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CHAPTER 65.

 SOIL CLASSIFIERS

**SECTION 40‑65‑5.** Application of other provisions to this chapter.

Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to professional soil classifiers regulated pursuant to this chapter.

**SECTION 40‑65‑10.** Administration of chapter; department is agency of licensure; appointment and membership of advisory council; qualifications of council members.

(A) The department shall serve as the agency of licensure for professional soil classifiers and shall administer the provisions of this chapter.

(B) The department shall appoint an advisory council of five qualified professional soil classifiers, who must have the qualifications required in Section 40‑65‑30, to recommend licensure for those applicants eligible to become licensed soil classifiers and to recommend certification for those applicants eligible to become a soil‑classifier‑in‑training. Each member of the council must be a professional soil classifier who has been actively engaged in the practice of soil classifying for a period of at least ten years and must have been in responsible charge of soil classification for at least six years.

**SECTION 40‑65‑20.** Definitions.

In addition to the definitions provided in Section 40‑1‑20, as used in this chapter, unless the context or subject matter indicates otherwise:

(1) “Department” means the Department of Labor, Licensing and Regulation.

(2) “Kind of soil” means a group of natural bodies that has a discrete combination landscape, morphological, chemical, and physical properties.

(3) “Practice of soil classifying” and “practice of professional soil classifying” means any service or work, the adequate performance of which requires education in the physical, chemical, biological, and soil sciences, training and experience in the application of the special knowledge of these sciences to soil classification, soil classification by accepted principles and methods, investigation, evaluation and consultation on the effect of measured, observed, and inferred soil properties upon various uses, the preparation of soil descriptions, maps and reports and interpretive drawings, maps and reports of soil properties and the effect of soil properties upon various uses, and the effect of various uses upon kinds of soil, any of which embraces this service or work, either public or private, incidental to the practice of soil classifying.

A person is construed to practice or offer to practice soil classifying within the meaning and intent of this chapter if the person, by verbal claim, sign, advertisement, letterhead, card or use of some other title, represents himself to be a soil classifier; however, this does not mean or include the practice of soil classifying by persons exempt under the provisions of Section 40‑65‑40 or the work ordinarily performed by persons who sample and test soil for fertility status or construction materials and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. Notwithstanding the provisions of this paragraph, a person must not be construed to practice soil classifying unless he offers soil classifying services to or performs soil classifying for the public.

(4) “Responsible charge” means direct control and personal supervision of soil classification.

(5) “Soil” means all of the groups of natural bodies occupying the unconsolidated portion of the earth’s surface capable of supporting plant life and having properties due to the combined effect of climate and living organisms, as modified by topography and time, upon parent materials.

(6) “Soil classification” means plotting the boundaries and describing and evaluating the kinds of soil as to their behavior and response to management under various uses.

(7) “Soil classifier” and “professional soil classifier” means a person who, by reason of his special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soil education and soil classification experience in the formation, morphology, description, and mapping of soils, is qualified to practice soil classifying, who has been licensed by the Department of Labor, Licensing and Regulation, and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

(8) “Soil‑classifier‑in‑training” means a person who complies with the requirements for education and character and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

**SECTION 40‑65‑30.** Licensure as professional soil classifier; certification as soil‑classifier‑in‑training; qualifications.

(A) A person must not practice or offer to practice professional soil classifying in this State unless the person is licensed to practice under the provisions of this chapter.

(B) To be eligible for licensure as a professional soil classifier or to be certified as a soil‑classifier‑in‑training, an applicant must be of good character and reputation and shall submit a written application to the department containing information the department may require.

(C) To be licensed as a professional soil classifier an applicant must have:

(1) fifteen or more semester hours of approved soil courses as recognized by the department;

(2) successfully passed an examination in the principles and practice of soil classifying as prescribed by the department;

(3) completed two or more years of training under the supervision of a registered or licensed soil classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier; and

(4) one of the following additional qualifications:

(a) a bachelor’s degree or equivalent in a curriculum approved by the department and two years or more of experience of a grade and character which indicates to the department that the applicant is competent to practice soil classifying;

(b) a bachelor’s degree or equivalent in one of the natural sciences and six years or more of experience in soil classifying work of a character and grade which indicates to the department that the applicant is competent to practice soil classifying;

(c) a soil‑classifier‑in‑training certificate with two years’ or more experience as a soil‑classifier‑in‑training of a grade and character which indicates to the department that the applicant is competent to practice soil classifying; or

(d) employment as an extension specialist, researcher, or teacher of soils in a college or university and has two or more years of soil classifying experience of a character and grade which indicates to the department that the applicant is competent to practice soil classifying.

(D) To be certified as a soil‑classifier‑in‑training, which certification is valid for two years, an applicant must have:

(1) a bachelor’s degree or equivalent in a curriculum approved by the department and have passed an examination in the fundamentals of soil classification; or

(2) completed a curriculum not approved by the department, have passed an examination in the fundamentals of soil classification, and have four years of soil classification experience, of which two years must be under the supervision of a registered or licensed soil classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier.

**SECTION 40‑65‑32.** Application form for licensure or certification.

Applications for licensure as a professional soil classifier and for certification as a soil‑classifier‑in‑training must be on forms prescribed and furnished by the department.

**SECTION 40‑65‑34.** Examinations.

Examinations must be held at such times and places as the department determines.

**SECTION 40‑65‑36.** Issuance of license; prima facie evidence; issuance of certification; fees; limitations; examinations; reciprocity.

(A)(1) The department shall issue a license upon payment of the license fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(2) The issuance of a license by the department is prima facie evidence that the person named is entitled to all rights and privileges of a professional soil classifier during the term for which the license is valid if the license has not been revoked or suspended.

(B) The department shall issue a certificate as a soil‑classifier‑in‑training upon payment of the certificate fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(C)(1) The application for a license as a professional soil classifier or for certification as a soil‑classifier‑in‑training shall be on a form prescribed and furnished by the department, shall contain statements made under oath showing the applicant’s education, a detailed summary of his experience, and references as required by this chapter, and shall be accompanied by an application fee established by the department of not less than five nor more than twenty‑five dollars.

(2) Licenses shall be established by the department subject to the following limitations:

(a) The license fee for professional soil classifiers shall be in an amount not less than twenty nor more than one hundred dollars.

(b) The certification fee for soil‑classifier‑in‑training certification or enrollment shall be established by the department in an amount not less than ten nor more than fifty dollars.

(c) Should the department deny the issuance of a license to an applicant, the fee paid shall be retained as an application fee.

(3) Examinations shall be held at such times and places as the department shall determine. Examinations required on fundamental soil subjects may be taken at any time prescribed by the department. The final examinations may not be taken until the applicant has completed a period of soil classifying experience as provided in this chapter. The passing grade on any examination shall not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the department of not less than ten nor more than twenty‑five dollars. Any candidate for registration having an average grade of less than fifty percent may not apply for reexamination for a period of one year from the date of such examination.

(D) An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

**SECTION 40‑65‑38.** Renewal of license; requirements; reinstatement of license after lapse.

(A) A licensee shall file an application for renewal every two years on or before a date designated by the department. The application for renewal must include:

(1) current contact information;

(2) renewal fee;

(3) acceptable continuing education promulgated by the department in regulation, upon consultation with the advisory council; and

(4) other information the department may request.

(B) A licensee who allows a license to lapse by failing to renew, as provided for in subsection (A), may reinstate the license within three years from the date the license lapsed by filing a reinstatement application and paying the required fees. After three years from the date the licensed lapsed, the person must apply for a new license, meeting all requirements for licensure in effect at the time of applying.

**SECTION 40‑65‑40.** Exemptions.

This chapter must not be construed to prevent or affect:

(1) the work of an employee or subordinate of a person licensed pursuant to this chapter or an employee of a person practicing lawfully pursuant to this chapter, if the work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person licensed pursuant to this chapter or a person practicing lawfully pursuant to this chapter;

(2) the practice of any other legally recognized profession or trade;

(3) the practice of soil classifying by a person who is regularly employed to perform soil classifying services solely for his employer or for a subsidiary or affiliated corporation of his employer, if the soil classifying is performed on the real property of his employer.

**SECTION 40‑65‑45.** Persons eligible without examination.

An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

**SECTION 40‑65‑50.** Administration of program of soil classifiers.

The department shall administer the program of soil classifiers in accordance with Section 40‑1‑50, this chapter, and regulations promulgated pursuant to this chapter.

**SECTION 40‑65‑60.** Power of department to promulgate regulations, including code of ethics for licensees.

In addition to the powers provided for in Chapter 1, the department may promulgate regulations pursuant to the Administrative Procedures Act including, but not limited to, a code of ethics for licensees.

**SECTION 40‑65‑70.** Power of department to seek injunctive relief.

In addition to the powers provided for in Chapter 1, the department may apply in the name of the State for relief by injunction to enforce the provisions of this chapter or to restrain any violation of this chapter. In these proceedings it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The director, employees, or agents of the department may not be held personally liable for bringing an action pursuant to this section.

**SECTION 40‑65‑80.** Investigative procedures; who may file complaint

Investigations must be conducted in accordance with Section 40‑1‑80. Any person may file a complaint, which must be in writing, alleging fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against a licensee or a person holding a certification.

**SECTION 40‑65‑90.** Omitted by 2010 Act No. 249, Section 2.A, eff June 11, 2010.

**SECTION 40‑65‑100.** Cease and desist orders and equitable relief.

Cease and desist orders and equitable relief may be obtained in accordance with Section 40‑1‑100.

**SECTION 40‑65‑110.** Grounds for disciplinary action.

In addition to the grounds provided in Section 40‑1‑110, the advisory council may cancel, fine, suspend, revoke, or restrict the license or certification to practice soil classifying of a person who is guilty of:

(1) the practice of fraud or deceit in obtaining a license or certification;

(2) any gross negligence, incompetence, or misconduct in the practice of soil classifying;

(3) any felony or crime involving moral turpitude or violation of the code of ethics promulgated by the department in regulation.

**SECTION 40‑65‑120.** Appeal of advisory council decision.

A person aggrieved by a decision of the advisory council may file an appeal in accordance with the Administrative Procedures Act.

**SECTION 40‑65‑130.** Grounds for denial of licensure or certification.

As provided in Section 40‑1‑130, the department may deny licensure or certification to an applicant based on the same grounds for which the advisory council may take disciplinary action against a licensee or a holder of certification.

**SECTION 40‑65‑140.** Criminal record grounds for denial of license or certification.

A license or certification may be denied based on a person’s prior criminal record only as provided in Section 40‑1‑140.

**SECTION 40‑65‑150.** Voluntary surrender of license or certification when under investigation for violation.

A licensee or a person holding a certification under investigation for a violation of this chapter or a regulation promulgated pursuant to this chapter may voluntarily surrender the license or certification in accordance with and subject to the provisions of Section 40‑1‑150.

**SECTION 40‑65‑160.** Omitted by 2010 Act No. 249, Section 2.A, eff June 11, 2010.

**SECTION 40‑65‑170.** Person found in violation to pay costs of investigation and prosecution.

A person found in violation of this chapter or regulations promulgated pursuant to this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

**SECTION 40‑65‑180.** Payment of cost and fine for violation.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180. No person against whom a cost or fine is levied is eligible for the issuance or reinstatement of a license or certification until the cost or fine has been paid in full.

**SECTION 40‑65‑190.** Confidentiality of investigations.

Investigations conducted pursuant to this chapter are confidential and all communications are privileged as provided in Section 40‑1‑190.

**SECTION 40‑65‑200.** Penalties.

A person who practices or offers to practice professional soil classifying in this State without being licensed in accordance with the provisions of this chapter or a person, firm, partnership, organization, association, corporation, or other entity using or employing the words “soil classifier” or “professional soil classifier”, or any modification or derivative of these terms, in its name or form of business or activity, except as authorized in this chapter, or any person presenting or attempting to use the license of another, or any person who shall give any false or forged evidence of any kind to the department in obtaining or attempting to obtain a license or any person who shall falsely impersonate a licensee of like or different name, or any person who attempts to use an expired or revoked or nonexistent license, or who practices or offers to practice when not qualified, or any person who falsely claims that he is licensed under this chapter, or any person, partnership, corporation, or other entity who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three months. Each violation constitutes a separate offense. It is the duty of all constituted officers of the State and all political subdivisions of the State to enforce the provisions of this chapter and to prosecute any person violating this chapter.

**SECTION 40‑65‑210.** Department may institute civil action for injunctive relief, fine.

The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter, a regulation promulgated under this chapter, or an order of the advisory council. For each violation an administrative law judge may impose a fine of no more than ten thousand dollars.

**SECTION 40‑65‑220.** Severability.

If a provision of this chapter or the application of a provision of this chapter to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**SECTIONS 40‑65‑230, 40‑65‑240.** Omitted by 2010 Act No. 249, Section 2.A, eff June 11, 2010.

 Under Repealed Sections

Section 40‑65‑230

**SECTIONS 40‑65‑230, 40‑65‑240.** Omitted by 2010 Act No. 249, Section 2.A, eff June 11, 2010.

 Under Repealed Sections

Section 40‑65‑240

**SECTION 40‑65‑260.** Omitted by 2010 Act No. 249, Section 2.A, eff June 11, 2010.