

Chapter 232 of the Acts of 2008

AN ACT RELATIVE TO THE LICENSING OF SHEET METAL WORKERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Chapter 13 of the General Laws is hereby amended by adding the following 2 sections:-

Section 101. (a) There shall be within the division of professional licensure a board of examiners of sheet metal workers to consist of the commissioner of public safety or his designee, the director of professional licensure or his designee and 5 persons, residents of the commonwealth, to be appointed by the governor for terms of 3 years, 2 of whom shall be journeyman sheet metal workers with at least 10 years of practical experience and who are wage earners, 2 of whom shall be master sheet metal workers with at least 10 years of practical experience in sheet metal work and 1 of whom shall be a representative of the public and subject to section 9B.

(b) No member shall serve for more than 2 consecutive and complete 3-year terms. As the term of the office of a member expires, a successor shall be appointed in like manner for a term of 3 years. The governor may fill a vacancy in the board for the unexpired portion of the term.

(c) The board shall annually elect from among its members a chairman and vice-chairman. The board shall meet at least 4 times annually and may hold additional meetings as necessary to discharge its duties. Members shall serve without compensation but shall be entitled to reasonable travel expenses. The members of the board shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

Section 102. The board shall have the following powers and duties: (i) to administer and enforce sections 237 to 251, inclusive, of chapter 112; (ii) to adopt rules and regulations governing the licensure of master, journeyman and apprentice sheet metal workers, and business entities and schools teaching sheet metal work; (iii) to establish standards of professional and ethical conduct; (iv) to establish standards for continuing education reflecting acceptable national standards; and (v) in conjunction with the division of professional licensure, to investigate complaints, conduct inspections, request and review business records of licensees, and set and administer penalties as defined in sections 61 to 65E, inclusive, of said chapter 112 and sections 237 to 251, inclusive, of said chapter 112 for fraudulent, deceptive or professionally incompetent and unsafe practices and for violations of rules and regulations promulgated by the board.

SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the following 15 sections:-

Section 237. As used in this section and sections 237 to 251, inclusive, the following words shall have the following meanings unless the context requires otherwise:

“Apprentice” or “apprentice sheet metal worker”, a person at least 16 years of age who is learning or working at the business of sheet metal work under the direct supervision of a master sheet metal worker or a journeyman sheet metal worker in the employ of a master.

“Board”, the board of examiners of sheet metal workers, established in section 101 of chapter 13.

“Certificate of a sheet metal corporation, partnership, LLP, LLC or other entity”, a certificate of registration issued by the board to a master sheet metal worker authorizing him to conduct a sheet metal business as a corporation, partnership, LLP, LLC or other such entity, as the case may be.

“Inspector”, the inspector of buildings, building commissioner or other local inspector charged with enforcing the state building code under section 3 of chapter 143.

“Journeyman” or “journeyman sheet metal worker”, a person who performs sheet metal work or who, through an apprentice in the employ of a master, employs the journeyman and who has passed an examination and been issued a license as provided in this chapter.

“Master” or “master sheet metal worker”, a person having a regular place of business and who, by himself or through journeymen in his employ, performs sheet metal work, subject to inspection and in compliance with any law, rule or regulation pertaining to sheet metal work. The master sheet metal worker may be in the employ of another master sheet metal worker, but shall not be in the employ of a journeyman or apprentice.

“Sheet metal work”, the manufacturing, fabrication, assembling, handling, erection, installation, dismantling, alteration and repairing of all commercial duct or air exhaust systems, except for refrigeration and combustion units; installation of commercial fans, sheaves, belt guards, dampers, louvers, screens, registers, grilles, diffusers, sound traps, attenuators, mixing boxes and access doors in connection with duct or air exhaust systems, commercial and industrial architectural sheet metal watershed roof systems, except for roof coverings and associated metal flashing; the testing, adjusting and air-balancing of all air-handling equipment and ductwork installed during new or remodeling construction, the installation of commercial and industrial kitchen hoods, kitchen vents, bathroom exhaust vents and fans; provided, however, that sheet metal work shall not include the work conducted by a licensed pipe fitter, oil burning technician, refrigeration technician, plumber or gasfitter as determined by the laws and regulations relating to those professions; and provided further, that nothing in this section shall be construed to supercede chapters 142 and 146.

“Veteran”, as that term is defined in clause Forty-third of section 7 of chapter 4.

Section 238. (a) No person shall engage in work as a master, journeyman or apprentice nor shall any person advertise or represent that he is a master, journeyman or apprentice unless that person holds a valid license issued by the board as provided in this chapter.

(b) The license or certificate of a master, journeyman or apprentice shall be displayed when required by an inspector of buildings or an inspector acting on behalf of the board. The inspectors may enforce this section by entering into an establishment where the licensees are performing their work.

(c) A sign, listing or advertisement of a sheet metal business, master or that of a journeyman sheet metal worker shall contain his designation and license number.

Section 239. (a) A person licensed in the commonwealth as a master sheet metal worker may apply to the board for a certificate of a sheet metal corporation, partnership, LLC, LLP or other such entity upon payment of a fee or a biennial renewal fee, the amounts of which shall be determined annually by the secretary of administration and finance pursuant to section 3B of chapter 7. A certificate of a sheet metal corporation shall authorize a master to conduct the sheet metal business as a corporation; provided, however, that in the corporation the master sheet metal worker shall be designated as an officer of the corporation organized under the laws of the commonwealth. A certificate of sheet metal partnership or LLP shall authorize a master sheet metal worker to conduct the sheet metal business as a partnership or LLP; provided, however, that all partners in such a partnership or LLP shall be master sheet metal workers. A certificate of a sheet metal LLC shall require, as a prerequisite, that a master sheet metal worker be designated as a manager of that LLC. The board shall determine the appropriate requirements for any other business entities not so designated.

(b) No corporation, partnership, LLC, LLP or other entity shall engage in business, advertise the provision of sheet metal work, make application for and take out permits for sheet metal work, bid for sheet metal work, permit its employees to perform sheet metal work or represent that it holds a license or certificate issued by the board unless the entity and all employees who performing such work hold a license or certificate, issued by the board, as further described in chapter 13 and this chapter.

(c) The certificate of a sheet metal corporation, partnership, LLP, LLC, or other entity shall only be issued to a master sheet metal worker who shall be responsible for all sheet metal work performed by that entity and its duly licensed employees.

Section 240. The board shall make such rules as they deem proper for the performance of their duties and governing the qualifications of applicants for examination. The board shall examine each person who applies for a license as a journeyman sheet metal worker or a master sheet metal worker, as to his practical knowledge of sheet metal work. The board shall hold frequent examinations in the greater Boston area, and at such other convenient locations as it deems necessary. The board shall make every effort to accommodate veterans, including the crediting of relevant military experience and the waiver of other requirements for individuals who demonstrate competence in the field of sheet metal work.

Section 241. An apprentice, before starting an apprenticeship, shall file an application with the board, accompanied by the appropriate fee, requesting that an apprentice license be issued. The application shall be made on a form to be furnished by the board and shall require the applicant to state his age, the employer's name and address and such other information as the board may require. A master sheet metal worker may employ more than 1 apprentices but not more than 1 apprentice may work under the direct supervision of a master or a journeyman in the employ of the master. The board may, by regulation, establish a maximum length of time for apprentice training.

Notwithstanding this section, students in a vocational school accredited by the department of education, under the direct personal supervision of a master or journeyman sheet metal worker who is certified as an instructor by the division of occupational education, may engage in an on-the-job training program on installations approved by the examiners and conducted in cooperation with such a vocational school. The examiners shall adopt rules and regulations relative to the on-the-job training program and may accept such training as fulfillment, in whole or in part, of the necessary prerequisites for journeyman licensure.

Section 242. Upon payment of a fee and the submission of an application provided by the board, the board may issue a license without examination to an applicant who is legally registered as a journeyman or master sheet metal worker in any other state or country whose requirements for obtaining and maintaining registration, in the opinion of the board, are at least substantially equivalent to the requirements in the commonwealth, provided such other state or country has a reciprocal privilege to licensees registered by the board. The board may require additional education if it determines that the standards required for sheet metal work in another state or country are inconsistent with the standards in effect in the commonwealth.

Section 243. The fees for a license as a journeyman, master and apprentice sheet metal worker, or for any biennial renewal thereof, shall be determined annually by the secretary of administration pursuant to section 3B of chapter 7.

Section 244. The board may adopt rules and regulations for a system of continuing education, compliance with which shall be a condition precedent to the renewal of licenses issued by the board.

Section 245. (a) The board may investigate all complaints filed relating to the proper practice of sheet metal work, any violation of this chapter pertaining to the practice of sheet metal work or any rule or regulation of the board. Such complaints may be brought by any person or the board.

(b) The board shall be under the supervision of the division of professional licensure and shall have all the authority conferred under sections 61 to 65E, inclusive. For the purposes of this section and said sections 61 to 65E, inclusive, conduct which places into question the holder's competence to practice sheet metal work shall include, but not be limited to: (1) committing fraud or misrepresentation in obtaining a license; (2) criminal conduct which the board determines to be of such a nature as to render the person unfit to practice sheet metal work, as evidenced by criminal proceedings which resulted in a conviction, guilty plea, plea of nolo contendere or an admission of sufficient facts; (3) violating a rule or regulation of the board; (4) failing to cooperate with the board or its agents in the conduct of an inspection or investigation; (5) failing to fulfill any continuing education requirements required by the board; (6) aiding or abetting an unlicensed person to practice sheet metal work; or (7) negligence in the course of professional practice.

(c) The board may issue an order to a licensee directing him to cease and desist from unethical or unprofessional conduct if the board finds, after notice and the opportunity for a hearing, that the licensee has engaged in such conduct.

(d) Nothing in this section shall limit the board's authority to impose, by agreement, sanctions that are considered reasonable and appropriate by the board. Any person aggrieved by a disciplinary action taken by the board pursuant to this section or for violation of any other law, rule or regulations may, pursuant to section 64, file a petition for judicial review.

Section 246. Whoever, not being licensed to practice sheet metal work pursuant to this chapter, practices or attempts to practice sheet metal work or holds himself out as being licensed to practice sheet metal work or uses any of the licensed titles of that profession, or whoever practices sheet metal work under a false or assumed name or under a name other than that by which he is licensed or whoever impersonates another practitioner of sheet metal work, or whoever buys, sells or fraudulently obtains a diploma, license, license renewal certificate or record or registration to practice sheet metal work or aids or abets in such selling or fraudulent obtaining or whoever practices sheet metal work under cover of any diploma, license, license renewal certificate, record or registration to practice sheet metal work shall be punished by a fine of not less than \$100 nor more than \$1,000. A city or town that fails to comply with any of its provisions shall forfeit \$50 to the commonwealth for each month during which such neglect continues. Nothing in this section shall affect, restrict, diminish or limit any other penalty or remedy provided by law, including those penalties provided under sections 61 to 65E of chapter 112.

Section 247. The board shall adopt reasonable and uniform rules and regulations for cities and towns relative to the practice of sheet metal work. The rules and regulations shall be enforced by the local inspector of buildings or a like official. The board shall adopt a regulation requiring all cities and towns to use a uniform application for a permit to perform sheet metal work or to make special reference to the work on permits issued by an inspector operating pursuant to chapter 143 and any other applicable laws. Any fees for these permits shall be established by the city or town. Notwithstanding any general or special law to the contrary, no licensed journeyman or master sheet metal worker shall be issued a permit for the performance of sheet metal work pursuant to this chapter unless the licensee has a current liability insurance policy, including completed operations coverage, which has been issued by an insurance company licensed to do business within the commonwealth, or other type of indemnity against liability providing substantially equivalent coverage, or a bond.

(b) A person aggrieved by a ruling interpreting the rules and regulations made under this section, may appeal to the board in writing within 10 days after such ruling and the board shall hear and decide such appeal, subject to chapter 30A relative to adjudicatory proceedings. Such decision shall be final and binding upon all parties in interest.

Section 248. If in the opinion of an inspector of buildings or other official, the holder of a license or certificate violates any law or rule or regulation relative to sheet metal work and has not resolved the violation to the satisfaction of the inspector, the inspector or other official shall give notice thereof to the board.

Section 249. No person shall install sheet metal work without first obtaining a permit from the local inspector of buildings or other official. The permit shall be obtained by mailing or delivering a permit application form approved by the board to the inspector or other official. A person failing to obtain the permit shall be punished by a fine to be determined by the board. This section shall be enforced by inspectors of buildings or other officials designated by the local building authority and the board. Nothing in this section shall affect, restrict, diminish or limit any other penalty or remedy provided by law, nor shall any enforcement action taken by a local inspector or other official limit the board from taking any action within the scope of its jurisdiction.

Section 250. The director of professional licensure shall determine the renewal cycle and renewal period for all licenses issued by the board. Persons licensed in accordance with these sections shall apply to the board for renewal of their licenses on or before the expiration date, as determined by the director, unless such license was earlier revoked, suspended or canceled as a result of a disciplinary proceeding instituted pursuant to this chapter. Applications for renewal shall be made on forms approved by the board and accompanied by payment of a renewal fee, as determined by the secretary of administration pursuant to section 3B of chapter 7. All licensing and application fees and civil administrative penalties collected pursuant to sections 237 to 250, inclusive, of chapter 112, shall be deposited into the trust fund established in section 35V of chapter 10.

Section 251. The board shall adopt rules relative to the construction, alteration, repair and inspection of all sheet metal work on property and buildings owned, used or constructed by the commonwealth and in property and buildings owned, used or constructed by a public instrumentality of the commonwealth which is not subject to the supervision and control of either the legislative, executive or judicial departments. Such instrumentalities shall include, but not be limited to, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority and the Massachusetts Water Resources Authority, and all plans for sheet metal work in such buildings shall be subject to the approval of the board.

SECTION 3. Section 96 of chapter 143 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

For the purposes of this section, "specialized codes" shall include, but not be limited to, the state plumbing code, electrical code, architectural barriers regulations, fire safety code, fire prevention regulations, sheet metal regulations and elevator regulations.

SECTION 4. Notwithstanding section 238 of chapter 112 of the General Laws, for a period of 1 year after the effective date of the initial regulations adopted by the board of examiners of sheet metal workers, an individual shall not be required to be licensed to practice sheet metal work pursuant to sections 237 to 251, inclusive, of said chapter 112 if he is of good moral character and can document that he has been engaged in the practice of sheet metal work for such period of time as may be determined by the board.

SECTION 5. (a) Notwithstanding any general or special law to the contrary, the board may issue a license to practice as a journeyman sheet metal worker, without examination, to an applicant who otherwise meets the requirements of sections 237 to 251 of chapter 112 of the General Laws and the board's regulations and provides, to the board's satisfaction, proof that he has been in the paid professional practice in the field of sheet metal work, prior to the effective date of the board's regulations for such period of time as may be determined by the board.

(b) In addition, the board may issue a license to practice as a master sheet metal worker, without examination, to an applicant who meets the requirements of subsection (a) for a journeyman sheet metal license and has employed individuals engaged in sheet metal work.

(c) For the purposes of this section the board, in its discretion, may waive any educational requirements for an applicant if it determines that the applicant's combined professional and educational credentials are adequate to protect public welfare and safety. An individual denied a license as a journeyman or master sheet metal worker under this section shall be entitled to a hearing to dispute the factual grounds for which the denial was based. Unless the board has substantial evidence related to moral character, business acumen, or public safety, a license shall be granted.

(d) This section shall expire 1 year after the effective date of the board's initial regulations.

Approved August 4, 2008

<http://www.mass.gov/legis/laws/seslaw08/sl080232.htm>