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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 745 Session of  
2023

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INTRODUCED BY D. MILLER, GALLOWAY, MADDEN, KINSEY, SANCHEZ,  
CIRESI, N. NELSON, SCHWEYER AND NEILSON, MARCH 28, 2023

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REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY  
PREPAREDNESS, MARCH 28, 2023

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AN ACT

1 Providing for the licensure of fire-resistant material  
2 applicators; establishing the Fireproofing Applicator  
3 Licensing Board; and imposing penalties.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Fireproofing  
8 Licensing Act.

9 Section 2. Definitions.

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

13 "Accredited educational and training program." A program  
14 that is:

15 (1) designed to provide education and training on the  
16 application of fire-resistant materials; and

17 (2) approved and accredited by the board.

18 "Board." The Fireproofing Applicator Licensing Board

1 established under section 3.

2 "Certificate." A certificate of licensure issued by the  
3 board indicating that the individual named in the certificate of  
4 licensure is a fire-resistant material applicator.

5 "Fire-resistant material." A cementitious or fibrous  
6 material that is sprayed onto a surface to provide fire-  
7 resistant protection of the substrate of the surface.

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

10 Section 3. Board generally.

11 (a) Establishment.--The Fireproofing Applicator Licensing  
12 Board is established.

13 (b) Members.--The board shall consist of the following  
14 voting members:

15 (1) The Commissioner of Professional and Occupational  
16 Affairs or a designee.

17 (2) The State Fire Commissioner or a designee.

18 (3) Five individuals appointed by the Governor. The  
19 following apply:

20 (i) Each of the five individuals shall be a resident  
21 of this Commonwealth.

22 (ii) Two of the five individuals shall be fire-  
23 resistant material applicators with at least 10 years of  
24 practical experience and who are wage earners.

25 (iii) Two of the five individuals shall be fire-  
26 resistant material applicators with at least 10 years of  
27 practical experience.

28 (iv) One of the five individuals shall be a  
29 representative of the public.

30 (c) Terms.--A member of the board described under subsection

1 (b) (3) shall be appointed to a term of three years. The member  
2 shall not be eligible for appointment to more than two  
3 consecutive full terms.

4 (d) Oath.--Each member of the board shall take and subscribe  
5 to the oath of office generally required of State officials.

6 (e) Attendance.--A member of the board who fails to attend  
7 three consecutive meetings shall forfeit membership on the  
8 board, unless the Commissioner of Professional and Occupational  
9 Affairs, upon written request from the member, finds that the  
10 member should be excused from a meeting because of illness or  
11 the death of an immediate family member.

12 (f) Quorum.--A majority of the board shall constitute a  
13 quorum to conduct official business.

14 (g) Organization and meetings.--

15 (1) An organizational meeting of the board shall be held  
16 annually, at which time the board shall elect from its  
17 membership a president, vice president and secretary, who  
18 shall serve for one year or until the board elects a  
19 successor.

20 (2) The board may meet at least four times per year and  
21 at other times as the board, in consultation with the  
22 Commissioner of Professional and Occupational Affairs, deems  
23 desirable. Other meetings of the board may be called in  
24 accordance with rules and regulations promulgated by the  
25 board.

26 (3) Adequate public notice of the date, time and place  
27 of meetings of the board shall be given.

28 (h) Vacancy in office.--If a vacancy in the office of  
29 president, vice president or secretary of the board occurs, the  
30 remaining members of the board shall fill the vacancy by

1 election.

2 (i) Expenses.--Each member of the board shall be paid  
3 reasonable travel, lodging and other necessary expenses and per  
4 diem compensation at the rate of \$60 for each day of actual  
5 service while on board business.

6 Section 4. Powers and duties of board.

7 The board shall:

8 (1) Establish reasonable rules and regulations that are  
9 consistent with and necessary to carry out the provisions of  
10 this act, including:

11 (i) Standards of professional conduct for fire-  
12 resistant material applicators.

13 (ii) Procedures for the issuance and renewal of  
14 certificates as the board deems appropriate.

15 (iii) The functions, powers, standards and duties to  
16 be followed by hearing examiners under this act.

17 (iv) Fees required under this act.

18 (2) Issue certificates to individuals who have qualified  
19 to engage in fire-resistant material application under the  
20 provisions of this act.

21 (3) Establish standards for continuing education  
22 reflecting acceptable national standards in the application  
23 and use of fire-resistant materials.

24 (4) Develop an accredited educational and training  
25 program.

26 (5) Administer and enforce the laws of this Commonwealth  
27 relating to fire-resistant material application, including:

28 (i) The commencement of appropriate proceedings or  
29 other actions for unauthorized and unlawful practice and  
30 for other violations of this act, including the

1 initiation of proceedings for injunctive relief or  
2 criminal prosecution. Proceedings for injunctive relief  
3 or criminal prosecution shall be in accordance with the  
4 act of October 15, 1980 (P.L.950, No.164), known as the  
5 Commonwealth Attorneys Act.

6 (ii) The commencement of disciplinary action as  
7 described in this act.

8 (6) Appoint, with the approval of the Governor, hearing  
9 examiners as necessary to conduct hearings under this act.

10 (7) Keep records of the proceedings of the board.

11 (8) Keep records relating to applications, which shall  
12 include:

13 (i) The name, age and last known address of each  
14 applicant for licensure.

15 (ii) Information concerning each applicant's  
16 education, experience and other qualifications.

17 (iii) Other information as the board deems  
18 appropriate.

19 (9) Maintain and regularly update a roster showing the  
20 name, license number and business address of each fire-  
21 resistant material applicator licensed under this act. The  
22 board shall post the roster on the publicly accessible  
23 Internet website of the board.

24 (10) Maintain records relating to all fire-resistant  
25 material applicators licensed under this act.

26 (11) Submit, at the end of each fiscal year, an annual  
27 report of the activities and transactions of the board during  
28 the preceding fiscal year to the Commissioner of Professional  
29 and Occupational Affairs.

30 (12) Within 15 days after the Governor has submitted the

1 proposed budget for the ensuing fiscal year to the General  
2 Assembly, submit a proposed budget request for the operation  
3 of the board for the ensuing fiscal year to:

4 (i) The Commissioner of Professional and  
5 Occupational Affairs.

6 (ii) The chairperson and minority chairperson of the  
7 Appropriations Committee of the Senate.

8 (iii) The chairperson and minority chairperson of  
9 the Appropriations Committee of the House of  
10 Representatives.

11 (13) Submit an annual report, which contains a  
12 description of the types of complaints received by the board,  
13 the status of cases, board actions and the length of time  
14 from the initial complaint to final board resolution, to:

15 (i) The chairperson and minority chairperson of the  
16 Consumer Protection and Professional Licensure Committee  
17 of the Senate.

18 (ii) The chairperson and minority chairperson of the  
19 Consumer Protection, Technology and Utilities Committee  
20 of the House of Representatives.

21 (iii) The chairperson and minority chairperson of  
22 the Professional Licensure Committee of the House of  
23 Representatives.

24 (14) Determine whether the fees, fines and civil  
25 penalties imposed under this act are sufficient to cover  
26 expenditures and take steps to ensure that projected revenues  
27 will meet or exceed projected expenditures.

28 Section 5. Applicants.

29 (a) Eligibility.--An individual who is of good character,  
30 who is a legal resident of this Commonwealth and who has

1 completed an accredited educational and training program may  
2 apply for a certificate under this act.

3 (b) Verification.--Each applicant for a certificate shall  
4 submit evidence satisfactory to the board that the applicant has  
5 completed an accredited educational and training program.

6 Section 6. Issuance and renewal of certificates.

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

10 (b) Contents.--Each certificate shall contain the name of  
11 the individual to whom the certificate was issued and a license  
12 number.

13 (c) Term.--

14 (1) A certificate shall be valid for two years.

15 (2) A certificate shall expire on the day prescribed by  
16 the board.

17 (d) Renewal.--A fire-resistant material applicator may renew  
18 a certificate after review by the board to ensure that the  
19 applicant for renewal remains in compliance with the conditions  
20 relating to the certificate.

21 (e) Duplicates.--

22 (1) The board may issue a duplicate certificate to  
23 replace one that has been lost, destroyed or mutilated, upon  
24 payment of a fee as required by the board.

25 (2) The board may require a fire-resistant material  
26 applicator requesting a duplicate certificate to furnish  
27 documentation satisfactory to the board relative to the loss,  
28 destruction or mutilation of the original certificate.

29 (f) Nontransferability.--A certificate shall not be  
30 transferable to another individual.

1 Section 7. Prohibition.

2 An individual may not engage in the practice, or offer to  
3 engage in the practice, of fire-resistant material application  
4 in this Commonwealth unless the individual holds a currently  
5 valid certificate.

6 Section 8. Disciplinary proceedings.

7 (a) Board action for inappropriate acts.--The board may  
8 refuse to issue a certificate to an applicant, revoke or suspend  
9 a certificate, censure a fire-resistant material applicator,  
10 issue a letter of reprimand, restrict a licensee under this act  
11 or attach certain conditions to a certificate for any of the  
12 following acts:

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

16 (2) Engaging in the application of fire-resistant  
17 materials in this Commonwealth in violation of:

18 (i) any provision of this act;

19 (ii) the rules and regulations adopted or  
20 promulgated in accordance with this act; or

21 (iii) the standards of professional conduct  
22 established under this act.

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

26 (b) Powers of board.--In a disciplinary proceeding brought  
27 in accordance with this act, the board shall have the power to  
28 administer oaths, summon witnesses and compel the production of  
29 documents in accordance with law. Upon the failure of any person  
30 to appear or produce documents in accordance with the board's



1 order, the board may take appropriate action, in accordance with  
2 the act of October 15, 1980 (P.L.950, No.164), known as the  
3 Commonwealth Attorneys Act, to enforce compliance.

4 Section 9. Penalties.

5 (a) Fines.--A person who engages in the application of fire-  
6 resistant materials in violation of this act shall:

7 (1) For a first offense, be guilty of a summary offense  
8 and, upon conviction, be sentenced to pay a fine not  
9 exceeding \$500.

10 (2) For a second or subsequent offense, be guilty of a  
11 misdemeanor and, upon conviction, be sentenced to pay a fine  
12 of not less than \$2,000 but not more than \$5,000.

13 (b) Civil penalty.--In addition to any other civil remedy or  
14 criminal penalty provided for in this act, the board, by a vote  
15 of the majority of members of the board, may levy a civil  
16 penalty not to exceed \$1,000 on a licensee under this act who  
17 violates any provision of this act or on a person who practices  
18 the profession of fire-resistant material applicator without  
19 being properly licensed to do so under this act. The board may  
20 levy the civil penalty only after affording the accused party  
21 the opportunity for a hearing, in accordance with 2 Pa.C.S.  
22 (relating to administrative law and procedure).

23 (c) Remedy not exclusive.--The right of the board to take  
24 any action described in section 8(a) shall be in addition to the  
25 penalties specified under this section.

26 (d) Deposit.--All fines and civil penalties imposed in  
27 accordance with this section shall be deposited into the  
28 Professional Licensure Augmentation Account.

29 Section 10. Complaint procedure and hearings.

30 (a) Charges.--

1           (1) A person may refer charges against a licensee under  
2 this act by submitting a written statement of charges, sworn  
3 to by the complainant, to the board.

4           (2) The board may, on its own motion, investigate the  
5 conduct of an applicant or a licensee under this act and  
6 shall, in appropriate cases, file a written statement of  
7 charges.

8           (b) Representation.--An applicant or fire-resistant material  
9 applicator charged shall be entitled to be represented by  
10 counsel at any hearing under this section.

11          (c) Hearings.--

12           (1) Except as otherwise provided in this section, a  
13 hearing under this section shall be conducted in accordance  
14 with 2 Pa.C.S. (relating to administrative law and  
15 procedure).

16           (2) A hearing under this section may be held by the  
17 board, any member of the board or any hearing examiner or  
18 other person authorized by the board.

19           (3) The date, time and place of a hearing under this  
20 section shall be fixed by the board or authorized hearing  
21 examiner.

22           (4) The individual authorized to conduct the hearing  
23 under this section may administer oaths and conduct  
24 investigations.

25           (5) When a matter is referred to an authorized hearing  
26 examiner or other person for a hearing under this section,  
27 the hearing officer or other person shall, following the  
28 completion of the testimony in the hearing and as soon as  
29 practicable, file a report with the board specifying findings  
30 of fact and recommendations. Upon review of the record, the

1 board may, by majority vote:

2 (i) adopt the findings and recommendations in the  
3 report; or

4 (ii) with or without additional testimony:

5 (A) return the matter to the hearing officer or  
6 other person for further consideration as the board  
7 deems necessary; or

8 (B) make additional or other findings of fact on  
9 the basis of all the legally probative evidence in  
10 the record and enter its conclusions of law and order  
11 in accordance with the requirements for the issuance  
12 of an adjudication under 2 Pa.C.S.

13 (d) Board authority.--The board may, in its discretion,  
14 issue a certificate to an applicant denied licensure upon  
15 presentation of suitable evidence of reform.

16 Section 11. Effective date.

17 This act shall take effect in 60 days.