

S. 1619

A. 4290

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 3, 2009

IN SENATE -- Introduced by Sens. LAVALLE, DIAZ, LARKIN, MORAHAN, VOLKER
-- read twice and ordered printed, and when printed to be committed to
the Committee on Higher Education

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI -- read once and
referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the independence of
design professionals in certain contractual relationships

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 7209 of the education law is amended by adding a
2 new subdivision 10 to read as follows:
3 10. A CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT LICENSED OR
4 OTHERWISE AUTHORIZED TO PRACTICE ENGINEERING, AS SUCH TERM IS DEFINED IN
5 SECTION SEVENTY-TWO HUNDRED ONE OF THIS ARTICLE, WHICH ASSUMES RESPONSI-
6 BILITY FOR BOTH DESIGN AND CONSTRUCTION OF A BUILDING PROJECT, OR UNDER
7 WHICH SAID PERSON OR ENTITY UNDERTAKES TO PROCURE OR PROVIDE PROFES-
8 SIONAL DESIGN SERVICES, SHALL BE AGAINST PUBLIC POLICY AND UNENFORCEA-
9 BLE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, HOWEVER, SUCH A
10 CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT LICENSED OR OTHERWISE
11 AUTHORIZED TO PRACTICE ENGINEERING, SHALL BE IN ACCORDANCE WITH PUBLIC
12 POLICY AND ENFORCEABLE IF THE LICENSED ENGINEER OR ENTITY DULY AUTHOR-
13 IZED PURSUANT TO SECTION SEVENTY-TWO HUNDRED TEN OF THIS ARTICLE WHO IS
14 TO PERFORM THE DESIGN SERVICES IS IDENTIFIED IN SUCH CONTRACT AND SUCH
15 LICENSEE OR AUTHORIZED ENTITY IS NEITHER AN OFFICER, PARTNER, EMPLOYEE,
16 SHAREHOLDER NOR MEMBER OF, AND DOES NOT MAINTAIN AN EQUITY INTEREST IN,
17 SUCH CONTRACTING PARTY AND THE PRACTICE OF SUCH LICENSEE IS INDEPENDENT
18 OF THE CONTRACTING PARTY'S BUSINESS.
19 S 2. Section 7307 of the education law is amended by adding a new
20 subdivision 6 to read as follows:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 6. A CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT LICENSED OR OTHER-
2 WISE AUTHORIZED TO PRACTICE ARCHITECTURE, AS SUCH TERM IS DEFINED IN
3 SECTION SEVENTY-THREE HUNDRED ONE OF THIS ARTICLE, WHICH ASSUMES RESPON-
4 SIBILITY FOR BOTH DESIGN AND CONSTRUCTION OF A BUILDING PROJECT, OR
5 UNDER WHICH SAID PERSON OR ENTITY UNDERTAKES TO PROCURE OR PROVIDE
6 PROFESSIONAL DESIGN SERVICES, SHALL BE AGAINST PUBLIC POLICY AND UNEN-
7 FORCEABLE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, HOWEVER,
8 SUCH A CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT LICENSED OR OTHER-
9 WISE AUTHORIZED TO PRACTICE ARCHITECTURE, SHALL BE IN ACCORDANCE WITH
10 PUBLIC POLICY AND ENFORCEABLE IF THE LICENSED ARCHITECT OR ENTITY DULY
11 AUTHORIZED TO PROVIDE ARCHITECTURE SERVICES WHO IS TO PERFORM THE DESIGN
12 SERVICES IS IDENTIFIED IN SUCH CONTRACT AND SUCH LICENSEE OR AUTHORIZED
13 ENTITY IS NEITHER AN OFFICER, PARTNER, EMPLOYEE, SHAREHOLDER NOR MEMBER
14 OF, AND DOES NOT MAINTAIN AN EQUITY INTEREST IN, SUCH CONTRACTING PARTY
15 AND THE PRACTICE OF SUCH LICENSEE IS INDEPENDENT OF THE CONTRACTING
16 PARTY'S BUSINESS.

17 S 3. Section 7327 of the education law is amended by adding a new
18 subdivision 5 to read as follows:

19 5. A CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT LICENSED OR OTHER-
20 WISE AUTHORIZED TO PRACTICE LANDSCAPE ARCHITECTURE, AS SUCH TERM IS
21 DEFINED IN SECTION SEVENTY-THREE HUNDRED TWENTY-ONE OF THIS ARTICLE,
22 WHICH ASSUMES RESPONSIBILITY FOR BOTH DESIGN AND CONSTRUCTION OF A
23 BUILDING PROJECT, OR UNDER WHICH SAID PERSON OR ENTITY UNDERTAKES TO
24 PROCURE OR PROVIDE PROFESSIONAL DESIGN SERVICES, SHALL BE AGAINST PUBLIC
25 POLICY AND UNENFORCEABLE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDI-
26 VISION, HOWEVER, SUCH A CONTRACT MADE BY A PERSON OR ENTITY WHO IS NOT
27 LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE LANDSCAPE ARCHITECTURE,
28 SHALL BE IN ACCORDANCE WITH PUBLIC POLICY AND ENFORCEABLE IF THE
29 LICENSED LANDSCAPE ARCHITECT OR ENTITY DULY AUTHORIZED TO PROVIDE LAND-
30 SCAPE ARCHITECTURE SERVICES WHO IS TO PERFORM THE DESIGN SERVICES IS
31 IDENTIFIED IN SUCH CONTRACT AND SUCH LICENSEE OR AUTHORIZED ENTITY IS
32 NEITHER AN OFFICER, PARTNER, EMPLOYEE, SHAREHOLDER NOR MEMBER OF, AND
33 DOES NOT MAINTAIN AN EQUITY INTEREST IN, SUCH CONTRACTING PARTY AND THE
34 PRACTICE OF SUCH LICENSEE IS INDEPENDENT OF THE CONTRACTING PARTY'S
35 BUSINESS.

36 S 4. This act shall take effect immediately.