

## **CHAPTER 43-36 PROFESSIONAL SOIL CLASSIFIERS**

### **43-36-01. Definitions.**

Unless the context or subject matter otherwise requires:

1. "Board" means the state board of registration for professional soil classifiers hereinafter provided in this chapter.
2. "Kind of soil" is a group of natural bodies that has a discrete combination of 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, the soil classification by accepted principles and methods, investigation, evaluation, and consultation on the effect of measured, observed, and inferred soil properties upon the 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 the various uses, and the effect of the various uses upon kinds of soil, any of which embraces such service or work either public or private incidental to the practice of soil classifying.

A person must be construed to practice or offer to practice soil classifying within the meaning and intent of this chapter who by verbal claim, sign, advertisement, letterhead, card, or use of some other title represents that the person is a soil classifier, but does not mean or include the practice of soil classifying by persons exempt under the provisions of section 43-36-24 nor 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 foregoing provisions, a person may not be construed to practice soil classifying unless the person offers soil classifying services to or performs such soil classifying for the public.

4. "Professional soil classifier" means a person who by reason of that person's 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 soils education and soil classification experience in the formation, morphology, description, and mapping of soils is qualified to practice soil classifying and who has been duly registered by the state board of registration for professional soil classifiers.
5. "Responsible charge" means direct control and personal supervision of soil classification.
6. "Soil" is 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.
7. "Soil classification" is plotting the boundaries, describing and evaluating the kinds of soil as to their behavior and response to management under the various uses.
8. "Soil classifier" means a professional soil classifier as defined in subsection 4.
9. "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 sections 43-36-10, 43-36-11, 43-36-12, and 43-36-13.

### **43-36-02. Board - Appointments - Terms.**

A state board of registration for professional soil classifiers is hereby created whose duty it is to administer the provisions of this chapter. The board consists of three professional soil classifiers appointed by the governor and two members at large appointed by the governor. The members of the board must be appointed for five years, staggered so the term of one member expires June thirtieth of each year and so that the terms of the members at large do not expire

in consecutive years. Each member of the board shall receive a certificate of that member's appointment from the governor and shall file with the secretary of state a written oath and affirmation of the faithful discharge of the member's official duties. On the expiration of the term of any member, the governor shall in the manner hereinbefore provided appoint for a term of five years a registered professional soil classifier or a member at large to take the place of the member whose term on said board is about to expire. A member may be reappointed. Each member shall hold office until a successor has been duly appointed and has qualified.

**43-36-03. Board - Qualifications.**

Each member of the board must be a citizen of the United States and a resident of this state.

**43-36-04. Board - Compensation and expenses.**

Each member of the board is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses as provided by law for state officers, if attending board meetings or performing duties directed by the board.

**43-36-05. Board - Removal of members - Vacancies.**

The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any sufficient cause in the manner prescribed by law for the removal of state officials. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in section 43-36-02.

**43-36-06. Board - Organization and meetings.**

The board shall hold at least two regular meetings each year. Special meetings may be held as the bylaws of the board provide. The board shall elect or appoint annually the following officers: a chairman, a vice chairman, and a secretary. A quorum of the board consists of three members.

**43-36-07. Board - Powers.**

The board has the power to administer this chapter under chapter 28-32 and:

1. To adopt and amend all bylaws, rules of procedure, and regulations to administer and carry out the provisions of this chapter and for the conduct of its affairs and functions consistent with the constitution and laws of this state or this chapter which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, examinations, and the conduct thereof, and to adopt and promulgate a code of ethics which is binding upon all persons registered under or subject to this chapter.
2. To employ such clerks, technical experts, and attorneys as it may deem necessary or desirable to carry out the provisions of this chapter.
3. To apply in the name of the state for relief by injunction without bond, to enforce the provisions of this chapter, or to restrain any violation thereof. In such 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 thereof. The members of the board are not personally liable under this proceeding.
4. To negotiate and enter reciprocal agreements with similar agencies in other states; provided that a reciprocal agreement may not limit the board's powers and duties regarding any application for registration as a professional soil classifier or for certification as a soil classifier-in-training or regarding the enforcement of this chapter or any rules adopted to implement this chapter.

**43-36-08. Receipts and disbursements.**

The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter and shall deposit and disburse the same in accordance with section 54-44-12. The secretary shall give a surety bond to the state in such sum as may be required by

the laws of this state. The premium on said bond must be regarded as a proper and necessary expense of the board. The secretary shall receive such salary as the board shall determine. Under no circumstances may the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.

#### **43-36-09. Records and reports.**

The board shall:

1. Keep a record of its proceedings and of all applications for registration which record must show the name, age, and last-known address of each applicant, the place of business of such applicant, the applicant's education, experience and other qualifications, type of examination required, whether or not a certificate of registration was granted, whether or not the applicant was rejected, the date of the action of the board, and such other information as may be deemed necessary by the board which record of the board is prima facie evidence of the proceeding of the board and a transcript thereof duly certified by the secretary under seal is admissible as evidence with the same force and effect as if the original were produced.
2. Annually as of January first submit to the governor a report of its transactions of the preceding year and shall transmit to the governor a complete statement of the receipts and expenditures of the board attested by affidavits of its chairman and its secretary.

#### **43-36-10. General requirements for registration - Professional soil classifier.**

To be eligible for registration as a professional soil classifier or certification as a soil classifier-in-training, an applicant must be of good character and reputation and shall submit a written application to the board containing such information as the board may require, together with five references, three of which must be professional soil classifiers having personal knowledge of the applicant's soil classifying experience; or in the case of an application for certification as a soil classifier-in-training, by three character references.

##### **43-36-10.1. Conviction not bar to registration - Exceptions.**

Conviction of an offense does not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a professional soil classifier, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

##### **43-36-11. Registration without examination - Reciprocity.**

An applicant otherwise qualified must be admitted to registration as a professional soil classifier without examination upon payment of the required fees if:

1. The applicant is of good character, has been a resident of the state for at least one year immediately preceding the date of application, was a practicing soil classifier on July 1, 1973, meets the requirements of this chapter, and has performed work of a character satisfactory to the board; or
2. The applicant holds a certificate of registration in the practice of soil classifying issued by another state, the District of Columbia, a Canadian province, or a foreign country, in which the requirements are substantially similar to those of this state.

##### **43-36-12. Registration with examination - Professional soil classifier.**

An applicant otherwise qualified must be admitted to registration as a professional soil classifier if the applicant has successfully passed an examination in the principles and practice of soil classifying as prescribed by the board and has one of the following additional qualifications:

1. Is a graduate of a soils curriculum approved by the board as satisfactory and with a specific record of an additional four years or more of experience of a grade and character which indicates to the board that the applicant is competent to practice soil classifying and who holds a valid soil classifier-in-training certificate.

2. Is a person who has satisfactorily completed a soils curriculum not approved by the board and eight years or more of experience in soil classifying work of a character and grade which indicates to the board that the applicant is competent to practice soil classifying.
3. Is a person who holds a valid soil classifier-in-training certificate with a specific record of four years or more of experience as a soil classifier-in-training of a grade and character which indicates to the board that the applicant is competent to practice soil classifying.
4. Is a person with experience of not less than four years of soil classification research or as a teacher of soils in a college or university offering an approved soils curriculum of four years or more, and a minimum of two years of soil classifying experience of a character and grade which indicates to the board that the applicant is competent to practice soil classifying.

#### **43-36-13. Qualifications of soil classifier-in-training.**

Unless otherwise qualified, a person must be admitted to certification as a soil classifier-in-training, which certification is valid for four years, if the person is:

1. A graduate of a soils curriculum approved by the board and has passed an examination in the fundamentals of soil classification; or
2. An applicant who has completed a soils curriculum not approved by the board and who has a specific record of four years of soil classification experience of a grade and character satisfactory to the board and who passes an examination in the fundamentals of soil classification.

#### **43-36-14. Application for registration.**

Application for registration as a professional soil classifier and for certification as a soil classifier-in-training must be on a form prescribed and furnished by the board, must contain statements made under oath showing the applicant's education, a detailed summary of the applicant's experience, and references as required by this chapter and must be accompanied by an application fee established by the board of not less than fifty nor more than two hundred dollars. If the national test is administered, the amount may not exceed five hundred dollars.

#### **43-36-15. Registration fees.**

1. The board shall establish registration fees provided:
  - a. The registration fee for in-state professional soil classifiers must be at least fifty dollars but not more than three hundred dollars.
  - b. The registration fee for in-state soil classifier-in-training certification or enrollment must be at least twenty-five dollars but not more than one hundred dollars.
  - c. The registration fee for out-of-state professional soil classifiers must be at least one hundred dollars but not more than three hundred dollars.
2. If the board denies the issuance of a certificate to an applicant, the board shall retain the application fee.

#### **43-36-16. Examinations.**

Examinations must be held at such times and places as the board determines. Examinations required on fundamental soil subjects may be taken at any time prescribed by the board. 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 may 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 board of not less than twenty-five nor more than fifty 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.

#### **43-36-17. Certificates.**

The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who in the opinion of the board has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as soil classifiers-in-training. Certificates of registration must carry the designation "professional soil classifier", must show the full name of the registrant without any titles, must be numbered, and must be signed by the chairman and the secretary under the seal of the board. The issuance of a certificate of registration by the board is prima facie evidence that the person named therein is entitled to all the rights and privileges of a professional soil classifier during the term for which the certificate is valid providing the certificate has not been revoked or suspended.

#### **43-36-18. Expirations and renewals.**

Certificates of registration expire on the last day of the month of December following their issuance and become invalid after that date unless renewed. It is the duty of the secretary of the board to notify every person registered under this chapter of the date of the expiration of said certificate of registration and the amount of the fee required for its renewal. Such notice must be mailed to the registrant at the registrant's last-known address at least one month in advance of the expiration of said certificate. Renewal may be effected at any time prior to or during the month of December by the payment of a fee established by the board not to exceed the fees established for registration. Renewal of an expired certificate may be effected under rules promulgated by the board regarding requirements for reexamination and penalty fees.

#### **43-36-19. Reissuance of certificates.**

A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board. A reasonable charge must be made for such issuance.

#### **43-36-20. Code of ethics.**

The board shall cause to have prepared and shall adopt a code of ethics a copy of which must be delivered to every registrant and applicant for registration under this chapter. Such delivery constitutes due notice to all registrants. The board may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of such revisions and amendments. Such code of ethics when adopted applies to all certificate holders.

#### **43-36-21. Disciplinary action - Revocations, suspensions, or reprimands.**

The board has the power to suspend, refuse to renew or revoke the certificate of registration of, or reprimand any registrant who is guilty of any of the following:

1. The practice of fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of soil classifying.
3. Any offense determined by the board to have a direct bearing upon a registrant's ability to serve the public as a professional soil classifier, or the board determines, following conviction of any offense, that a registrant is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Violation of the code of ethics adopted and promulgated by the board.

#### **43-36-22. Disciplinary action - Procedure.**

Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing and must be sworn to by the person or persons making them and must be filed with the secretary of the board. All charges unless dismissed by the board as unfounded or trivial must be heard by the board within three months after the date on which they have been preferred. The time and place for said hearing must be fixed by the board and a copy of the charges together with a notice of the time and place of hearing must be served upon the accused either personally or sent by registered or certified mail to the last-known address of such individual registrant at least thirty days before the date fixed for hearing. At any hearing the

accused registrant has the right to appear in person or by counsel, or both, to cross-examine witnesses appearing against the accused, and to produce evidence and witnesses in defense of the accused. If the accused person fails or refuses to appear, the board may proceed to hear and determine the validity of the charges. If after such hearing a majority of the board votes in favor of sustaining the charges, the board shall make findings of fact, draw its conclusions and issue its order therein and serve the same upon the accused. In said order the board may reprimand, suspend, refuse to renew, or revoke the accused individual's certificate of registration. Any person who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that person's certificate of registration may appeal therefrom to the district court under the procedures provided by chapter 28-32.

**43-36-23. Right to practice.**

No person may practice or offer to practice professional soil classifying as defined by this chapter unless the person is duly registered to practice under or exempt from the provisions of this chapter.

**43-36-24. Exemptions.**

This chapter shall not be construed to prevent or affect:

1. The practice or offer to practice soil classifying by a person not a resident or having no established place of business in this state provided such person is legally qualified by the provisions of this chapter to practice soil classifying as defined herein in that person's own state which extends similar privileges to persons registered under this chapter provided such person shall make application accompanied by the appropriate application fee to the board in writing prior to that person's practicing or offering to practice soil classifying, may be granted a temporary permit for a definite period of time not to exceed one year to do a specific job provided, however, no right to practice soil classifying shall accrue to such applicant with respect to any other work not set forth in said permit.
2. The work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under subsection 1, provided such work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person holding a certificate of registration under this chapter or a person practicing lawfully under subsection 1.
3. The practice of any other legally recognized profession or trade.
4. The practice of soil classifying by any person regularly employed to perform soil classifying services solely for that person's employer or for a subsidiary or affiliated corporation or limited liability company of that person's employer, providing the soil classifying performed is in connection with the property, products, or services of that person's employer.

**43-36-25. Violation - Penalty.**

Any person who practices or offers to practice professional soil classifying in this state without being registered in accordance with the provisions of this chapter, or any person using or employing the words "soil classifier" or "professional soil classifier" or any modification or derivative thereof in its name or form of business or activity except as authorized in this chapter, or any person presenting the certificate of registration of another, or any person who falsely impersonates any other registrant of like or different name, or any person who attempts to use an expired or revoked or nonexistent certificate of registration, or who practices or offers to practice when not qualified, or any person who falsely claims that that person is registered under this chapter, or any person who violates any of the other provisions of this chapter is guilty of a class B misdemeanor.