

MAINE STATE LEGISLATURE

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(EMERGENCY)

(New Draft of H.P. 1545, L.D. 2035)
(New Title)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2337

H.P. 1770

House of Representatives, March 22, 1984

Reported by Representative Brown from the Committee on Education
and printed under Joint Rule 2.

Original bill presented by Representative Manning of Portland.

Cosponsored by Senator Hayes of Penobscot, Senator Clark of Cumberland
and Representative Brannigan of Portland.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Clarify the Laws Relating to
Private Business, Trade and Technical Schools.

Emergency preamble. Whereas, Acts of the Legis-
lature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

Whereas, the approval and regulation of schools
of barbering and schools of cosmetology were repealed
by Public Law 1983, chapter 140; and

Whereas, there are no comprehensive statutes or
regulations in place to govern the operation of these
schools; and

Whereas, there were repealed inadvertently cer-
tain provisions of the Revised Statutes, Title 32 re-

1 lating to the issuing of student permits to student
2 barbers and cosmetologists in school clinics; and

3 Whereas, there were certain provisions of Title
4 32 regarding the regulation of schools of barbering
5 and cosmetology which inadvertently were not re-
6 pealed, causing confusion over the proper authority
7 for regulation of these schools; and

8 Whereas, in the judgment of the Legislature,
9 these facts create an emergency within the meaning of
10 the Constitution of Maine and require the following
11 legislation as immediately necessary for the preser-
12 vation of the public peace, health and safety; now,
13 therefore,

14 Be it enacted by the People of the State of Maine as
15 follows:

16 Sec. 1. 20-A, c. 323, first 2 lines are repealed
17 and the following enacted in their place:

18 CHAPTER 323

19 PRIVATE BUSINESS, TRADE AND TECHNICAL SCHOOLS

20 Sec. 2. 20-A MRSA §9501, as amended by PL 1983,
21 c. 140, §1, is further amended to read:

22 §9501. License; exemptions; definitions

23 1. Requirement of license. Any person, ~~partner-~~
24 ~~ship, corporation or school~~ located either within or
25 outside the State shall obtain a ~~certificate of~~
26 ~~approval~~ license from the commissioner before
27 ~~conducting~~ operating or maintaining any ~~course of~~
28 ~~instruction~~ proprietary school or before collecting
29 any tuition, fee or other charge for ~~conducting~~ oper-
30 ~~ating or maintaining~~ or soliciting for any ~~education-~~
31 ~~al services or related training~~ proprietary school
32 within the State.

33 2. Exemptions. Educational programs related to
34 the real estate professions which are subject to ap-
35 proval under Title 32, chapter 59, commercial driver

1 educational schools subject to approval by the Board
2 of Commercial Driver Education under Title 32, chap-
3 ter 95, educational programs offered by any Maine
4 nonprofit corporation, any educational programs of-
5 fered by any professional or trade association pri-
6 marily for the benefit of its own members and any
7 educational institution authorized by the laws of
8 this State to grant a degree are exempt from the re-
9 quirements of this chapter.

10 3. Definitions. As used in this section, unless
11 the context indicates otherwise, the following terms
12 have the following meanings.

13 A. "Person" includes a person, partnership, as-
14 sociation or corporation, but does not include
15 any public agency.

16 B. "Proprietary school" means a school as de-
17 defined in the rules of the commissioner, but
18 means, at a minimum, any school maintained or
19 course of instruction conducted for the purpose
20 of teaching any trade or any industrial, occupa-
21 tional, vocational, business or technical skill,
22 except as exempt under subsection 2.

23 Sec. 3. 20-A MRSA §9502, as enacted by PL 1981,
24 c. 693, §§5 and 8, is amended to read:

25 §9502. Application form; fee; bond

26 1. Application requirements; licensing; bonding
27 and revocation of license. The application for a
28 ~~certificate of approval license~~ required ~~in section~~
29 ~~9501~~ by this chapter shall be made on forms furnished
30 by the commissioner and shall be accompanied by a fee
31 of \$100, except as provided in section 9505 for
32 schools of barbering and cosmetology, and a surety
33 bond in the penal sum of ~~\$1,000~~ \$10,000.

34 A. A ~~certificate of approval~~ license is valid
35 for the calendar year in which it is issued.

36 B. The bond shall be continuous and shall pro-
37 vide indemnification to any student suffering
38 loss as a result of any fraud or misrepresenta-
39 tion. The bond shall provide for written notifi-

1 cation by the surety to the department
2 commissioner in the event of cancellation. Can-
3 cellation of the bond by the surety shall result
4 in the revocation of the certificate of approval
5 license.

6 2. Renewal fee. A fee of \$50 shall be charged
7 for the renewal of a certificate license, except as
8 otherwise provided in section 9505 for schools of
9 barbering and cosmetology.

10 3. General Fund. All fees collected for the is-
11 suance or renewal of a certificate license shall be
12 deposited in the State Treasury.

13 Sec. 4. 20-A MRSA §9503, as enacted by PL 1981,
14 c. 693, §§5 and 8, is repealed and the following en-
15 acted in its place:

16 §9503. Penalties

17 1. Fines. Any person, who operates or maintains
18 a proprietary school in violation of this chapter, or
19 represents itself as operating and maintaining such a
20 school, is subject to a civil penalty of not more
21 than \$5,000, payable to the State, to be recovered in
22 a civil act.

23 2. Enforcement actions. The State may bring an
24 action in Superior Court to enjoin any person from
25 violating this chapter, regardless of whether pro-
26 ceedings have been or may be instituted in the Admin-
27 istrative Court or whether criminal proceedings have
28 been or may be instituted.

29 Sec. 5. 20-A MRSA §9504, as enacted by PL 1981,
30 c. 693, §§5 and 8, is amended to read:

31 §9504. Rules

32 The commissioner may adopt rules for the adminis-
33 tration and enforcement of this chapter. The rules
34 may establish requirements relating to advertising,
35 records and recordkeeping, health and sanitation,
36 safety, personnel, tuition, fees, contracts and oth-
37 er matters which may protect the public and consumer
38 interests.

1 Sec. 6. 20-A MRSA §§9505 to 9507 are enacted to
2 read:

3 §9505. Regulation of schools of barbering and
4 schools of cosmetology

5 The commissioner shall adopt rules for the li-
6 censing of persons to maintain and operate schools of
7 barbering and schools of cosmetology which shall in-
8 clude standards relating to educational programs, in-
9 structor qualifications and physical facilities. An
10 annual fee not to exceed \$500 shall be charged the
11 schools for the cost of that regulation.

12 §9506. License; refusal to renew; suspension; revo-
13 cation

14 The commissioner may investigate complaints in-
15 volving a school, including any allegation of noncom-
16 pliance with or violation of this chapter and appli-
17 cable rules. The commissioner may, after a hearing
18 in conformance with Title 5, chapter 375, subchapter
19 IV, to the extent applicable, amend, modify or refuse
20 to renew any license and may revoke, suspend or
21 refuse to renew a license as provided in Title 5,
22 section 10004.

23 The Administrative Court may suspend or revoke
24 the license of any person found to have violated any
25 provision of this chapter or any lawful order or rule
26 issued by the commissioner.

27 §9507. Hearings

28 The commissioner shall not refuse to renew a li-
29 cence for any reason other than failure to pay the
30 required fee, unless the licensee has been given an
31 opportunity for a hearing.

32 Hearings may also be conducted by the commission-
33 er, at the commissioner's discretion, to assist with
34 investigations of complaints, to determine whether
35 grounds exist for suspension, revocation, denial or
36 nonrenewal of any license, or as otherwise deemed
37 necessary to fulfill the responsibilities under this
38 chapter.

1 The commissioner may subpoena witnesses, records
2 and documents in any hearing conducted pursuant to
3 this chapter.

4 Sec. 7. 32 MRSA §301, sub-§1, ¶C, as amended by
5 PL 1967, c. 137, is further amended to read:

6 C. Singeing, dyeing, tinting, bleaching or
7 shampooing the hair or applying cosmetic prepara-
8 tions to the hair, scalp, face, neck or upper
9 part of the body; ~~such dyeing, tinting or bleach-~~
10 ~~ing shall not be practiced unless the barber has~~
11 ~~taken a course in such practices, approved by the~~
12 ~~board;~~

13 Sec. 8. 32 MRSA §301, sub-§2 is amended to read:

14 2. Apprentice or student barber. "Apprentice
15 barber" ~~shall mean~~ means any person who is engaged in
16 learning and acquiring a knowledge of the practice of
17 barbering under the direction and supervision of a
18 person duly authorized licensed under this chapter to
19 practice barbering. "Student barber" means any per-
20 son who is engaged in learning and acquiring a knowl-
21 edge of the practice of barbering as a duly enrolled
22 student in a school of barbering licensed by the Com-
23 missioner of Educational and Cultural Services.

24 Sec. 9. 32 §352, sub-§2, as amended by PL 1983,
25 c. 339, §3 and as repealed and replaced by PL 1983,
26 c. 413, §25, is repealed and the following enacted
27 in its place:

28 2. Rules. The board shall adopt rules pursuant
29 to the authority vested in it by this chapter, sub-
30 ject to the Maine Administrative Procedure Act, Title
31 5, chapter 375, except as otherwise provided in this
32 subsection and subject to the approval of the Commis-
33 sioner of Human Services.

34 The rules shall include, but not be limited to, the
35 following matters:

36 A. The proper use of appliances, apparatus and
37 electrical machines used in any establishment in
38 connection with the practice of barbering, as def-
39 ined in section 301;

1 B. The sanitary requirements for proprietors of
2 barber shops and persons engaged in the practice
3 of barbering, as defined in section 301; and

4 C. Requirements for licenses and certificates of
5 registration consistent with this chapter.

6 The rules may also include reasonable requirements,
7 including sanitary standards, to govern the practice
8 of barbering by persons outside of licensed shops, as
9 authorized by section 302, subsection 2.

10 A copy of all valid rules issued by the board shall
11 be sent to all persons licensed or registered under
12 this chapter.

13 Sec. 10. 32 MRSA §352, sub-§4, as enacted by PL
14 1977, c. 398, §8, is amended to read:

15 4. Diseases. No person ~~shall~~ who has a communi-
16 cable disease may give service in any barber shop or
17 school ~~who has a disease in a communicable stage.~~ The
18 board shall have the right to require the physical
19 examination of any person who, while employed in any
20 such barber shop or school, is suspected of having
21 any ~~contagious or infectious~~ communicable disease.
22 Failure to submit to such an examination shall be
23 grounds for suspension or revocation of the person's
24 certificate of registration, license or permit.

25 Sec. 11. 32 MRSA §353 is amended to read:

26 §353. Register

27 The board shall keep a register in which shall be
28 entered the names of all persons to whom certificates
29 and licenses and permits are issued under this chap-
30 ter and ~~said~~ that register shall be at all times open
31 to public inspection.

32 Sec. 12. 32 MRSA §401, 7th ¶, as amended by PL
33 1979, c. 694, §2, is further amended to read:

34 Each student upon enrollment in an approved a
35 school of barbering licensed by the Commissioner of
36 Educational and Cultural Services shall make written
37 application for a student permit therefor on a form

1 prescribed and supplied by the board. The application
2 shall contain satisfactory evidence of the qualifica-
3 tions required of the applicant under this chapter
4 and shall be notarized. The applicant shall pay to
5 the secretary of the board a fee of \$5 and the permit
6 shall expire with termination or completion of the
7 school course for which the permit was obtained. No
8 permit shall may be issued to a person who has not
9 attained 17 years of age.

10 Sec. 13. 32 MRSA §401, as amended by PL 1979, c.
11 694, §§1 and 2, is further amended by adding at the
12 end a new paragraph to read:

13 A student permit shall not be required of an ap-
14 prentice who obtains a certificate of registration
15 pursuant to section 405.

16 Sec. 14. 32 MRSA §402, sub-§3, as repealed and
17 replaced by PL 1977, c. 398, §9, is amended to read:

18 3. Training. Who has satisfactorily completed a
19 course of instruction of 1,500 hours in not less than
20 9 months in a school of barbering approved licensed
21 by the board Commissioner of Educational and Cultural
22 Services, or in lieu thereof has had a total experi-
23 ence as an apprentice in the practice of barbering of
24 2,500 hours distributed over a period of at least 18
25 months; and

26 Sec. 15. 32 MRSA §402, 2nd ¶, as repealed and
27 replaced by PL 1977, c. 398, §9, is amended to read:

28 Any person licensed as a cosmetologist pursuant
29 to chapter 23 and who has satisfactorily completed a
30 course of instruction of at least 500 hours in a
31 school of barbering approved licensed by the board
32 Commissioner of Educational and Cultural Services, or
33 in lieu thereof has had a total experience as an ap-
34 prentice in the practice of barbering of at least 900
35 hours, shall be entitled to take the examination,
36 upon payment of the fees prescribed in this section.

37 Sec. 16. 32 MRSA §1551, sub-§5, as enacted by PL
38 1977, c. 398, §10, is amended to read:

1 5. Apprentice cosmetologist. "Student or
2 apprentice "Apprentice cosmetologist" shall mean
3 means any person who is engaged in learning and ac-
4 quiring a knowledge of the practice of cosmetology
5 under the direction and supervision of a person duly
6 authorized licensed under this chapter to teach
7 practice cosmetology and under in accordance with the
8 rules and regulations of the board relating to stu-
9 dents and apprentices.

10 Sec.17. 32 MRSA §1551, sub-§6 is enacted to
11 read:

12 6. Student cosmetologist. "Student cosmetolo-
13 gist" means any person who is engaged in learning and
14 acquiring a knowledge of the practice of cosmetology
15 as a duly enrolled student in a school of cosmetology
16 licensed by the Commissioner of Educational and Cul-
17 tural Services.

18 Sec. 18. 32 MRSA §1602, sub-§4, as enacted by PL
19 1977, c. 398, §10, is amended to read:

20 4. Diseases. No person shall who has a communi-
21 cable disease may give service in any beauty shop or
22 school of cosmetology who has a disease in a communi-
23 eable stage. The board shall have the right to re-
24 quire the physical examination of any person who,
25 while employed in any such beauty shop or school, is
26 suspected of having any ~~contagious or infectious~~
27 communicable disease. Failure to submit to such an
28 examination shall be grounds for suspension or revo-
29 cation of the person's certificate of registration,
30 license or permit.

31 Sec. 19. 32 MRSA §1603, as repealed and replaced
32 by PL 1977, c. 398, §10, is amended to read:

33 §1603. Register of names

34 The board shall keep a register in which shall be
35 entered the names of all persons to whom certifi-
36 cates, licenses and permits are issued under this
37 chapter and ~~said~~ that register shall be at all times
38 open to public inspection.

1 Sec. 20. 32 MRSA §1652, sub-§3, as repealed and
2 replaced by PL 1977, c. 398, §10, is amended to
3 read:;

4 3. Training. Who has satisfactorily completed a
5 course of instruction of 1,500 hours in not less than
6 9 months in a school of cosmetology approved licensed
7 by the ~~board~~ Commissioner of Educational and Cultural
8 Services, or in lieu thereof has had a total experi-
9 ence in the practice of cosmetology or as an appren-
10 tice of 2,500 hours distributed over a period of at
11 least 18 months; and

12 Sec. 21. 32 MRSA §1652, 2nd ¶, as repealed and
13 replaced by PL 1977, c. 398, §10, is amended to
14 read:

15 Any person licensed as a barber pursuant to chap-
16 ter 7 and who has satisfactorily completed a course
17 of instruction of at least 500 hours in a school of
18 cosmetology approved licensed by the ~~board~~ Commis-
19 sioner of Educational and Cultural Services, or in
20 lieu thereof has had a total experience in the prac-
21 tice of cosmetology as an apprentice of at least 900
22 hours, shall be entitled to take the examination upon
23 payment of the fees prescribed in this section.

24 Sec. 22. 32 MRSA §1654, last ¶, as enacted by PL
25 1981, c. 92, is repealed.

26 Sec. 23. 32 MRSA §1655-A is enacted to read:

27 §1655-A. Student cosmetologists

28 The board shall furnish each student cosmetolo-
29 gist with a student permit upon the student's comple-
30 tion and filing of an application form supplied by
31 the board which demonstrates the students's eligibil-
32 ity for this permit.

33 To be eligible for a student permit, a student
34 cosmetologist must be at least 16 years of age and
35 have completed the 10th grade in a secondary school.
36 The application shall include evidence of the student
37 cosmetologist's enrollment in a school of cosmetology
38 licensed by the Commissioner of Educational and Cul-
39 tural Services. The student shall pay a registration
40 fee of \$5.

1 Section 6 contains the intent of the original
2 bill, directing the commissioner to adopt certain ad-
3 ditional rules to regulate the operation of schools
4 of barbering and cosmetology. Because of the esti-
5 mated additional expense for such a regulation, these
6 schools will be charged a higher fee than other pro-
7 prietary schools.

8 Section 6 also transfers language from the Re-
9 vised Statutes, Title 32 to Title 20-A to regulate
10 schools, essentially restating provisions of the
11 Maine Administrative Procedure Act, Title 5, chapter
12 375.

13 Section 7 repeals reference to a 2nd license for
14 barbers for certain practices because that license is
15 no longer issued by the Board of Barbers.

16 Sections 8 to 23 make corrections to the Revised
17 Statutes, Title 32 governing schools of barbering and
18 cosmetology which were overlooked or caused by the
19 simultaneous enactments of Public Law 1983, chapters
20 140, 339 and 413.

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