

LAWS
OF THE
STATE OF DELAWARE

ONE HUNDRED AND THIRTY-NINTH

GENERAL ASSEMBLY

FIRST SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 14, A.D.
1997

SECOND SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 13, A.D.
1998

VOLUME LXXI
Part II

CHAPTER 296

FORMERLY

HOUSE BILL NO. 503

AN ACT TO AMEND CHAPTER 38, TITLE 31 OF THE DELAWARE CODE REGARDING THE FOSTER CHILD REVIEW ACT AND CHAPTER 101, TITLE 29 OF THE DELAWARE CODE REGARDING THE ADMINISTRATIVE PROCEDURES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend subsections (1) and (2), §3802, Title 31 of the Delaware Code by striking the words "Child Protective" and they appear in said subsections, and substituting the word "Family" in lieu thereof.

Section 2. Amend §3803, Title 31 of the Delaware Code by striking the word "Child" as it appears in the section heading, and by substituting the word "Care" in lieu thereof.

Section 3. Amend subsection (b), §3803, Title 31 of the Delaware Code by striking the words "a citizen of the United States and" as the same appear in said subsection.

Section 4. Amend subsection (b), §3804, Title 31 of the Delaware Code by striking the words "Child Protective" as they appear in said subsection, and by substituting the word "Family" in lieu thereof.

Section 5. Amend §3805, Title 31 of the Delaware Code by striking the words "2 times per year" and by substituting the words "once a year" in lieu thereof.

Section 6. Amend §3806, Title 31 of the Delaware Code by striking the number "\$15" and by substituting the number "\$25" in lieu thereof.

Section 7. Amend subsection (10), §3807, Title 31 of the Delaware Code by adding thereto a new sentence at the end of said subsection, which shall read as follows: "The annual report shall be used by the Board to generate additional volunteers for the Board."

Section 8. Amend §3807, Title 31 of the Delaware Code by renumbering current subsection (1) as new subsection (2) and by renumbering each succeeding subsection accordingly.

Section 9. Amend §3807, Title 31 of the Delaware Code by adding a new subsection (1) which new subsection shall read as follows:

"(1) Establish Goals and Objectives to measure its progress in achieving permanent placement or other goals for children in foster care."

Section 10. Amend subsection (1), §3808, Title 31 of the Delaware Code by striking the final sentence of said subsection in its entirety, beginning with the words "The Department" and ending with the words "in monitoring and evaluation."

Section 11. Amend subsection (a), §3809, Title 31 of the Delaware Code by striking the final sentence of said subsection in its entirety, beginning with the words "Internal reviews" and ending with the words "Review Board."

Section 12. Amend subsection (1), §3811, Title 31 of the Delaware Code by adding a new sentence at the end of said subsection which shall read as follows: "All interested parties shall be encouraged to attend the Board's reviews."

Section 13. Amend subsection (a), §3813, Title 31 of the Delaware Code by striking the words "Child Protective" as the same appear in said subsection, and by substituting the word "Family" in lieu thereof:

Section 14. Amend §3814, Title 31 of the Delaware Code by striking the first sentence of said subsection beginning with the words "The Board" and ending with the words "participating parties" and by substituting the following in lieu thereof:

"The Board shall submit a written report of the review to the placement agency and other participating parties within 15 days, except when a case has been referred to the Executive Committee to resolve an internal issue, in which case the report must be sent out 15 days following the Executive Committee review."

Section 15. Amend §3814, Title 31 of the Delaware Code by designating all of current §3814 as new subsection (a), and by adding a new subsection designated as subsection (b), which shall read as follows:

"(b) The Board and the Division of Family Services shall inform Family Court of the position of the Board regarding the identified Permanency Placement Goal for the child and current placement of the child."

Section 16. Amend paragraph (1), subsection (a), §3815, Title 31 of the Delaware Code by striking the number "20" as the same appears in said paragraph, and by substituting the number "90" in lieu thereof.

Section 17. Amend §3820, Title 31 of the Delaware Code by striking said section in its entirety, and by renumbering each succeeding section accordingly.

Section 18. Amend subsection (a), §10161, Title 29 of the Delaware Code by renumbering current paragraph (44) as new paragraph (45), and by adding a new paragraph (44), which new paragraph shall read as follows: "(44) Foster Care Review Board."

Approved June 17, 1998

CHAPTER 297

FORMERLY

SENATE BILL NO. 286

AN ACT TO AMEND 71 LAWS OF DELAWARE, CHAPTER 12 RELATING TO
SUNSETTING PROVISIONS OF THE PHARMACY ACCESS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE:

Section 1. Amend 71 Laws of Delaware, Chapter 12 by striking in their entirety the last two lines of said 71 Laws of Delaware, Chapter 12 which read as follows:

"Section 4. This Act shall sunset and automatically be repealed on June 30, 1998, unless reenacted prior to that date."

Approved June 17, 1998

CHAPTER 298

FORMERLY

HOUSE BILL NO. 428
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 36, TITLE 24 OF THE DELAWARE CODE RELATING TO GEOLOGY AND TITLE 29 OF THE DELAWARE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 24 of the Delaware Code by striking Chapter 36 in its entirety and substituting the following in lieu thereof:

"CHAPTER 36. GEOLOGY

Subchapter 1. Board of Geologists.

§3601. Objectives.

The primary objective of the Board of Geologists, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this Chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

The secondary objectives of the Board are to maintain minimum standards of practitioner competency; and, to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensed practitioners.

§3602. Definitions.

The following words, terms and phrases, when used in this Chapter shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

- (1) 'Board' shall mean the State Board of Geologists established in this Chapter.
- (2) 'Excessive use or abuse of drugs' shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs his or her ability to perform the work of a geologist.
- (3) 'Geologist' shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.
- (4) 'Person' shall mean a corporation, company, association and partnership, as well as an individual.
- (5) 'Practice of geology' shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluations, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, building, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out as able to perform or who does perform geologic services or work.

Nothing contained herein shall be construed to apply to persons engaged solely in the practice of well-drilling or persons engaged in the practice of engineering as registered professional engineers.

(6) 'Responsible charge' shall mean the individual control and direction, by the use of initiative skill and individual judgment, of the practice of geology.

§3603. Board of Geologists; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Geologists, which shall administer and enforce this Chapter.

(b) The Board shall consist of seven members, appointed by the Governor, who are residents of this state: Four shall be geologists licensed under this Chapter, one of whom shall be a member of the Delaware Geological Survey, either the State Geologist, or his or her designee if the State Geologist declines the appointment, and three public members. The public members shall not be, nor ever have been, geologists, nor members of the immediate family of a geologist; shall not have been employed by a geologist or a company engaged in the practice of geology; shall not have a material interest in the providing of goods and services to geologists; nor have been engaged in an activity directly related to geology. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each member shall serve a term of three years, and may succeed himself or herself for one additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only one additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor. Persons who are members of the Board on the effective date of this Act shall complete their terms.

(d) A person, who has never served on the Board may be appointed to the Board for two consecutive terms; but, no such person shall thereafter be eligible for two consecutive appointments. No person, who has been twice appointed to the Board or who has served on the Board for six years within any nine-year period, shall again be appointed to the Board until an interim period of at least one term has expired since such person last served. This section shall not apply to the State Geologist or his or her designee.

(e) Any act or vote by a person appointed in violation of this section shall be invalid. An amendment or revision of this Chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

(f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of geologists; this includes a prohibition against serving as head of the professional association's Political Action Committee (PAC).

(h) The provisions of Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board.

(i) Any member, who is absent without adequate reason for three consecutive meetings, or fails to attend at least half of all regular business meetings during any calendar year, shall be guilty of neglect of duty.

(j) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel according to Division of Professional Regulation policy; and, in addition shall receive not more than \$50 for each meeting attended but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

§3604. Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the President deems necessary, or, at the request of a majority of the Board members.

(b) The Board annually shall elect a President, Vice-President and Secretary. Each officer shall serve for one year, and shall not succeed himself or herself for more than two consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. No disciplinary action shall be taken without the affirmative vote of at least four members of the Board.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it.

§3605. Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a geologist, and complete records relating to meetings of the Board, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, hearings and such other matters as the Board shall determine. Such records shall be prima facie evidence of the proceedings of the Board.

§3606. Powers and duties.

(a) The Board of Geologists shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State. Each rule or regulation shall implement or clarify a specific section of this Chapter.

(2) Designate the application form to be used by all applicants, and to process all applications;

(3) Designate the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG) to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on all parts of the ASBOG examination or a comparable, alternative national or regional examination, if a national examination is not available;

(5) Establish minimum education, training, and experience requirements for licensure as geologists;

(6) Evaluate the credentials of all persons applying for a license to practice geology in Delaware, in order to determine whether such persons meet the qualifications for licensing set forth in this Chapter.

(7) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure;

(8) Require all technical submissions to be stamped with the impression of the state-licensed geologist's seal;

(9) Establish by rule and regulation continuing education standards required for license renewal;

(10) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified, or registered in another jurisdiction to practice geology, has engaged in any act or offense that would be grounds for disciplinary action under this Chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicant for such acts or offenses;

(11) Refer all complaints from licensees and the public concerning licensed geologists, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to §8807 of Title 29 of the Delaware Code; and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;

(12) Conduct hearings and issue orders in accordance with procedures established pursuant to this Chapter, Chapter 101 of Title 29 of the Delaware Code. Where such provisions conflict with the provisions of this Chapter, this Chapter shall govern. The Board shall determine whether or not a geologist shall be subject to a disciplinary hearing, and if so, shall conduct such hearing in accordance with this Chapter and the Administrative Procedures Act.

(13) Where it has been determined after a hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.

Subchapter II. License.

§3607. License required.

(a) No person shall engage in the practice of geology or hold himself or herself out to the public in this State as being qualified to practice geology; or use in connection with his or her name, or otherwise assume or use, any title or description conveying or tending to convey the impression that he or she is qualified to practice geology, unless such person has been duly licensed under this Chapter.

(b) Whenever a license to practice as a geologist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice geology in this state.

§3608. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a geologist under this Chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) has received a degree from an accredited college or university with a major in geology; or, has completed 30 credit hours of geology or its subdisciplines, of which 24 credits are third or fourth year courses or graduate courses;

(2) has acquired five years of experience in geologic work satisfactory to the Board and as defined in its rules and regulations;

(3) has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor;

(4) shall not have been the recipient of any administrative penalties regarding his or her practice of geology, including but not limited to fines, formal reprimands, license suspensions or revocation, (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any 'consent agreements' which

contain conditions placed by a Board on his or her professional conduct and practice, including any voluntary surrender of a license;

(5) shall not have any impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of geology in a manner consistent with the safety of the public;

(6) shall not have been convicted of a felony;

(7) shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of geology. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of geology.

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for him or her than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

§3609. Reciprocity.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to each applicant who shall present proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this State; and who meets the following criteria:

(1) his or her license is in good standing as defined in §3608(a)(4), (5), (6), and (7), of this Chapter; and

(2) has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor; unless at the time the applicant became licensed in the state, District of Columbia, or territory of the United States, from which he or she is applying, the examination prepared under the authority of ASBOG, or subsequent examination(s) prepared under the authority of ASBOG was/were not required by the state of Delaware.

(b) An applicant, who is licensed or registered in a state whose standards are not substantially similar to those of this state, shall have practiced for a minimum of five years in the state in which he or she currently is, or has been licensed; provided however, that he or she meets all other qualifications for reciprocity in this subsection.

(c) An applicant, who is a graduate of a foreign college or university with a major in geology; or, who has completed 30 credit hours of geology or its subdisciplines, of which 24 credits are third or fourth year courses or graduate courses, must submit a certified copy of his or her college or university record for evaluation by the Board.

§3610. Fees.

The amount to be charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division of

Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

§3611. Issuance and renewal of licenses.

The Board shall issue a license to each applicant, who meets the requirements of this Chapter for licensure as a geologist and who pays the fee established under §3610 of this Chapter.

Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee has met the continuing education requirements established by the Board.

The Board, in its rules and regulations, shall determine the period of time within which a licensed geologist may still renew his or her license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

§3612. Grounds for discipline.

(a) A practitioner licensed under this Chapter shall be subject to disciplinary actions set forth in §3616 of this Chapter, if, after a hearing, the Board finds that the geologist:

(1) has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a geologist; has impersonated another person holding a license, or allowed another person to use his or her license, or aided or abetted a person not licensed as a geologist to represent himself or herself as a geologist;

(2) has illegally, incompetently or negligently practiced geology;

(3) has been convicted of a felony;

(4) has been convicted of any offense, the circumstances of which substantially relate to the practice of geology. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;

(5) has excessively used or abused drugs either in the past two years or currently; excessive use or abuse of drugs shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a geologist;

(6) has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(7) has violated a lawful provision of this Chapter, or any lawful regulation established thereunder;

(8) has had his or her license as a geologist suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the acts defined in this Chapter. Every person licensed as a geologist in this State shall be deemed to have given consent to the release of this information by the Board of Geologists or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(9) has failed to notify the Board that his or her license as a geologist in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or

(10) has a physical condition such that the performance of geology is or may be injurious or prejudicial to the public.

(b) Where a practitioner fails to comply with the Board's request that he or she attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have the jurisdiction to issue such order.

(c) Subject to the provisions of this Chapter and Subchapter IV of Chapter 101 of Title 29 of the Delaware Code, no license shall be restricted, suspended or revoked by the Board, and no practitioner's right to practice geology shall be limited by the Board until such practitioner has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act.

§3613. Complaints.

(a) All complaints shall be received and investigated by the Division of Professional Regulation in accordance with §8807 of Title 29 of the Delaware Code, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(b) When it is determined that an individual is engaging, or has engaged, in the practice of geology, or is using the title 'geologist' and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order after formally warning the unlicensed practitioner in accordance with the provisions of this Chapter.

§3614. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in §3612 of this Chapter applies to a practitioner regulated by this Chapter:

- (1) Issue a letter of reprimand;
- (2) Censure a practitioner;
- (3) Place a practitioner on probationary status, and require the practitioner to:
 - a. report regularly to the Board upon the matters which are the basis of the probation;
 - b. limit all practice and professional activities to those areas prescribed by the Board;
- (4) Suspend any practitioner's license;
- (5) Revoke any practitioner's license;
- (6) Impose a monetary penalty not to exceed \$500 for each violation.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) The Board may temporarily suspend a practitioner's license in advance of a final adjudication, during the appeals process, but, only in cases where there is clear and immediate danger to the health and safety and welfare of the public if the licensee is allowed to continue to practice. Such suspension may be appealed to Superior Court.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.