

## 1 HOUSE BILL NO. 90

2 INTRODUCED BY J. SHOCKLEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF PROFESSIONAL ENGINEERS AND  
5 PROFESSIONAL LAND SURVEYORS TO MAINTAIN A REGISTRY AND ESTABLISH PROCEDURES FOR THE  
6 DESIGN OF FIRE EXTINGUISHING SYSTEMS BY PERSONS CERTIFIED IN FIRE SUPPRESSION AT LEVEL  
7 III OR IV BY THE NATIONAL INSTITUTE FOR CERTIFICATION IN ENGINEERING; ALLOWING A MEMBER  
8 OF THE BOARD TO INITIATE A COMPLAINT AGAINST A REGISTRANT; PROVIDING A PENALTY FOR  
9 ENGAGING IN OR OFFERING TO ENGAGE IN THE DESIGN OF FIRE EXTINGUISHING SYSTEMS IF A  
10 PERSON IS NOT REGISTERED WITH THE BOARD; AND AMENDING SECTIONS 37-67-103, 37-67-331,  
11 AND 37-67-332, MCA."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 NEW SECTION. **Section 1. Registration required to design fire extinguishing systems -- board**  
16 **maintenance of registry.** (1) Unless otherwise authorized by law, a person may not engage in the design  
17 of fire extinguishing systems, as defined in 50-39-108, unless the person is registered with the board as  
18 being currently certified in fire suppression by the national institute for certification in engineering as  
19 qualified at level III or IV OR IS REGISTERED WITH THE BOARD AS PROVIDED IN SUBSECTION (4) OF THIS SECTION.

20 (2) (a) The board shall maintain a registry of persons certified in fire suppression by the national  
21 institute for certification in engineering at level III or IV to design fire extinguishing systems OR QUALIFIED,  
22 AS PROVIDED IN SUBSECTION (4), TO DESIGN FIRE EXTINGUISHING SYSTEMS.

23 (b) The board shall require a person desiring to be listed in the registry to file on an annual basis  
24 proof that the person is currently certified at the required level OR CONTINUES TO BE QUALIFIED AS PROVIDED IN  
25 SUBSECTION (4).

26 (c) The board shall remove from the registry the name of any person who fails to maintain or  
27 provide proof of the required certification OR QUALIFICATION UNDER SUBSECTION (4).

28 (3) The board shall determine by rule the type and extent of fire extinguishing systems that a  
29 person registered under this section may design.

30 (4) THE BOARD SHALL LIST ON THE REGISTRY PROVIDED FOR IN SUBSECTION (2)(A) ANY PERSON NOT CERTIFIED

1 AT LEVEL III OR IV WHO:

2 (A) HAS ENGAGED IN DESIGNING FIRE EXTINGUISHING SYSTEMS IN THIS STATE FOR A PERIOD OF 5 YEARS PRIOR  
 3 TO OCTOBER 1, 2001;

4 (B) PROVIDES AN AFFIDAVIT TO THE BOARD STATING THAT THERE HAVE NOT BEEN ANY SYSTEM FAILURES DURING  
 5 THE 5-YEAR PERIOD IN ANY SYSTEMS DESIGNED BY THE PERSON; AND

6 (C) APPLIES FOR LISTING ON THE REGISTRY BY OCTOBER 1, 2002.

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8 **Section 2.** Section 37-67-103, MCA, is amended to read:

9 **"37-67-103. Exemptions. (1)** The following are exempt from coverage under this chapter:

10 ~~(1)~~(a) the practice of any other legally recognized professions or trades;

11 ~~(2)~~(b) the mere execution of work by a contractor, as distinguished from its planning or design  
 12 or the supervision of the construction of work as a ~~foreman~~ lead supervisor or superintendent;

13 ~~(3)~~(c) the work of an employee or a subordinate of a person holding a certificate of registration  
 14 under this chapter or an employee of a person practicing lawfully under this chapter, ~~provided such if the~~  
 15 work does not include final engineering or land surveying designs or decisions and is done under the direct  
 16 supervision of a person holding a certificate of registration under this chapter or a person practicing  
 17 lawfully under this chapter;

18 ~~(4)~~(d) the practice of professional engineering by licensed architects ~~where~~ when the practice is  
 19 purely incidental to their practice of architecture.

20 (2) The exemptions provided in this section do not apply to a person registered under [section 1]."

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22 **Section 3.** Section 37-67-331, MCA, is amended to read:

23 **"37-67-331. Revocation, suspension, or refusal to renew certificate -- grounds -- procedure --**  
 24 **reinstatement.** (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a  
 25 registrant found responsible for:

26 (a) fraud or deceit in obtaining a certificate of registration;

27 (b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying  
 28 as a registered professional engineer or professional land surveyor or in the design of fire extinguishing  
 29 systems as a registrant under [section 1];

30 (c) a felony;

1 (d) a violation of rules for professional conduct for professional engineers and professional land  
2 surveyors adopted by the board;

3 (e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

4 (2) (a) Any person or member of the board may make charges of fraud, deceit, gross negligence,  
5 incompetency, or misconduct against a registrant. The charges must be made by affidavit, subscribed and  
6 sworn to by the person making them, and filed with the department. The charges must be investigated  
7 by the board. For purposes of investigation under this section, the board may require that a registrant meet  
8 with the board.

9 (b) A board member who initiates a charge pursuant to subsection (2)(a) may not:

10 (i) vote on requiring the person charged by the board member to take an examination pursuant to  
11 subsection (3);

12 (ii) vote in a hearing held pursuant to subsection (4) regarding the charge; or

13 (iii) vote pursuant to subsection (5) on the matter of reissuing a registration to a person subject  
14 to the charge.

15 (3) The board may require a registrant to take a written or oral examination, or both, in a  
16 proceeding to reprimand or to revoke, suspend, or refuse to renew the certificate of registration.

17 (4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges,  
18 the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the  
19 registered professional engineer or professional land surveyor or the registration of a person registered  
20 under [section 1].

21 (5) The board, for reasons it considers sufficient, may reissue a certificate of registration or  
22 registration pursuant to [section 1] to a person whose certificate or registration has been revoked if five  
23 or more members of the board vote in favor of the reissuance."  
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25 **Section 4.** Section 37-67-332, MCA, is amended to read:

26 **"37-67-332. Violations -- penalties -- enforcement.** (1) (a) A person commits a criminal offense  
27 if the person knowingly:

28 (i) (A) practices or offers to practice engineering or land surveying in this state without being  
29 registered under this chapter; or

30 (B) practices or offers to engage in fire extinguishing systems design without being registered

1 under [section 1] unless otherwise authorized by law;

2 (ii) presents or attempts to use the certificate of registration, the registration, or the seal of another  
3 person;

4 (iii) gives false or forged evidence to the board or department in obtaining a certificate of  
5 registration or registration;

6 (iv) impersonates another registrant;

7 (v) attempts to use an expired, revoked, or emeritus certificate of registration or registration; or

8 (vi) violates a provision of this chapter.

9 (b) A person convicted under subsection (1)(a) shall on conviction be fined an amount not less  
10 than \$100 or more than \$500 or be incarcerated in the county jail for a period not exceeding 3 months,  
11 or both.

12 (2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter  
13 and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render  
14 legal assistance necessary in carrying out this chapter.

15 (3) The board may apply to the appropriate court for an injunction against a person found by the  
16 board to have practiced or ~~attempted or~~ offered to practice engineering or land surveying in this state  
17 without a valid certificate of registration or a person found by the board to have practiced or offered to  
18 engage in fire extinguishing systems design without being registered under [section 1] unless otherwise  
19 authorized by law.

20 (4) If a person violates an injunction against practice without a valid certificate of registration or  
21 registration, the court may impose a fine in an amount not to exceed \$25,000."

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23 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an  
24 integral part of Title 37, chapter 67, and the provisions of Title 37, chapter 67, apply to [section 1].

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