

FIRST REGULAR SESSION

# HOUSE BILL NO. 482

## 93RD GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE DIXON.

Read 1<sup>st</sup> time February 8, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1410L.011

---

### AN ACT

To repeal sections 327.011, 327.111, 327.201, 327.291, 327.441, 327.633 and 621.045, RSMo, and to enact in lieu thereof six new sections relating to architects, professional engineers, and land surveyors, with a penalty provision.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 327.011, 327.111, 327.201, 327.291, 327.441, 327.633, and 621.045, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 327.011, 327.076, 327.077, 327.078, 327.441, and 621.045, to read as follows:

327.011. As used in this chapter, the following words and terms shall have the meanings indicated:

(1) "Accredited degree program from a school of architecture", a degree from any school or other institution which teaches architecture and whose curricula for the degree in question have been, at the time in question, certified as accredited by the National Architectural Accrediting Board;

(2) "Accredited school of landscape architecture", any school or other institution which teaches landscape architecture and whose curricula on the subjects in question are or have been at the times in question certified as accredited by the Landscape Architecture Accreditation Board of the American Society of Landscape Architects;

(3) "Accredited school of engineering", any school or other institution which teaches engineering and whose curricula on the subjects in question are or have been, at the time in question certified as accredited by the engineering accreditation commission of the accreditation board for engineering and technology or its successor organization;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (4) "Architect", any person authorized pursuant to the provisions of this chapter to  
16 practice architecture in Missouri, as the practice of architecture is defined in section 327.091;

17 (5) "Board", the Missouri board for architects, professional engineers, professional land  
18 surveyors and landscape architects;

19 (6) "Corporation", any general business corporation, professional corporation or limited  
20 liability company;

21 (7) "Department", the department of economic development;

22 (8) "Division", the division of professional registration in the department of economic  
23 development;

24 (9) "Landscape architect", any person licensed pursuant to the provisions of sections  
25 327.600 to 327.635 who is qualified to practice landscape architecture by reason of special  
26 knowledge and the use of biological, physical, mathematical and social sciences and the  
27 principles and methods of analysis and design of the land, has demonstrated knowledge and  
28 ability in such areas, and has been duly licensed as a landscape architect by the board on the basis  
29 of professional education, examination and experience in landscape architecture;

30 (10) **"Licensee", a person licensed to practice any profession regulated under this  
31 chapter or a corporation authorized to practice any such profession;**

32 (11) "Partnership", any partnership or limited liability partnership;

33 [(11)] (12) "Person", any person, corporation, firm, partnership, association or other  
34 entity;

35 [(12)] (13) "Professional engineer", any person authorized pursuant to the provisions  
36 of this chapter to practice as a professional engineer in Missouri, as the practice of engineering  
37 is defined in section 327.181;

38 [(13)] (14) "Professional land surveyor", any person authorized pursuant to the  
39 provisions of this chapter to practice as a professional land surveyor in Missouri as the practice  
40 of land surveying is defined in section 327.272.

**327.076. 1. Any person who practices architecture, engineering, land surveying,  
2 or landscape architecture, as defined in sections 327.011 to 327.635, or who holds himself  
3 or herself out as able to practice such profession and who is not the holder of a currently  
4 valid license or certificate of authority in Missouri, and who is not exempt from holding  
5 such a license or certificate, is guilty of a class A misdemeanor.**

**6 2. The board may cause a complaint to be filed with the administrative hearing  
7 commission, as provided in chapter 621, RSMo, against any unlicensed person for any one  
8 or any combination of the following causes:**

9 (1) **Engages in or offers to render or engage in the practice of architecture,  
10 professional engineering, land surveying, or landscape architecture;**

11           (2) Uses or employs titles defined and protected by this chapter, or implies  
12 authorization to provide or offer professional services, or otherwise uses or advertises any  
13 title, word, figure, sign, card, advertisement, or other symbol or description tending to  
14 convey the impression that the person is licensed or holds a certificate of authority to  
15 practice architecture, professional engineering, land surveying, or landscape architecture;

16           (3) Presents or attempts to use another person's license, seal, or certificate of  
17 authority as his or her own;

18           (4) Attempts to use an expired, suspended, revoked, or nonexistent license or  
19 certificate of authority;

20           (5) Gives false or forged evidence of any kind to the board or any member of the  
21 board in obtaining or attempting to obtain a certificate of licensure in this state or any  
22 other state or jurisdiction;

23           (6) Knowingly aids or abets an unlicensed or unauthorized person who engages in  
24 any prohibited activity identified in this subsection;

25           (7) Violates any provision of the code of professional conduct or other rule adopted  
26 by the board;

27           (8) Violates any provision of subsection 2 of section 327.441.

28           3. When reviewing complaints against unlicensed persons, the board may initiate  
29 an investigation and take all measures necessary to find the facts of any potential violation,  
30 including issuing subpoenas to compel the attendance and testimony of witnesses and the  
31 disclosure of evidence, and may request the attorney general to bring an action to enforce  
32 the subpoena.

33           4. After the filing of such complaint, the proceedings shall be conducted in  
34 accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
35 administrative hearing commission that the grounds provided in subsection 2 of this  
36 section for disciplinary action are met, the board may, either singularly or in combination  
37 with other provisions of this chapter, impose a civil penalty as provided for in section  
38 327.077 against the person named in the complaint.

          327.077. 1. In disciplinary actions against licensed or unlicensed persons, the board  
2 may issue an order imposing a civil penalty.

3           2. A civil penalty imposed under this section shall not exceed five thousand dollars  
4 for each offense. Each day of a continued violation constitutes a separate offense, with a  
5 maximum penalty of twenty-five thousand dollars. In determining the amount of penalty  
6 to be imposed, the board may consider any of the following:

7           (1) Whether the amount imposed will be a substantial deterrent to the violation;

8           (2) The circumstances leading to the violation;

- 9           (3) The severity of the violation and the risk of harm to the public;  
10           (4) The economic benefits gained by the violator as a result of noncompliance;  
11           (5) The interest of the public.

12           3. Any final order imposing a civil penalty is subject to judicial review upon the  
13 filing of a petition under section 536.100, RSMo, by any person subject to the penalty.

14           4. Payment of a civil penalty shall be made within sixty days of filing the order, or  
15 if the order is stayed pending an appeal within ten days after the court enters a final  
16 judgment in favor of the board, the board shall notify the attorney general. The attorney  
17 general may commence an action to recover the amount of the penalty, including  
18 reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus  
19 ten percent per annum on any amounts owed. In such action, the validity and  
20 appropriateness of the final order imposing the civil penalty shall not be subject to review.

21           5. An action to enforce an order under this section may be joined with an action for  
22 an injunction.

23           6. Any offer of settlement to resolve a civil penalty under this section shall be in  
24 writing, state that an action for imposition of a civil penalty may be initiated by the  
25 attorney general representing the board under this section, and identify any dollar amount  
26 as an offer of settlement which shall be negotiated in good faith through conference,  
27 conciliation, and persuasion.

28           7. Failure to pay a civil penalty by any person licensed under this chapter shall be  
29 grounds for refusing to renew a license or certificate of authority.

30           8. Penalties collected under this section shall be handled in accordance with section  
31 7 of article IX of the Missouri Constitution and shall be deposited in the state general  
32 revenue fund. Such penalties shall not be considered a charitable contribution for tax  
33 purposes.

327.078. 1. In its determination that a licensee or nonlicensee has violated this  
2 chapter or a rule promulgated under this chapter, the board may assess the licensee or  
3 nonlicensee with its reasonable costs and expenses incurred in conducting the investigation  
4 and administrative hearing.

5           2. All moneys collected under this section shall be deposited in the fund established  
6 in section 327.081 and shall be used by the board to defray its expenses in connection with  
7 disciplinary investigations and hearings. Notwithstanding the provisions of section  
8 327.081, such moneys may be expended without legislative appropriation.

327.441. 1. The board may refuse to issue any license or certificate of authority required  
2 pursuant to this chapter for one or any combination of causes stated in subsection 2 of this  
3 section. The board shall notify the applicant in writing of the reasons for the refusal and shall

4 advise the applicant of the applicant's right to file a complaint with the administrative hearing  
5 commission as provided by chapter 621, RSMo.

6         2. The board may cause a complaint to be filed with the administrative hearing  
7 commission as provided by chapter 621, RSMo, against any holder of any license or certificate  
8 of authority required by this chapter or any person who has failed to renew or has surrendered  
9 such person's license or certificate of authority, for any one or any combination of the following  
10 causes:

11         (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
12 beverage to an extent that such use impairs a person's ability to perform the work of any  
13 profession licensed or regulated by this chapter;

14         (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
15 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
16 for any offense reasonably related to the qualifications, functions or duties of any profession  
17 licensed or regulated under this chapter, for any offense an essential element of which is fraud,  
18 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not  
19 sentence is imposed;

20         (3) Use of fraud, deception, misrepresentation or bribery in securing any license or  
21 certificate of authority issued pursuant to this chapter or in obtaining permission to take any  
22 examination given or required pursuant to this chapter;

23         (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by  
24 fraud, deception or misrepresentation;

25         (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
26 in the performance of the functions or duties of any profession licensed or regulated by this  
27 chapter;

28         (6) Violation of, or assisting or enabling any person to violate, any provision of this  
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30         (7) Impersonation of any person holding a license or certificate of authority, or allowing  
31 any person to use his or her license or certificate of authority, or diploma from any school;

32         (8) Disciplinary action against the holder of a license or a certificate of authority, or other  
33 right to practice any profession regulated by this chapter granted by another state, territory,  
34 federal agency or country upon grounds for which revocation or suspension is authorized in this  
35 state;

36         (9) A person is finally adjudged incapacitated or disabled by a court of competent  
37 jurisdiction;

38         (10) Assisting or enabling any person to practice or offer to practice any profession  
39 licensed or regulated by this chapter who is not licensed and currently eligible to practice

40 pursuant to this chapter;

41 (11) Issuance of a professional license or a certificate of authority based upon a material  
42 mistake of fact;

43 (12) Failure to display a valid license or certificate of authority if so required by this  
44 chapter or any rule promulgated pursuant to this chapter;

45 (13) Violation of any professional trust or confidence;

46 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to  
47 the general public or persons to whom the advertisement or solicitation is primarily directed.

48 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
49 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing  
50 commission that the grounds, provided in subsection 2 of this section, for disciplinary action are  
51 met, the board may, singly or in combination, censure or place the person named in the complaint  
52 on probation on such terms and conditions as the board deems appropriate for a period not to  
53 exceed five years, or may suspend, for a period not to exceed three years, **or order a civil**  
54 **penalty under section 327.077**, or revoke the license or certificate of authority of the person  
55 named in the complaint.

621.045. 1. The administrative hearing commission shall conduct hearings and make  
2 findings of fact and conclusions of law in those cases when, under the law, a license issued by  
3 any of the following agencies may be revoked or suspended or when the licensee may be placed  
4 on probation or when an agency refuses to permit an applicant to be examined upon his  
5 qualifications or refuses to issue or renew a license of an applicant who has passed an  
6 examination for licensure or who possesses the qualifications for licensure without examination:

- 7 Missouri State Board of Accountancy
- 8 Missouri Board of Registration for Architects, Professional Engineers and Land
- 9 Surveyors
- 10 Board of Barber Examiners
- 11 Board of Cosmetology
- 12 Board of Chiropody and Podiatry
- 13 Board of Chiropractic Examiners
- 14 Missouri Dental Board
- 15 Board of Embalmers and Funeral Directors
- 16 Board of Registration for the Healing Arts
- 17 Board of Nursing
- 18 Board of Optometry
- 19 Board of Pharmacy
- 20 Missouri Real Estate Commission

21 Missouri Veterinary Medical Board  
22 Supervisor of Liquor Control  
23 Department of Health and Senior Services  
24 Department of Insurance  
25 Department of Mental Health

26 2. If in the future there are created by law any new or additional administrative agencies  
27 which have the power to issue, revoke, suspend, or place on probation any license, then those  
28 agencies are under the provisions of this law.

29 3. **The administrative hearing commission is authorized to conduct hearings and**  
30 **make findings of fact and conclusions of law in those cases brought by the Missouri Board**  
31 **of Registration for Architects, Professional Engineers and Land Surveyors against**  
32 **unlicensed persons pursuant to section 327.076, RSMo.**

33 4. Notwithstanding any other provision of this section to the contrary, after August 28,  
34 1995, in order to encourage settlement of disputes between any agency described in subsection  
35 1 of this section and its licensees, any such agency shall:

36 (1) Provide the licensee with a written description of the specific conduct for which  
37 discipline is sought and a citation to the law and rules allegedly violated, together with copies  
38 of any documents which are the basis thereof, or file a contested case against the licensee, at least  
39 thirty days prior to offering the licensee a settlement proposal, and provide the licensee with an  
40 opportunity to respond to the allegations;

41 (2) If no contested case has been filed against the licensee, allow the licensee at least  
42 sixty days, from the date of mailing, during which to consider the agency's initial settlement offer  
43 and discuss the terms of such settlement offer with the agency;

44 (3) If no contested case has been filed against the licensee, advise the licensee that the  
45 licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen  
46 days thereafter, submit the agreement to the administrative hearing commission for determination  
47 that the facts agreed to by the parties to the settlement constitute grounds for denying or  
48 disciplining the license of the licensee; and

49 (4) In any contact pursuant to this subsection by the agency or its counsel with a licensee  
50 who is not represented by counsel, advise the licensee that the licensee has the right to consult  
51 an attorney at the licensee's own expense.

52 [4.] 5. If the licensee desires review by the administrative hearing commission pursuant  
53 to subdivision (3) of subsection [3] 4 of this section at any time prior to the settlement becoming  
54 final, the licensee may rescind and withdraw from the settlement and any admissions of fact or  
55 law in the agreement shall be deemed withdrawn and not admissible for any purposes under the  
56 law against the licensee. Any settlement submitted to the administrative hearing commission

57 shall not be effective and final unless and until findings of fact and conclusions of law are  
58 entered by the administrative hearing commission that the facts agreed to by the parties to the  
59 settlement constitute grounds for denying or disciplining the license of the licensee.

60 [5.] 6. As to a matter settled prior to August 28, 1995, by consent agreement or agreed  
61 settlement, any party to a consent agreement or agreed settlement, other than a state agency, after  
62 having received written notice at their last known address known to the agency from the  
63 respective licensing agency of a person's rights under this section, shall have six months to file  
64 an action in the circuit court of Cole County contesting the authority of any agency described in  
65 subsection 1 of this section to enter into such consent agreement or agreed settlement. Any  
66 consent agreement or agreed settlement which is not invalidated by the court pursuant to this  
67 subsection shall be given full force and effect by all courts and agencies.

2 [327.111. Any person who practices architecture in Missouri as defined  
3 in section 327.091, who is not exempt pursuant to the provisions of section  
4 327.101, or who is not the holder of a currently valid license or certificate of  
5 authority to practice architecture in Missouri, or who pretends or attempts to use  
6 as such person's own the license or certificate of authority or the seal of another  
7 architect or who affixes his or her or another's architect's seal on any plans,  
8 specifications, drawings, or reports which have not been prepared by such person  
9 or under such person's immediate personal supervision, is guilty of a class A  
misdemeanor.]

2 [327.201. Any person who practices professional engineering in Missouri  
3 as defined in section 327.181, who is not exempt pursuant to the provisions of  
4 section 327.191 and who is not the holder of a currently valid license or  
5 certificate of authority to practice professional engineering in Missouri, or who  
6 pretends or attempts to use as such person's own the license or certificate of  
7 authority or the seal of another professional engineer, or who affixes such  
8 person's or another professional engineer's seal on any plans, specifications,  
9 drawings or reports which have not been prepared by such person or under such  
10 person's immediate personal supervision is guilty of a class A misdemeanor.]

2 [327.291. Any person who practices as a professional land surveyor in  
3 Missouri as defined in section 327.272, who is not a holder of a currently valid  
4 license or certificate of authority to practice professional land surveying in  
5 Missouri, or who pretends or attempts to use as such person's own the license or  
6 certificate of authority or the seal of another professional land surveyor or who  
7 affixes such person's or another professional land surveyor's seal on any map,  
8 plat, survey or other document which has not been prepared by such person or  
under such person's immediate personal supervision is guilty of a class A



9           misdemeanor.]  
10

2                           [327.633. Any person violating any of the provisions of sections 327.600  
to 327.635 is deemed guilty of a class A misdemeanor.]