cases, file a written statement of charges. The applicant or fire-resistant material applicator charged shall be entitled to be represented by counsel. Hearings shall be conducted in accordance with the provisions for hearings of contested cases as prescribed by the applicable laws and regulations relating to administrative hearings.

(b) The hearings may be held by the board or any member thereof, or by any of its duly authorized hearing examiners or by any other person duly authorized by the board for such purpose in any particular case. The time and place of such hearing shall be fixed by the board or its duly authorized hearing examiner. Any member of the board or hearing examiner

authorized to conduct the hearing may administer oaths and conduct investigations.

(c) When a matter is referred to a hearing examiner for hearing, such person following the completion of the testimony in the hearing before him shall, with reasonable dispatch, file a report with the board setting forth his findings of fact and recommendation. Upon review of the record, the board by majority vote, may adopt the findings in the report or may, with or without additional testimony, either return the matter to the representative for such further consideration as the board deems necessary or make additional or other findings of fact on the basis of all the legally probative evidence in the record and enter its conclusions of law and order in accordance with the requirements for the issuance of an adjudication under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) The board may, in its discretion, issue a certificate to any applicant denied licensure upon presentation of suitable evidence of reform.

Section 14. Severability.

The provisions of this act are severable and if any section shall be declared invalid or void for any reason, the remainder of the act shall not be affected or impaired.