

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 842, L.D. 2134)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 2396

8 S.P. 956

In Senate, April 12, 1986

9 Reported by Senator Bustin of Kennebec from the Committee on
10 Business and Commerce and printed under Joint Rule 2. Original bill
11 sponsored by Senator Clark of Cumberland. Cosponsored by Representative
Davis of Monmouth, Representative Rolde of York and Representative
Joseph of Waterville.

JOY J. O'BRIEN, Secretary of the Senate

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-SIX
17

18 AN ACT to Strengthen Professional Regulation.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL
23 1983, c. 171, §1, is further amended to read:

24 2. Licensing jurisdiction. Except as provided in
25 Title 5, section 10004; Title 10, section 8003-A; Ti-
26 tle 29, ~~chapter 17~~; Title 32, ~~chapter 59~~; and Title
27 35, section 13-A, the Administrative Court shall have
28 exclusive jurisdiction upon complaint of an agency
29 or, if the licensing agency fails or refuses to act
30 within a reasonable time, upon complaint of the At-
31 torney General, to revoke or suspend licenses issued
32 by the agency, and shall have original jurisdiction
33 upon complaint of a licensing agency to determine
34 whether renewal or reissuance of a license of that
35 agency may be refused.

1 Notwithstanding any other provisions of law, no li-
2 censing agency ~~shall~~ may have the authority to rein-
3 state or otherwise affect a license suspended, re-
4 voked or modified by the Administrative Court pursu-
5 ant to a complaint filed by the Attorney General,
6 without the approval of the Attorney General.

7 Sec. 2. 4 MRSA §1151, sub-§2-A, as enacted by PL
8 1983, c. 171, §2, is repealed and the following en-
9 acted in its place:

10 2-A. Appellate jurisdiction. The Administrative
11 Court shall have exclusive jurisdiction to review
12 disciplinary decisions of occupational licensing
13 boards and commissions taken pursuant to Title 10,
14 section 8003. The Maine Administrative Procedure
15 Act, Title 5, chapter 375, subchapter VII, shall gov-
16 ern this procedure as far as applicable, substituting
17 "Administrative Court" for "Superior Court."

18 Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL
19 1983, c. 818, §1, is further amended to read:

20 1. Jurisdiction. Except as provided in section
21 10004; Title 10, section 8003; Title 29; Title 32,
22 chapter 59; and Title 35, section 13-A, the Adminis-
23 trative Court shall have exclusive jurisdiction upon
24 complaint of any agency or, if the licensing agency
25 fails or refuses to act within a reasonable time,
26 upon complaint of the Attorney General to revoke or
27 suspend licenses issued by the agency and shall have
28 original jurisdiction upon complaint of an agency to
29 determine whether renewal or reissuance of a license
30 of that agency may be refused.

31 Sec. 4. 5 MRSA §10051, sub-§3, as enacted by PL
32 1983, c. 171, §4, is repealed and the following en-
33 acted in its place:

34 3. Appellate jurisdiction. The Administrative
35 Court shall have exclusive jurisdiction to review
36 disciplinary decisions of occupational licensing
37 boards and commissions taken pursuant to Title 10,
38 section 8003. The Maine Administrative Procedure
39 Act, chapter 375, subchapter VII, shall govern these
40 proceedings as far as applicable, substituting "Ad-
41 ministrative Court" for "Superior Court."

1 Sec. 5. 5 MRSA §12004, sub-§1, ¶A, sub-¶(3-A) is
2 enacted to read:

3 (3-A) Board of Licensing \$30/Day 32 MRSA §271
4 of Auctioneers

5 Sec. 6. 5 MRSA §12004, sub-§1, ¶A, sub-¶¶(17),
6 (18) and (32-A) are repealed.

7 Sec. 7. 5 MRSA §12004, sub-§1, ¶A, sub-¶(40), as
8 enacted by PL 1985, c. 295, §14, and c. 496, Pt. A,
9 §1, is repealed and the following enacted in its
10 place:

11 (40) Board of Underground Expenses only 32 MRSA §100.
12 Oil Storage Tank
13 Installers

14 Sec. 8. 5 MRSA §12004, sub-§1, ¶A, sub-¶(41) is
15 repealed.

16 Sec. 9. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶(23-A)
17 and (23-B) are enacted to read:

18 (23-A) Environment: Advisory Board for Expenses 12 MRS
19 Natural Re- the Licensing of Only \$7301
20 sources Guides

21 (23-B) Environment: Junior Maine Expenses 12 MRS
22 Natural Re- Guides and Trip Only \$7302
23 sources Leaders' Curri-
24 culum Advisory
25 Board

26 Sec. 10. 5 MRSA §12004, sub-§10, ¶A, sub-¶(44-A)
27 is enacted to read:

28 (44-A) Human Ser- Advisory Board for Expenses 22 MRS
29 vices: Pub- Licensure of Water Only \$2524
30 lic Health Treatment Plant
31 Operators

32 Sec. 11. 5 MRSA §12004, sub-§10, ¶A, sub-¶(66)
33 is repealed.

34 Sec. 12. 5 MRSA §12004, sub-§13, ¶A, sub-¶(3-A)
35 is enacted to read:

1 (3-A) Joint Committee of See subsection 1, 32 MRSA
2 Licensure-Certifi- paragraph A, sub- §3840
3 cation for School paragraph (33) and
4 Psychological Ser- subsection 8, para-
5 vices graph A, subpara-
6 graph (3)

7 Sec. 13. 5 MRSA §12015, sub-§3 is enacted to
8 read:

9 3. Occupational or professional licensing
10 boards; preauthorization review. Any joint standing
11 committee of the Legislature which considers legisla-
12 tion to establish a board to license or otherwise
13 regulate an occupational profession not previously
14 regulated or to substantially expand the scope of the
15 functions or practices regulated by an existing occu-
16 pational or professional licensing board shall evalu-
17 ate whether the occupation should be regulated or
18 further regulated. Any recommendation to the full
19 Legislature for the establishment or expansion of ju-
20 risdiction of such a board shall include a concise
21 written report addressing:

22 A. The nature of the potential harm to the pub-
23 lic if the occupation or activity is not regu-
24 lated and the extent to which there is a threat
25 to the public health or safety;

26 B. The extent to which existing legal remedies
27 are inadequate to prevent or redress the kinds of
28 harm potentially resulting from nonregulation;

29 C. The extent to which the public is guided in
30 selecting competent practitioners by private cer-
31 tifications, membership in professional or occu-
32 pational associations or academic credentials;

33 D. The extent to which the occupation or profes-
34 sion has made efforts to regulate itself by adop-
35 tion of standards of performance, a code of eth-
36 ics or methods of resolving disputes with consum-
37 ers of their services;

38 E. The nature of the standards proposed for
39 granting a license, as compared with the stan-
40 dards adopted in other jurisdictions, and the au-

1 thority of the proposed regulatory board to amend
2 those standards or establish new standards;

3 F. The qualifications of members of the proposed
4 regulatory board; and

5 G. The extent to which the harms expected to re-
6 sult from continued nonregulation may reasonably
7 be expected to be reduced by the program of regu-
8 lation proposed.

9 Sec. 14. 10 MRSA Pt. 9, first 2 lines are re-
10 pealed and the following enacted in their place:

11 PART 9

12 DEPARTMENT OF PROFESSIONAL AND FINANCIAL

13 REGULATION

14 Sec. 15. 10 MRSA §8001, as repealed and replaced
15 by PL 1985, c. 233, §2; c. 288, §2; and c. 389, §6,
16 is repealed and the following enacted in its place:

17 §8001. Department; organization

18 There is created and established the Department
19 of Professional and Financial Regulation, in this
20 chapter referred to as the "department," to regulate
21 financial institutions, insurance companies, commer-
22 cial sports, grantors of consumer credit and to li-
23 cence and regulate professions and occupations. The
24 department shall be composed of the following bu-
25 reaus, boards and commissions:

26 Banking, Bureau of;

27 Consumer Credit Protection, Bureau of;

28 Insurance, Bureau of;

29 Athletic Commission, Maine;

30 Pilotage Commission, Maine State;

31 Real Estate Commission;

1 Running Horse Racing Commission, State;
2 Arborist Examining Board;
3 Auctioneers, Board of Licensing of;
4 Barbers, State Board of;
5 Commercial Driver Education, Board of;
6 Dietetic Practice, Board of Registration of;
7 Electricians' Examining Board;
8 Foresters, State Board of Registration for Pro-
9 essional;
10 Funeral Service, State Board of;
11 Geologists and Soil Scientists, State Board of
12 Certification for;
13 Hearing Aid Dealers and Fitters, Board of;
14 Manufactured Housing Board;
15 Nursing Home Administrators Licensing Board;
16 Occupational Therapy Practice, Board of;
17 Oil and Solid Fuel Board;
18 Physical Therapy, Board of Examiners in;
19 Plumbers' Examining Board;
20 Psychologists, State Board of Examiners of;
21 Respiratory Care Practitioners, Board of;
22 Social Worker Registration, State Board of;
23 Speech Pathology and Audiology, Board of Examin-
24 ers on; and
25 Substance Abuse Counselors, Board of Registration
26 of.

1 Sec. 16. 10 MRSA §8002, sub-§5, as repealed and
2 replaced by PL 1975, c. 767, §9, is amended to read:

3 5. Liaison. Act as a liaison ~~between~~ among the
4 bureaus, boards and commissions within and affiliated
5 with the department and act as liaison between them
6 and the Governor.

7 Sec. 17. 10 MRSA §8002, last ¶, as repealed and
8 replaced by PL 1977, c. 564, §49, is amended to read:

9 The commissioner shall not have the authority to
10 exercise or interfere with the exercise of discre-
11 tionary regulatory or licensing authority granted by
12 statute to the bureaus, boards or commissions within
13 or affiliated with the department set forth in sec-
14 tion 8001.

15 Sec. 18. 10 MRSA §8003, sub-§5, as repealed and
16 replaced by PL 1983, c. 553, §13, is amended to read:

17 5. Authority of bureaus, boards or commissions.
18 Nothing in this section may be construed to diminish
19 or deprive any bureau, board or commission within the
20 department of its statutory duty and sole authority
21 to regulate its profession, occupation or industry.

22 In addition to authority otherwise conferred, unless
23 expressly precluded by language of denial in its own
24 governing law, each licensing board and commission
25 within the department may:

26 A. Suspend a violator's license for up to 90
27 days, or impose a civil penalty of up to \$500,
28 for any violation of the applicable laws, rules
29 or license terms under its jurisdiction; or

30 B. Execute a consent agreement, with the consent
31 of all parties and the counsel to the licensing
32 board or commission, to resolve any complaint or
33 investigation without further proceedings. Any
34 remedy that is otherwise available by law may be
35 achieved by consent agreement, including tempo-
36 rary or permanent surrender of an occupational
37 license. A consent agreement is not subject to
38 review or appeal. A consent agreement is enforce-
39 able by an action in Superior Court.

1 The jurisdiction to suspend occupational licenses
2 conferred by this subsection shall be concurrent with
3 that of the Administrative Court. Civil penalties
4 shall be paid to the Treasurer of State.

5 Any nonconsensual disciplinary action taken under au-
6 thority of this subsection may be imposed only after
7 a hearing conforming to the requirements of Title 5,
8 chapter 375, subchapter IV, and shall be subject to
9 judicial review exclusively in the Administrative
10 Court in accordance with Title 5, chapter 375, sub-
11 chapter VII, substituting the term "Administrative
12 Court" for "Superior Court," notwithstanding any oth-
13 er provision of law.

14 Sec. 19. 10 MRSA §8003-A is enacted to read:

15 §8003-A. Complaint investigation

16 In aid of their investigative authority, all
17 boards and commissions within or affiliated with the
18 department may issue subpoenas in the name of the
19 relevant licensing board or commission, in accordance
20 with the terms of Title 5, section 9060, except that
21 the authority shall apply to any stage of an investi-
22 gation and shall not be limited to an adjudicatory
23 proceeding.

24 Licensing boards and commissions within or affil-
25 iated with the department, upon disposition of each
26 complaint and investigation, shall make such disposi-
27 tion available to the public.

28 With respect to any occupation within or affili-
29 ated with the department, the department may join or
30 subscribe to any national disciplinary record system
31 and report disciplinary actions taken within this
32 State to any such system.

33 Sec. 20. 12 MRSA §7301, sub-§1, as amended by PL
34 1983, c. 812, §89, is further amended to read:

35 1. Examining board. A The Advisory Board of
36 Examiners for the Licensing of Guides, established by
37 Title 5, section 12004, subsection 10, shall con-
38 sist of the following:

1 A. ~~The commissioner or such~~ One subordinate of-
2 ficer of the department as designated by the com-
3 missioner ~~may designate~~;

4 B. Two wardens of the department; and

5 C. A representative of the public to be ap-
6 pointed by the Governor for a term of 3 years.
7 The public member shall be compensated as pro-
8 vided in Title 5, chapter 379.

9 Sec. 21. 12 MRSA §7301, sub-§1-A, as amended by
10 PL 1983, c. 797, §9, is further amended to read:

11 1-A. Rules. The commissioner, with the advice
12 and consent of the advisory board of examiners, shall
13 make such rules pertaining to the licensing of guides
14 as he deems necessary, including safety standards to
15 provide the clients of guides reasonable protection
16 from hazards.

17 Sec. 22. 12 MRSA §7301, sub-§3, as repealed and
18 replaced by PL 1983, c. 100, §2, is amended to read:

19 3. Application. Any person wishing to be li-
20 censed as a Maine guide shall submit an application
21 on such forms as the commissioner may provide.

22 In addition to other relevant information, the com-
23 missioner may require statements that the applicant
24 is competent; has no habitual intemperance in the use
25 of alcohol, habitual use of narcotic, hypnotic or
26 other drugs listed as controlled substances by the
27 Drug Enforcement Administration; and has not received
28 and retained a fee from a party and then failed to
29 meet that party as agreed or failed to provide the
30 services agreed to.

31 The commissioner may adopt rules to establish stan-
32 dards of competency which shall be provided to each
33 applicant and other rules necessary to administer
34 this subsection.

35 Failure or refusal to satisfactorily answer any ques-
36 tion in the application shall be a basis for denying
37 the application.

1 The board commissioner shall act on all applications
2 within 5 working days of receipt, and shall notify
3 all applicants at least 2 weeks prior to the examina-
4 tion.

5 Sec. 23. 12 MRSA §7301, sub-§4, as amended by PL
6 1983, c. 100, §3, is further amended to read:

7 4. Examinations. All persons who have not held a
8 guide's license prior to January 1, 1980, shall be
9 required to pass an examination as directed by the
10 board of examiners commissioner. Examinations shall
11 be held in areas designated by the commissioner.

12 In addition, the commissioner may require any li-
13 censed guide to be examined or reexamined if the com-
14 missioner receives written complaint and upon inves-
15 tigation believes that the statements made by the ap-
16 plicant on his application are no longer true.

17 Sec. 24. 12 MRSA §7302, as amended by PL 1985,
18 c. 304, §15, is further amended to read:

19 §7302. Junior Maine guides and trip leaders; curric-
20 ulum advisory board

21 1. Advisory board. The commissioner, as autho-
22 rized by Title 5, section 12004, subsection 10, shall
23 appoint a board of 5 members, to be known as the
24 "Junior Maine Guides and Trip Leaders' Curriculum
25 Advisory Board." The board shall consist of one mem-
26 ber from the Department of Inland Fisheries and Wild-
27 life, one member from the Department of Human Ser-
28 vices and 3 public members, one of whom shall be a
29 Maine camp director. The public members shall be com-
30 pensated as provided in Title 5, chapter 379. Ap-
31 pointments to the board shall be for 3 years or until
32 successors are appointed.

33 2. Requirements. The board shall hold such meet-
34 ings as may be necessary and shall advise the commis-
35 sioner on adoption of rules for the administration of
36 this section and section 7303. The With the advice of
37 the board, the commissioner shall establish standards
38 of requirements and methods of ascertaining fitness
39 of candidates for a junior Maine guide certificate-
40 The board and shall also adopt, approve and review

1 trip leaders' safety course curriculum which shall
2 include, but not be limited to, training in first aid
3 and water safety, including lifesaving techniques, as
4 appropriate, and trip leaders' qualifications under
5 the special application procedure in section 7303.

6 3. Eligibility for junior guides. To qualify as
7 a junior guide, a person shall be 14 years of age or
8 older and under 18 years of age and shall pass the
9 required examinations. A junior guide permit shall be
10 presented by the commissioner to those who qualify.

11 4. Restrictions.

12 A. No junior guide ~~shall~~ may receive remunera-
13 tion for services; and

14 B. No junior guide ~~shall~~ may compete in any way
15 with regular Maine guides.

16 Sec. 25. 22 MRSA §2621, as amended by PL 1983,
17 c. 819, Pt. A, §55, is further amended to read:

18 §2621. Definitions

19 As used in this subchapter, unless the context
20 otherwise indicates, the following words have the
21 following meanings.

22 1. Board. "Board" means the Advisory Board for
23 Licensure of Water Treatment Plant Operators referred
24 to in this subchapter.

25 2. License. "License" means a license issued by
26 the ~~board~~ commissioners stating that the applicant
27 has met the requirements for the specified operator
28 classification.

29 Sec. 26. 22 MRSA §2624, as amended by PL 1985,
30 c. 295, §§35 and 36, is further amended to read:

31 §2624. Advisory Board of Licensure

32 The Governor shall appoint ~~a~~ an Advisory Board of
33 for Licensure of Water Treatment Plant Operators, as
34 authorized by Title 5, chapter 379, which shall be
35 composed of 6 persons as follows: Two operators who

1 shall be licensed under this chapter, with one of
2 these holding a license of the highest classification
3 issued by the board; one person who shall be from the
4 Department of Human Services, as the commissioner may
5 recommend; one person who shall be a water utility
6 management representative; one person who shall be an
7 educator whose field of interest is related to water
8 supply; and one member of the general public.

9 Each member of the board, with the exception of
10 the ex officio member from the Department of Human
11 Services, shall be appointed for a 3-year term. Va-
12 cancies shall be filled by appointment of the Gover-
13 nor for unexpired terms.

14 Members of the board, shall elect from their num-
15 ber a chairman at the first meeting of each year. ~~On~~
16 ~~all matters before the board, the chairman may vote~~
17 ~~only in case of a tie among the other members present~~
18 ~~and voting. Thereafter, annually, a chairman shall~~
19 ~~be elected.~~ The Department of Human Services repre-
20 sentative of the board shall serve as secretary of
21 the board and be responsible for maintaining records
22 and providing administrative support.

23 The board shall design and the commissioner shall
24 hold at least one examination each year at a time and
25 place designated ~~by them~~ for the purpose of examining
26 candidates for licensure. ~~Additional meetings~~ Meet-
27 ings of the board may be called by the chairman, or
28 by him at the request of any other 2 members, as may
29 be necessary to carry out this chapter.

30 Members of the board shall be compensated accord-
31 ing to Title 5, chapter 379.

32 The commissioner, with the advice of the board,
33 shall license persons to supervise the operation of a
34 public water system or of a part of a system.

35 The ~~board~~ commissioner, with the advice of the
36 ~~commissioner~~ board, shall establish by regulation the
37 qualifications, conditions and licensing standards
38 and procedures for the licensure of individuals to
39 act as operators.

40 Sec. 27. 22 MRSA §2625, as amended by PL 1983,
41 c. 819, Pt. A, §55, is further amended to read:

1 §2625. Licenses

2 The beard commissioner shall issue biennial li-
3 censes to individuals to act as operators. The li-
4 cense shall indicate the classification level of the
5 systems or parts of systems for the operation of
6 which the individual is qualified to act as an opera-
7 tor.

8 The beard commissioner may file a complaint with
9 the Administrative Court to revoke a license of an
10 operator when ~~the beard~~ he determines that the opera-
11 tor has practiced fraud or deception; that he has
12 been negligent in that reasonable care, judgment or
13 the application of his knowledge or ability was not
14 used in the performance of his duties; or that the
15 operator is incompetent or unable to perform his du-
16 ties properly.

17 The licenses of operators who terminate their em-
18 ployment at a public water system shall remain renew-
19 able for 3 years. After 3 years, the licenses shall
20 be automatically invalidated. Operators whose li-
21 censes are invalidated under this section may be is-
22 sued new licenses of a like classification provided
23 appropriate proof of competency is presented to the
24 beard commissioner.

25 This chapter shall not be construed to effect or
26 prevent the practices of any other legally recognized
27 profession.

28 When the unexpired term of license of an appli-
29 cant is or will be more than one year at the time of
30 licensure, the beard commissioner may require the ap-
31 plicant to pay an additional fee not to exceed 1/2
32 the biennial license fee.

33 Applications for a first examination shall be re-
34 ceived by the board chairman at least 5 days prior to
35 a scheduled meeting of the beard the examination.
36 The passing grade on any portion of the examination
37 shall be not less than 70%. A candidate failing one
38 examination may apply for reexamination, which may be
39 granted upon payment of a fee established by ~~the~~
40 beard regulation. Any candidate for registration
41 having an average grade of less than 50% may not ap-
42 ply for reexamination for 6 months.

1 Sec. 28. 22 MRSA §2625-A, as enacted by PL 1983,
2 c. 819, Pt. A, §55, is amended to read:

3 §2625-A. Renewals

4 All licenses shall expire on December 31st of
5 each biennial period and may be renewed thereafter
6 for 2-year periods without further examination, upon
7 the payment of the proper renewal fee as set forth in
8 the ~~board's~~ rules. Any person who fails to renew his
9 license within the 6-month grace period following the
10 expiration date shall be required to take an examina-
11 tion.

12 The board commissioner shall notify everyone reg-
13 istered under this subchapter of the date of expira-
14 tion of his license and the fee required for its re-
15 newal for a 2-year period. The notice shall be
16 mailed to the person's last-known address at least 30
17 days in advance of the expiration date of his li-
18 cense.

19 Sec. 29. 22 MRSA §§2626, 2628 and 2629, as
20 amended by PL 1983, c. 819, Pt. A, §55, are further
21 amended to read:

22 §2626. License from outside of Maine

23 The board commissioner, upon application there-
24 for, may issue a license without examination, in a
25 comparable classification, to any person who holds a
26 license in any state, territory or possession of the
27 United States or any country, providing the require-
28 ments for licensure of operators under which the
29 person's license was issued does not conflict with
30 this chapter and in the opinion of the commissioner,
31 with the advice of the board, are of a standard not
32 lower than that specified by regulations adopted un-
33 der this chapter.

34 §2628. Rules

35 The board commissioner, with the advice of the
36 ~~commissioner~~ board, in accordance with any other ap-
37 propriate state laws, shall make such rules as are
38 reasonably necessary to carry out the intent of this
39 subchapter. The rules shall include, but are not lim-

1 ited to, provisions establishing requirements for li-
2 censure and procedures for examination of candidates
3 and such other provisions as are necessary for the
4 administration of this subchapter.

5 §2629. Fees

6 The application fees, biennial renewal fees and
7 reinstatement fees shall be established by the ~~board~~
8 ~~commissioner~~ by rule and shall be based upon differ-
9 ent classifications of water treatment systems and
10 the levels of competence to operate various water
11 systems. The application fee shall not exceed \$35,
12 and the biennial renewal fee shall not exceed \$30.
13 ~~The revenues derived from the fees shall be deposited~~
14 ~~by the board in a special account to be used to de-~~
15 ~~fray the expenses incurred by the board.~~ Revenues de-
16 rived from applicants failing the examination shall
17 be retained by the board.

18 Sec. 30. 32 MRSA §271, as amended by PL 1985, c.
19 389, §9, is repealed and the following enacted in its
20 place:

21 §271. Board of Licensing of Auctioneers

22 The Board of Licensing of Auctioneers, as estab-
23 lished by Title 5, section 12004, subsection 1, shall
24 be composed of 3 members, 2 of whom shall be auction-
25 eers and one of whom shall be a public member. Mem-
26 bers shall be compensated according to Title 5, chap-
27 ter 379.

28 Appointments shall be made by the Governor for
29 3-year terms, with no person being eligible to serve
30 more than 3 full consecutive terms, provided that for
31 this purpose only a period actually served which ex-
32 ceeds 1/2 of the 3-year term shall be deemed a full
33 term. Upon expiration of a member's term, he shall
34 serve until his successor is qualified and appointed.
35 The successor's term shall be 3 years from the date
36 of the expiration, regardless of the date of his ap-
37 pointment. Any vacancy shall be filled by appoint-
38 ment for the unexpired term. A board member may be
39 removed by the Governor for cause.

40 The board shall meet at least once a year and at
41 such other times as the board deems necessary.

1 The board may, in accordance with the procedures
2 established by the Maine Administrative Procedure
3 Act, Title 5, chapter 375, subchapter II, adopt such
4 rules as may be reasonably necessary for the proper
5 administration of this chapter.

6 Sec. 31. 32 MRSA §271-A, as enacted by PL 1983,
7 c. 824, Pt. S, is amended to read:

8 §271-A. Disposition of fees

9 All fees received by the ~~commissioner~~ under this
10 chapter shall be paid to the Treasurer of State to be
11 used for carrying out ~~Title 10, chapter 901~~ the pur-
12 poses of this chapter. Any balance of these fees
13 shall not lapse, but shall be carried forward as a
14 continuing account to be expended for the same pur-
15 pose in the following fiscal years.

16 Sec. 32. 32 MRSA §273, as amended by PL 1983, c.
17 413, §15, is further amended to read:

18 §273. Resident application; fee

19 Every resident person in this State desiring to
20 do business as an auctioneer, who satisfies the ~~Com-~~
21 ~~missioner of Business Regulation, hereinafter re-~~
22 ~~ferred to as the commissioner, or an agent designated~~
23 ~~by him,~~ board that he has knowledge of the laws of
24 this State pertaining to auctions and sales, the eth-
25 ics and practices of auctioneers, the laws relating
26 to the record of sales of used merchandise and such
27 other related subjects as the ~~commissioner~~ board may
28 select, upon application in form designated by the
29 ~~commissioner~~ board, shall receive a license to con-
30 duct auctions. The original application shall be ac-
31 companied by 2 letters of recommendation as evidence
32 of ethical business practice.

33 The ~~commissioner~~ board may establish an applica-
34 tion fee and an examination fee in amounts which are
35 reasonable and necessary for their respective pur-
36 poses.

37 The applicant shall furnish evidence of a surety
38 bond payable to the Treasurer of State in the amount
39 of \$10,000 issued by a surety company approved by the

1 Bureau of Insurance and licensed to do business in
2 the State of Maine.

3 The application and supporting information shall
4 be kept on file together with a record of all li-
5 censes issued. The license fee shall be \$50 for a bi-
6 ennium and the original license shall be effective
7 from date of issue until March 31st of the biennial
8 expiration or at any date which the ~~commissioner~~
9 board designates. Original licenses effective for
10 less than one year for the biennial licensing period
11 shall be \$25.

12 Sec. 33. 32 MRSA §276, as amended by PL 1983, c.
13 413, §17, is further amended to read:

14 §276. Nonresident licensure

15 Every nonresident person desiring to do business
16 as an auctioneer in this State shall obtain an auc-
17 tioneer's license. The ~~commissioner~~ board may issue a
18 license to any nonresident upon fulfillment of the
19 same application requirements as those set forth for
20 resident auctioneers.

21 In addition, an applicant licensed to conduct
22 auctions in the state in which he resides shall fur-
23 nish proof of that licensure to the ~~commissioner~~
24 board.

25 Sec. 34. 32 MRSA §278-A, as enacted by PL 1983,
26 c. 413, §19, is amended to read:

27 §278-A. Investigations; hearings; license suspension
28 or revocation

29 1. Investigations. The commissioner shall in-
30 vestigate, or cause to be investigated, all com-
31 plaints made to him and all cases of noncompliance
32 with or violation of this chapter.

33 2. Hearings. Hearings may be conducted by the
34 ~~commissioner~~ before the board to assist with inves-
35 tigations, to determine whether grounds exist for
36 suspension, revocation or denial of a license, or as
37 otherwise deemed necessary by the ~~commissioner~~ to the
38 fulfillment of his ~~responsibilities under~~ this chap-
39 ter.

1 The ~~commissiener~~ board shall not refuse to renew a
2 license for any reason other than failure to pay a
3 required fee unless ~~he has afforded~~ the licensee has
4 been afforded an opportunity for an adjudicatory
5 hearing. The ~~commissiener~~ board shall hold an adju-
6 dicatory hearing at the written request of any person
7 who is denied a license without a hearing for any
8 reason other than failure to pay a required fee,
9 provided that the request for hearing is received
10 within 30 days of the applicant's receipt of written
11 notice of the denial of his application, the reasons
12 therefor and his right to request a hearing. Hear-
13 ings shall be conducted in conformity with the Maine
14 Administrative Procedure Act, Title 5, chapter 375,
15 subchapter IV, to the extent applicable. The
16 ~~commissiener~~ board may subpoena witnesses, records
17 and documents in any hearing ~~he~~ it conducts.

18 3. Refusal to issue or renew; suspension or rev-
19 ocation. The ~~commissiener~~ board may suspend or re-
20 voke a license pursuant to Title 5, section 10004.
21 In addition, the ~~commissiener~~ board may refuse to
22 issue or renew a license or the Administrative Court
23 may revoke, suspend or refuse to renew a license for
24 any of the following reasons:

25 A. Conviction of the licensee of a violation of
26 the Maine Criminal Code, Title 17-A, chapter 15,
27 19 or 37 or of a Class A, Class B or Class C
28 crime thereunder or of a felony under federal
29 law, subject to the limitations of Title 5, chap-
30 ter 341;

31 B. Failure to comply with or properly maintain
32 records required by Title 15, section 456;

33 C. Failure, within reasonable time, to account
34 for or remit any moneys coming into his posses-
35 sion which belong to others; or

36 D. Any act in violation of this chapter.

37 Sec. 35. 32 MRSA §352, sub-§1, as enacted by PL
38 1983, c. 758, §4, is amended to read:

39 1. Board to administer, coordinate and enforce.
40 The board shall administer, coordinate and enforce

1 this chapter, evaluate the qualifications and super-
2 vise the examinations of applicants for registration
3 under this chapter and shall, at its discretion, in-
4 vestigate allegations of violations of this chapter.
5 The board shall keep such records and minutes as are
6 necessary to the ordinary dispatch of its functions.

7 Any member or employee of the board may enter and
8 make reasonable examination of any barber shop during
9 business hours for the purpose of ascertaining wheth-
10 er or not the rules are being observed.

11 The board shall submit to the Commissioner of Busi-
12 ness, Occupational and Professional and Financial
13 Regulation its budgetary requirements in the same
14 manner as is provided in Title 5, section 1665.

15 The commissioner may require the board to be accessi-
16 ble to the public for complaints and questions during
17 regular business hours, to maintain copies of all ap-
18 plication materials with the department and to pro-
19 vide any information the commissioner requires in or-
20 der to assure that the board is operating administra-
21 tively within the requirements of this chapter.

22 Sec. 36. 32 MRSA §352, sub-§2, as repealed and
23 replaced by PL 1983, c. 841, §9, is amended to read:

24 2. Rules. The board shall adopt rules pursuant
25 to the authority vested in it by this chapter, sub-
26 ject to the Maine Administrative Procedure Act, Title
27 5, chapter 375, except as otherwise provided in this
28 subsection and subject to the approval of the Commis-
29 sioner of Human Services Professional and Financial
30 Regulation.

31 The rules shall include, but not be limited to, the
32 following matters:

33 A. The proper use of appliances, apparatus and
34 electrical machines used in any establishment in
35 connection with the practice of barbering, as de-
36 fined in section 301;

37 B. The sanitary requirements for proprietors of
38 barber shops and persons engaged in the practice
39 of barbering, as defined in section 301; and

1 C. Requirements for licenses and certificates of
2 registration consistent with this chapter.

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

7 A copy of all valid rules issued by the board shall
8 be sent to all persons licensed or registered under
9 this chapter.

10 Sec. 37. 32 MRSA §401, 4th ¶, as amended by PL
11 1979, c. 694, §1, is further amended to read:

12 No person, firm or corporation ~~shall~~ may operate
13 or cause to be operated a shop where barbering is
14 practiced unless that shop or establishment has been
15 duly licensed. The fee for a license to operate a
16 barber shop and the ~~biennial~~ annual renewal thereof
17 shall be ~~\$40~~ \$25. Shop licenses that require a spe-
18 cial inspection, such as new barber shops, change of
19 barber shop location and change of barber shop owner-
20 ship, shall be ~~\$45~~ \$30 in the first instance includ-
21 ing the license, and ~~\$40~~ \$25 for each ~~biennial~~ annual
22 renewal thereof. The license shall run from the first
23 day of January in every ~~other~~ year ~~for 2 years~~ and
24 the fee shall be payable to the board.

25 Sec. 38. 32 MRSA §407, first ¶, as repealed and
26 replaced by PL 1977, c. 398, §9, is amended to read:

27 The board shall furnish to each registered barber
28 a certificate of registration ~~bearing the seal of the~~
29 ~~board and the names of all of its members,~~ certifying
30 that the holder thereof is entitled to practice bar-
31 bering in this State. It shall be the duty of the
32 holder of such certificate of registration to post it
33 in a conspicuous place where it may be readily seen
34 by all persons served.

35 Sec. 39. 32 MRSA §407, 2nd ¶, as amended by PL
36 1979, c. 694, §4, is further amended to read:

37 The certificate of registration shall be renewed
38 on or before the first day of January ~~biennially~~
39 annually, and the holder of the certificate of regis-

1 tration shall pay the sum of ~~\$50~~ \$35 for each
2 ~~biennial~~ annual renewal.

3 Sec. 40. 32 MRSA §4056, sub-§2, ¶F, as enacted
4 by PL 1983, c. 171, §9, is amended to read:

5 F. If the commission, after a hearing, finds
6 that a violation of this chapter has occurred, it
7 shall:

8 (1) Report its findings and recommendations
9 to the Attorney General or district attorney
10 for prosecution;

11 (2) If it finds that there are mitigating
12 circumstances, reprimand the person;

13 (3) Assess the violator a ~~fine of no more~~
14 ~~than \$500 for each violation~~ civil penalty
15 pursuant to Title 10, section 8003, subsec-
16 tion 5;

17 (4) Except for violations under subsection
18 5, ~~suspend the violator's license for up to~~
19 60 days pursuant to Title 10, section 8003,
20 subsection 5; or

21 (5) Require the person to comply with such
22 terms and conditions as it determines are
23 necessary to correct or prevent the basis of
24 the violation.

25 Sec. 41. Transition clause. This Act does not
26 affect in any manner either the identity or term of
27 any member of any board or commission, nor does it
28 affect the validity or term of any certificate or li-
29 cense issued prior to the effective date of this Act.

30 All existing rules currently in effect and opera-
31 tion in departments and agencies affected by this re-
32 organization shall continue in effect, unless in con-
33 flict with this Act, until rescinded or amended. For
34 purposes of the preceding sentence only, "rules"
35 shall include, but not be limited to, any rule, or-
36 der, administrative procedure, policy, determination,
37 directive, authorization, permit, license, privilege,
38 requirement, designation, regulation or agreement.

1 Any occupational board or commission that holds a
2 leasehold interest in real property on the effective
3 date of this Act, unless such property is in Augusta
4 or Hallowell, shall take such steps as may be neces-
5 sary to terminate the lease and vacate the premises
6 in order to accomplish physical relocation to offices
7 in the Capitol area by January 1, 1990. The commis-
8 sioner shall have the authority to extend this dead-
9 line up to 3 years for any board that can demonstrate
10 to the commissioner's satisfaction that compliance
11 with the 1990 deadline would constitute undue hard-
12 ship to the board or to its hired personnel.

13 After the effective date of this Act, no occupa-
14 tional licensing board or commission may enter into
15 or extend any leasehold interest in real property,
16 unless the property is in the Capitol area, without
17 the approval of the commissioner.

18 The Bureau of Public Improvements is directed to
19 assist any occupational board or commission that
20 makes a request in relocating to the Capitol area.

21 **Sec. 42. Revision clause.** Wherever in the Maine
22 Revised Statutes, Title 32, chapters 9, 16, 31, 34-A,
23 36, 41, 48, 51, 71-A and 103, reference is made to
24 the Commissioner of Human Services or the Department
25 of Human Services or to the Commissioner of Agricul-
26 ture, Food and Rural Resources or the Department of
27 Agriculture, Food and Rural Resources, those refer-
28 ences are amended to refer to the Commissioner of
29 Professional and Financial Regulation or the Depart-
30 ment of Professional and Financial Regulation, as ap-
31 plicable.

32 **Sec. 43. Allocation.** There is allocated from
33 other special revenue funds for the fiscal year end-
34 ing June 30, 1987, the following sums:

35 1986-87

36 ATTORNEY GENERAL,
37 DEPARTMENT OF THE

38 Legal Assistance to
39 Other Agencies

1	Positions	(7.0)
2	Personal Services	\$165,000
3	All Other	15,000
4	Capital Expenditures	5,000
5	The 7 positions authorized in	
6	this allocation for the Depart-	
7	ment of the Attorney General	
8	are 4 attorneys, one legal sec-	
9	retary and 2 professional in-	
10	vestigators. These positions	
11	will be used by and paid for by	
12	the licensing boards and com-	
13	missions within and affiliated	
14	with the Department of Profes-	
15	sional and Financial Regula-	
16	tion. The Attorney General's	
17	Office shall bill affiliated	
18	boards and commissions on an	
19	hourly basis for the services	
20	of attorneys and investigators	
21	used to serve the boards and	
22	commissions.	
23		
24	Total	<u>\$185,000</u>

25 FISCAL NOTE

26 This new draft requires an allocation, from funds
 27 ahead held, from various boards' and commissions'
 28 dedicated accounts to pay for the services of 7 new
 29 positions in the Attorney General's office.

30 STATEMENT OF FACT

31 State Government includes 46 occupational licens-
 32 ing boards which were created between 1877 and 1985.
 33 Together they regulate over 70 types and levels of
 34 trades and occupations.

35 Licensing boards exist to protect the public.
 36 They do so by qualifying applicants for licensure, by

1 preventing unlicensed practice and by disciplining
2 licensed practitioners who are incompetent or who act
3 improperly. Beyond this, it is difficult to cite any-
4 thing which applies to all Maine licensing boards;
5 they vary so greatly in their powers, duties, respon-
6 sibilities, performances and means. Their membership
7 ranges from 3 to 12 persons and the number of their
8 licensees from 10 to over 17,000.

9 Twenty-three of the 46 licensing boards are with-
10 in the Department of Business, Occupational and Pro-
11 fessional Regulation, 6 more are affiliated with it
12 for budgeting and reporting and the remaining 17
13 boards are affiliated with various other departments
14 or are completely autonomous. Licensing boards not
15 within the department are located in communities
16 throughout the State. Some still operate out of pri-
17 vate homes, offices or businesses.

18 The purposes of this new draft are to increase
19 the regulatory authority of licensing boards, give
20 them access to additional legal and investigatory
21 services and enhance the Legislature's ability to
22 oversee and evaluate professional licensing. Another
23 purpose is to increase public confidence in profes-
24 sional self-regulation through public agencies.

25 Sections 1 to 12 and 15 of this new draft are
26 technical amendments which implement throughout the
27 laws the substance of the new draft.

28 Section 13 is a "sunrise" provision. It sets spe-
29 cific standards that must be met by groups seeking
30 the creation of future licensing boards. The same
31 standards are applied to requests for "substantially
32 expanding" the authority of existing boards.

33 Section 14 renames the department to indicate
34 clearly what it regulates and removes the too broad
35 term "business."

36 Sections 16 and 17 make minor changes in the com-
37 missioner's responsibilities and extend the limit of
38 his authority.

39 Section 18 restores to boards within the depart-
40 ment authority to suspend licenses for up to 90 days,

1 impose civil penalties up to \$500 and enter into con-
2 sent agreements.

3 Section 19 establishes for all boards the author-
4 ity to issue subpoenas, if the Attorney General ap-
5 proves, during an investigation. It provides further
6 that the disposition of complaints be available to
7 the public and for membership in national disciplin-
8 ary record system.

9 Sections 20 to 34 make the Auctioneers Advisory
10 Board a licensing board, and the Boards of Maine
11 Guides, Junior Maine Guides and Trip Leaders Curricu-
12 lum, and Water Treatment (Supply) Plant Operators ad-
13 visory.

14 Sections 35 to 39 put the State Board of Barbers
15 in the department, make its licenses annual and raise
16 the fee \$5 a year.

17 Section 40 conforms the law of the Real Estate
18 Commission to the changes elsewhere in this new
19 draft.

20 Section 41 provides continuity and sets condi-
21 tions limiting the effects of the changes made in
22 this new draft. This section also contains a provi-
23 sion requiring boards to move to the Capitol area by
24 January 1, 1990, unless an extension is given by the
25 commissioner.

26 Section 42 affiliates with the Department of Pro-
27 fessional and Financial Regulation 10 boards now af-
28 filiated with other departments.

29 Section 43 authorizes positions within the De-
30 partment of the Attorney General to carry out the in-
31 tent of this new draft.

32 Although there is a fiscal note attached to this
33 new draft, no new funds need to be raised to pay for
34 the provisions in the new draft. All the funds nec-
35 essary for the new positions will come out of exist-
36 ing board funds. No increase in license fees are
37 needed to pay for the personnel.

38

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