



Sen. Iris Y. Martinez

Filed: 3/12/2009

09600SB1488sam001

LRB096 06297 ASK 23017 a

1 AMENDMENT TO SENATE BILL 1488

2 AMENDMENT NO. _____. Amend Senate Bill 1488 by deleting
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Heating, Ventilation, Air Conditioning, and Refrigeration
6 Contractor Registration Act.

7 Section 5. Objects and Purpose. The installation and
8 maintenance of HVACR systems in the State is hereby declared to
9 affect the public health, safety, and welfare and to be subject
10 to regulation and control in the public interest. It is further
11 declared to be a matter of public interest and concern that the
12 installation and maintenance of HVACR systems as defined in
13 this Act merit and receive the confidence of the public, and
14 that only qualified persons are authorized to install and
15 maintain HVACR systems in the State. The purpose of this Act is
16 to provide for the registration of persons who install and

1 repair HVACR systems in the State and this Act shall be
2 liberally construed to best carry out these subjects and
3 purposes.

4 Section 10. Definitions. As used in this Act:

5 "Advisory board" means the HVACR Contractors Advisory
6 Board.

7 "Department" means the Department of Financial and
8 Professional Regulation.

9 "Secretary" means the Secretary of the Department of
10 Financial and Profession Regulation.

11 "HVACR" means heating, ventilation, air conditioning and
12 refrigeration.

13 "HVACR contractor" means any person, sole proprietorship,
14 corporation, partnership, association, or other business
15 entity that performs or offers to perform heating, ventilation,
16 air conditioning, or refrigeration contracting to the general
17 public.

18 "HVACR contracting" means to perform or offer to perform
19 the design, installation, construction, maintenance, service,
20 repair, alteration, or modification of a product or equipment
21 in environmental air conditioning, commercial refrigeration,
22 or process cooling or heating systems. HVACR contracting
23 includes all HVACR systems, products, or equipment of any size
24 or capacity, and electrical wiring to and from the unit's
25 disconnect and all necessary low voltage control wiring on any

1 HVACR equipment.

2 "HVACR maintenance work" means repair work and all other
3 work required for the continued normal performance of an
4 environmental heating, ventilation, air conditioning system,
5 refrigeration system or equipment, or process cooling system.

6 "Person" means any natural person.

7 "Registered contractor" means a HVACR contractor fully
8 registered by the State under the terms of this Act.

9 Section 15. HVACR Contractor Advisory Board.

10 (a) There is created an HVACR Contractor Advisory Board
11 that shall exercise its duties provided in this Act under the
12 supervision of the Department. The Board shall consist of 7
13 members, who are experienced in the design, installation,
14 construction, maintenance, service, repair, alteration, or
15 modification of equipment used for environmental air
16 conditioning, commercial refrigeration, and process cooling or
17 heating. The Secretary shall appoint:

18 (i) 4 members who are full-time registered air
19 conditioning and refrigeration contractors holding
20 registration;

21 (ii) 2 members who are officials of municipalities; and

22 (iii) One member who is a registered Professional
23 Engineer in an Engineering firm with an HVACR discipline in
24 the State.

25 To the extent possible, the members of the Board shall

1 reasonably reflect the geographic distribution of the
2 population of the State.

3 (b) In appointing the HVACR members of the Board, at least
4 one, but no more than 2 of those appointees should be an HVACR
5 contractor, who employs organized labor.

6 (c) The term for members of the Board shall be 6 years,
7 except for the initial appointees. Of the initial appointments,
8 2 members shall be appointed for terms ending July 1, 2011, 2
9 members shall be appointed for terms ending July 1, 2012, and 3
10 members shall be appointed for terms ending July 1, 2013. A
11 member shall serve no more than 2 consecutive terms.

12 (d) The Board may annually elect a chairperson and a vice
13 chairperson who shall preside in the absence of the
14 chairperson.

15 (e) The Secretary may terminate the appointment of a member
16 for cause. Cause for termination may include, without
17 limitation, misconduct, incapacity, neglect of duty, or
18 missing 4 Board meetings during any one calendar year.

19 (f) Upon the termination of a member of the Board or the
20 vacancy of a seat on the Board, the Secretary shall fill the
21 remainder of the unexpired term with an individual who
22 represents the same interest with which the predecessor was
23 identified.

24 (g) A majority of the Board members currently appointed
25 shall constitute a quorum. A vacancy in the membership of the
26 Board shall not impair the right of a quorum to exercise all of

1 the rights and to perform all of the duties of the Board. A
2 decision of the Board is effective upon the affirmative vote of
3 at least 4 members.

4 (h) The Board shall meet at least quarterly and may be
5 convened by the chairperson, the vice chairperson, or 3 members
6 of the Board upon 10 days written notice.

7 (i) The Board shall advise and make recommendations to the
8 Secretary on matters of registration, education, approval of
9 courses, discipline, and enforcing and administering this Act
10 and the rules adopted under this Act.

11 (j) Members of the Board shall be immune from suit in an
12 action based upon any disciplinary proceedings or other acts
13 performed in good faith as members of the Board.

14 (k) Each member shall be reimbursed for his or her
15 necessary and contingent expenses.

16 Section 20. Powers and duties of the Secretary. The
17 Secretary shall:

18 (1) Prepare and issue registered contractor certificates
19 as provided in this Act.

20 (2) Renew the registration of any applicant who has
21 fulfilled the requirements and who has paid the required
22 renewal fee.

23 (3) Prescribe rules for hearings to deny, suspend, revoke,
24 or reinstate registrations as provided in this Act.

25 (4) Maintain a current record showing:

1 (i) the names and addresses of registered HVACR
2 contractors;

3 (ii) the dates of issuance of registrations;

4 (iii) the date and substance of the charges set forth
5 in any hearing for denial, suspension, or revocation of any
6 registration;

7 (iv) the date and substance of the final order issued
8 upon each hearing; and

9 (v) the date and substance of all petitions for
10 reinstatement of a registered HVACR contractor and the
11 final orders on such petitions.

12 (6) Prescribe, in consultation with the Board, uniform and
13 reasonable rules defining what constitutes an approved
14 continuing education unit of related HVACR associations and a
15 course of instruction in HVACR in colleges, universities, or
16 trade schools, and approve or disapprove the courses of
17 instruction offered by the colleges, universities, or trade
18 schools by reference to their compliance or noncompliance with
19 the rules adopted under this Act. Upon the recommendation of
20 the Board, the Department may require by rule that each
21 registered HVACR contractor annually complete a minimum number
22 of 10 hours of classroom instruction and provide evidence of
23 attending the meetings or classes before receiving a renewal of
24 the HVACR contractor's registration. At least 5 hours of any
25 required classroom instruction must be on the topic of general
26 business practices. In addition, the Department shall by rule

1 establish guidelines for approval of the continuing education
2 to be required.

3 (7) Adopt guidelines for the denial of registration of any
4 HVACR contractors found to have committed repeated violations
5 of this Act or the rules adopted pursuant to this Act.

6 (8) Provide, for a reasonable administration fee, an
7 on-line directory of the persons registered under this Act.

8 (9) Prescribe rules and contract with another State agency
9 or political subdivision for the enforcement of this Act and
10 the rules adopted under this Act.

11 (10) Employ those persons necessary for the implementation
12 of this Act.

13 (11) Issue emergency orders, without notice or a hearing,
14 as necessary to enforce this Act and to protect the public
15 health and safety. The Secretary shall set a time and place for
16 a hearing to affirm, modify, or set aside the emergency order.

17 Section 30. Application for Registration.

18 (a) An applicant for registration shall file a written
19 application with the Department on the form designated by the
20 Department at least 30 days before the date of registration.

21 (b) The Secretary shall promptly approve the application
22 for registration if:

23 (1) the required application fee has been paid;

24 (2) the applicant is at least 18 years of age;

25 (3) the applicant has submitted a Certificate of

1 Insurance showing Liability coverage of at least \$250,000
2 and Workman's Compensation coverage of at least one
3 technician in the HVACR classifications of Illinois Code
4 #5537 or #5538; and vehicle insurance, if applicable; and

5 (4) the applicant has signed an attestation of honest
6 representation of all of the above.

7 Section 35. Issuance of a registration. The Secretary shall
8 issue the Certificate of Registration to a HVACR contractor
9 with the appropriate endorsement to each contractor who
10 fulfills the above requirement, submits the proper insurance
11 documents and has paid to the Department the required
12 registered contractor fee. Each HVACR contractor's certificate
13 shall be issued in the name of the Department with the seal
14 thereof attached. A person registered as an HVACR contractor
15 under this Act shall not be required to be registered or
16 licensed under any other Act in the State in order to engage in
17 HVACR contracting or HVACR maintenance work.

18 Section 40. Registered contractor renewal. A HVACR
19 contractor's registration issued under this Act shall expire on
20 the next December 31 following the date of issuance. An HVACR
21 contractor's registration may be renewed for one year upon
22 payment of the required renewal fee and the submission of
23 required evidence of successful completion of 5 hours of
24 general business continuing education and 5 hours of either

1 technical or business continuing education units. There cannot
2 be any lapse in the basic insurance coverage during the year.

3 Application for renewal shall be on forms provided by the
4 Department. An application for renewal of a registration
5 received by the Department after January 1 shall include the
6 annual renewal fees plus any applicable reinstatement fees.

7 Section 45. Enforcement of contracts. An HVACR contracting
8 company that performs HVACR contracting without proper
9 registration contractor certificate under this Act may not
10 collect a fee or otherwise enforce a contract for the services
11 performed.

12 Section 50. Denial, suspension, or revocation of a
13 registration. The Secretary, after notice and the opportunity
14 for a hearing to the applicant or registered contractor, may
15 deny, suspend, or revoke a registered contractor certificate in
16 any case in which he or she finds that there has been a
17 substantial failure to comply with the provisions of this Act
18 or the standards and rules established pursuant to this Act.

19 Notice shall be provided by certified mail or by personal
20 service setting forth the particular reasons for the proposed
21 action and fixing a date, not less than 20 days from the date
22 of the mailing or service, within which time the applicant or
23 registered holder must request in writing a hearing. Failure to
24 serve upon the Department a request for a hearing, in writing

1 and within the time provided in the notice, shall constitute a
2 waiver of the person's right to an administrative hearing.

3 The hearing shall be conducted by the Secretary or by an
4 individual designated in writing by the Secretary as a hearing
5 officer. The Secretary or hearing officer shall give written
6 notice of the time and place of the hearing, by certified mail
7 or personal service, to the applicant or registered contractor
8 at least 10 days prior to the hearing. On the basis of the
9 hearing, or upon default of the applicant or registered
10 contractor, the Secretary shall make a determination
11 specifying his or her findings and conclusions. A copy of the
12 determination shall be sent by certified mail or served
13 personally upon the applicant or registered contractor. The
14 decision of the Secretary shall be final on issues of fact and
15 final in all respects unless judicial review is sought as
16 provided in this Act.

17 The procedure governing hearings authorized by this
18 Section shall be in accordance with rules promulgated by the
19 Department. A full and complete record shall be kept of all
20 proceedings, including the notice of hearing, the complaint,
21 and all other documents in the nature of pleadings, written
22 motions filed in the proceedings, and the report and orders of
23 the Secretary and hearing officer. The Department, at its
24 expense, shall provide a court reporter to take testimony.
25 Technical error in the proceedings before the Department or
26 hearing officer or their failure to observe the technical rules

1 of evidence shall not be grounds for the reversal of any
2 administrative decision unless it appears to the Court that
3 such error or failure materially affects the rights of any
4 party and results in substantial injustice to them.

5 The Department or hearing officer, or any parties in an
6 investigation or hearing before the Department, may cause the
7 depositions of witnesses within the State to be taken in the
8 manner prescribed by law for depositions in civil actions in
9 courts of this State, and compel the attendance of witnesses
10 and the production of books, papers, records, or memoranda.

11 The Department shall not be required to certify any record
12 to the Court or file any answer in Court or otherwise appear in
13 any Court in a judicial review proceeding, unless there is
14 filed in the Court with the complaint a receipt from the
15 Department acknowledging payment of the costs of furnishing and
16 certifying the record. The cost shall be paid by the party
17 requesting a copy of the record. Failure on the part of the
18 person requesting a copy of the record to pay the cost shall be
19 grounds for dismissal of the action.

20 Section 55. Grounds for revocation or suspension of a
21 registered contractor. The Secretary may revoke or suspend a
22 registered contractor when findings show one or more of the
23 following:

24 (1) the registered contractor obtained or conspired
25 with others to obtain a registration by misrepresentation

1 of the facts;

2 (2) the registered contractor willfully violated any
3 law of this State or any rule or code promulgated there
4 under regulating HVACR contractors;

5 (3) the registered contractor has made a fraudulent
6 promise to influence, persuade, or induce an individual to
7 contract for services; or

8 (4) the registered contractor has loaned or in any
9 manner transferred a registered contractor under his or her
10 employment to another person.

11 The Department may refuse to issue or may suspend the
12 registration of a HVACR contractor who fails to file a return,
13 or to pay the tax, penalty, or interest shown in a filed
14 return, or to pay any final assessment of the tax, penalty, or
15 interest, as required by any tax Act administered by the
16 Illinois Department of Revenue, until such time as the
17 requirements of any such tax Act are satisfied.

18 Section 60. Power to subpoena. The Secretary or hearing
19 officer shall have power to subpoena to any hearing authorized
20 by this Act any person in this State to give testimony and
21 evidence either orally or by deposition or both. The Secretary
22 or hearing officer may also issue subpoena duces tecum for
23 production of any books and records and other documents for
24 evidence at any authorized hearing under this Act. Witnesses
25 subpoenaed as provided herein shall be paid the same witness

1 fees and mileage as provided for witnesses who are subpoenaed
2 to give testimony in any civil case in a court of this State.
3 The Secretary or hearing officer is empowered to administer
4 oaths or affirmations to witnesses at any hearing authorized by
5 this Act.

6 Section 65. Court ordered appearance. Any circuit court
7 upon the application of the Secretary or any party of record to
8 a hearing authorized by this Act may order the attendance of
9 any witness and the production of books, papers, or documents
10 in this State at any hearing authorized by this Act for the
11 purpose of giving testimony or evidence. Any court, as provided
12 in this Section, may compel obedience to the order for
13 appearance or production of records by a proceeding for
14 contempt.

15 Section 70. Order or certified copy; prima facie proof. An
16 order of suspension, revocation, or reinstatement of a
17 registration, or of dismissal of a complaint or petition, or a
18 certified copy of such an order, over the seal of the
19 Department and purporting to be signed by the Secretary, shall
20 be prima facie proof that:

21 (a) the signature is the genuine signature of the
22 Secretary; and

23 (b) the Secretary is duly appointed and qualified.

1 Section 75. Administrative Procedure Act. The provisions
2 of the Illinois Administrative Procedure Act are hereby
3 expressly adopted and shall apply to all administrative rules
4 and procedures of the Department of Public Health under this
5 Act, except that in case of conflict between the Illinois
6 Administrative Procedure Act and this Act the provisions of
7 this Act shall control, and except that Section 5-35 of the
8 Illinois Administrative Procedure Act relating to procedures
9 for rulemaking does not apply to the adoption of any rule
10 required by federal law in connection with which the Department
11 is precluded by law from exercising any discretion.

12 All final administrative decisions of the Department under
13 this Act shall be subject to judicial review pursuant to the
14 provisions of the Administrative Review Law and the rules
15 adopted under it. The term "administrative decision" has the
16 meaning ascribed to it in Section 3-101 of the Code of Civil
17 Procedure.

18 Section 80. Criminal penalties.

19 (1) Any person violating any provision of this Act or rule
20 promulgated pursuant to this Act shall be guilty of a Class B
21 misdemeanor and assessed a civil penalty of \$500 for the first
22 offense and a second or subsequent violation of this Act shall
23 constitute a Class A misdemeanor with a fine of \$1,000. Each
24 day of violation constitutes a separate offense. The State's
25 Attorney of the county in which the violation occurred or the

1 Attorney General shall bring such actions in the name of the
2 People of the State. The court may enjoin the use of an HVACR
3 system installed in violation of this Act or a rule promulgated
4 pursuant to this Act until it has been corrected to comply with
5 the minimum standards for HVACR contracting as provided for by
6 the rules adopted under this Act.

7 (2) If it is established that the defendant contrary to
8 this Act has been or is engaged in or is about to engage in
9 HVACR contracting after his or her registration has been
10 suspended or revoked or after his or her registration has not
11 been renewed, the court may enter a judgment perpetually
12 enjoining the defendant from further engaging in HVACR
13 contracting contrary to this Act. In case of violation of any
14 injunction entered under this Section, the court may summarily
15 try and punish the offender for contempt of court.

16 Section 85. Unregistered practice; violation; civil
17 penalty.

18 (a) A person who practices, offers to practice, attempts to
19 practice, or holds himself or herself out to practice as an
20 HVACR contractor without being registered under this Act shall,
21 in addition to any other penalty provided by law, pay a civil
22 penalty to the Department in an amount not to exceed \$5,000 for
23 each offense as determined by the Department. The civil penalty
24 shall be assessed by the Department after a hearing is held in
25 accordance with the provisions set forth in this Act regarding

1 the provision of a hearing for the discipline of an HVACR
2 contractor.

3 (b) The Department has the authority and power to
4 investigate any person who practices, offers to practice,
5 attempts to practice, or holds himself or herself out to
6 practice as an HVACR contractor without being registered under
7 this Act.

8 (c) The civil penalty must be paid within 60 days after the
9 effective date of the order imposing the civil penalty. The
10 order shall constitute a judgment and may be filed and executed
11 in the same manner as a judgment from a court of record.

12 Section 90. Consumer complaint investigation.

13 (a) The Secretary shall prepare information of consumer
14 interest describing the functions performed by the Secretary
15 under this Act and the rights of consumers affected by this
16 Act. The information must describe the procedure by which a
17 consumer complaint is filed with and resolved by the Secretary.
18 The Secretary shall make the information available to the
19 general public.

20 (b) The Secretary shall investigate consumer complaints
21 filed with the Secretary or advisory board. If the Secretary
22 determines after investigation that a registered contractor
23 has violated this Act or a rule adopted under this Act, the
24 Secretary may take appropriate action under Section 50 of this
25 Act.

1 Section 95. Fees; Fund. The Department shall, by rule,
2 establish a schedule of fees for registration. Further, the
3 Department, by rule, shall establish a one-time implementation
4 fee upon all new applications for registration. The Department
5 shall, by rule, establish a fee for providing the on-line
6 directory of registered HVACR contractors.

7 All fees, fines, and penalties collected by the Department
8 under Act shall be deposited into the General Professions
9 Dedicated Fund for use by the Department in performing
10 activities relating to the duties of the Department.

11 Section 100. Home rule. A home rule unit may not regulate
12 the registration of HVACR contractors in a manner less
13 restrictive than the regulation by the State under this Act.
14 This Section is a limitation under subsection (i) of Section 6
15 of Article VII of the Illinois Constitution on the concurrent
16 exercise by home rule units of powers and functions exercised
17 by the State.

18 Section 105. Municipal Reporting. A municipality that
19 regulates HVACR contractors shall report violations of the
20 applicable ordinances or rules to the Secretary not later than
21 30 days after the date on which the municipality takes action
22 to enforce the ordinance or rule. Violation of an applicable
23 municipal ordinance is a ground for the denial, suspension, or

1 revocation of a registration issued under this Act.

2 Section 110. Permits; municipality. A municipality that
3 has adopted an ordinance or resolution regulating HVACR
4 contractors may provide for its administration and enforcement
5 by requiring permits for any HVACR installation, the inspection
6 of HVACR installations by inspectors who are registered as
7 HVACR contractors in accordance with this Act, and the issuance
8 of certificates of approval or compliance that shall be
9 evidence that a HVACR system has been installed in compliance
10 with the standards required under this Act or by rule.

11 A municipality may, by ordinance or resolution, prescribe
12 reasonable fees for the issuance of permits for installation
13 work, the issuance of certificates of compliance or approval,
14 and for the inspection of HVACR installations.

15 Section 115. Inspections. The Department is authorized and
16 directed to make inspections necessary to determine compliance
17 with this Act and the rules adopted pursuant to this Act.

18 Subject to constitutional limitation, the Department, by
19 its representatives, after proper identification, is
20 authorized to enter at reasonable times, upon private and
21 public property for the purpose of inspecting and investigating
22 conditions relating to the enforcement of this Act and the
23 rules adopted pursuant to this Act.

1 Section 120. Exemptions and limitations.

2 (a) This Act does not apply to a person who:

3 (1) performs HVACR contracting in a building owned
4 solely by the person as the person's home;

5 (2) performs HVACR maintenance work if

6 (i) the person is a maintenance person or
7 maintenance engineer who is a regular bona fide
8 employee of the property owner, the property lessee, or
9 the management company managing the property where the
10 maintenance work is being performed;

11 (ii) the work is performed in connection with the
12 business in which the person is employed; and

13 (iii) the person and the person's employer
14 referred to in item (i) above do not engage in the
15 occupation of HVACR contracting for the general
16 public;

17 (3) is registered as a professional engineer under the
18 Professional Engineering Practice Act of 1989, performs
19 work in connection with the business in which the person is
20 employed, and does not engage in the practice of HVACR
21 contracting for the general public;

22 (4) performs process cooling or heating work for an
23 industrial operation when employed by that operation;

24 (5) performs air conditioning services only on a motor
25 vehicle or who employs a person who performs air
26 conditioning services only on a motor vehicle; or

1 (6) performs air conditioning and refrigeration
2 contracting on residential refrigerators, freezers, and
3 ice machines.

4 (b) A person registered under this Act may not perform or
5 offer or attempt to perform any act, service, or function that
6 is defined as the practice of engineering by the Professional
7 Engineering Practice Act of 1989, unless separately licensed
8 thereunder.

9 Section 130. The Regulatory Sunset Act is amended by adding
10 Section 4.30 as follows:

11 (5 ILCS 80/4.30 new)

12 Sec. 4.30. Act repealed on January 1, 2020. The following
13 Act is repealed on January 1, 2020:

14 The Heating, Ventilation, Air Conditioning, and
15 Refrigeration Contractor Registration Act.

16 Section 999. Effective date. This Act takes effect upon
17 becoming law.".