

MAINE STATE LEGISLATURE

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L.D. 1100

(Filing No. S-214)

STATE OF MAINE
SENATE
113TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 365, L.D. 1100, Bill, "AN ACT to Register Acupuncturists."

Amend the Bill by striking out the title and inserting in its place the following:

'AN ACT to License Acupuncturists.'

Further amend the Bill by striking out everything after the enacting clause and inserting in its place the following:

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

(2-A)	<u>Acupuncture Licensing</u>	<u>Expenses</u>	<u>32 MRSA</u>
	<u>Board</u>	<u>Only</u>	<u>§12406</u>

Sec. 2. 10 MRSA §8001, as repealed and replaced by PL 1985, c. 737, Pt. A, §21, and as amended by PL 1985, c. 819, Pt. A, §15, is repealed and the following enacted in its place:

§8001. Department; organization

There is created and established the Department of Professional and Financial Regulation, in this chapter referred to as the "department," to regulate financial institutions, insurance companies, commercial sports, grantors of consumer credit and to license and regulate professions and occupations. The department shall be composed of the following bureaus, boards and commissions:

Banking, Bureau of;

Consumer Credit Protection, Bureau of;

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- 1 Insurance, Bureau of;
- 2 Athletic Commission, Maine;
- 3 Pilotage Commission, Maine State;
- 4 Real Estate Commission;
- 5 Running Horse Racing Commission, State;
- 6 Arborist Examining Board;
- 7 Auctioneers, Board of Licensing of;
- 8 Barbers, State Board of;
- 9 Commercial Driver Education, Board of;
- 10 Dietetic Practice, Board of Registration of;
- 11 Electricians' Examining Board;
- 12 Foresters, State Board of Registration for Pro-
13 essional;
- 14 Funeral Service, State Board of;
- 15 Geologists and Soil Scientists, State Board of
16 Certification for;
- 17 Hearing Aid Dealers and Fitters, Board of;
- 18 Manufactured Housing Board;
- 19 Nursing Home Administrators Licensing Board;
- 20 Occupational Therapy Practice, Board of;
- 21 Oil and Solid Fuel Board;
- 22 Physical Therapy, Board of Examiners in;

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1 Plumbers' Examining Board;
2 Psychologists, State Board of Examiners of;
3 Radiologic Technology Board of Examiners;
4 Respiratory Care Practitioners, Board of;
5 Social Worker Registration, State Board of;
6 Speech Pathology and Audiology, Board of Examin-
7 ers on;
8 Substance Abuse Counselors, Board of Registration
9 of;
10 Veterinary Board; and
11 Acupuncture Licensing Board.

12 **Sec. 3. 32 MRSA c. 113 is enacted to read:**

13 CHAPTER 113

14 ACUPUNCTURISTS

15 SUBCHAPTER I

16 GENERAL PROVISIONS

17 §12401. Acupuncture Licensing Board

18 The Acupuncture Licensing Board within the De-
19 partment of Professional and Financial Regulation as
20 established by Title 5, section 12004, subsection 1,
21 paragraph A, shall carry out the purposes of this
22 chapter.

23 §12402. Objective

24 The objective of this chapter is to establish the

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1 Acupuncture Licensing Board which will establish and
2 ensure high professional standards among profession-
3 als who provide services and will encourage and pro-
4 motivate quality treatment for their clients.

5 §12403. Definitions

6 As used in this chapter, unless the context oth-
7 erwise indicates, the following terms have the fol-
8 lowing meanings.

9 1. Acupuncture. "Acupuncture" means the inser-
10 tion of fine metal needles through the skin at spe-
11 cific points on or near the surface of the body, with
12 or without the application of electric current, with
13 or without the application of heat to the needles,
14 skin, or both, and with or without the palpitation of
15 specific points on the body. The practice of acu-
16 puncture is based on traditional oriental theories
17 and serves to normalize physiological function, treat
18 certain diseases and dysfunctions of the body, pre-
19 vent or modify the perception of pain and promote
20 health and well-being.

21 2. Person. "Person" means any individual, firm,
22 partnership, corporation or other association or or-
23 ganization.

24 §12404. Licensure; penalty

25 1. Licensure required. No person may practice
26 acupuncture or represent himself to the public as an
27 acupuncturist in this State unless that person holds
28 a current and valid license from the board.

29 2. Penalty. Any person who practices acupunc-
30 ture in violation of subsection 1 is guilty of a
31 Class E crime.

32 §12405. Exception

33 This chapter does not apply to any person who is

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1 licensed to practice any healing art or science and
2 who is practicing acupuncture in the course of that
3 practice and within the scope of that license.

4 SUBCHAPTER II

5 ACUPUNCTURE LICENSING BOARD

6 §12406. Establishment and compensation

7 1. Membership. There is within the Department
8 of Professional and Financial Regulation the Acupunc-
9 ture Licensing Board as established in Title 5, chap-
10 ter 379. The board shall consist of 5 members ap-
11 pointed by the Governor. The Governor shall make the
12 initial appointments to the board no later than 60
13 days after the effective date of this section and
14 shall inform the Commissioner of Professional and Fi-
15 ancial Regulation. The commissioner shall call the
16 first meeting of this board for a date no more than
17 30 days after his notification. Three members shall
18 be licensed acupuncturists, one member shall be a li-
19 censed, practicing medical or osteopathic doctor and
20 one member shall be a member of the public who is not
21 licensed to practice any healing art or science and
22 who is not an acupuncturist. Until such time as a
23 licensing procedure is in place, persons who meet the
24 qualifications for licensing may be appointed in lieu
25 of the licensed board members.

26 2. Terms of office. Appointments shall be for
27 3-year terms, except that no more than 2 members'
28 terms may expire in any calendar year and appoint-
29 ments for terms of less than 3 years may be made in
30 order to comply with this limitation. No person may
31 be eligible to serve more than 3 full consecutive
32 terms, provided that for this purpose only a period
33 actually served which exceeds 1/2 of the 3-year term
34 shall be deemed a full term. Upon expiration of a
35 member's term, he shall serve until his successor is
36 qualified and appointed. The successor's term shall
37 be 3 years from the date of the expiration, regard-

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1 less of the date of his appointment. Any vacancy oc-
2 curring prior to the expiration of the specified term
3 shall be filled by appointment for the unexpired
4 term.

5 3. Qualifications. Members of the board shall
6 be residents of this State and shall be trustworthy
7 and competent to fulfill the responsibilities imposed
8 by this chapter. Each board member, other than the
9 public member and the practicing physician, shall
10 have been engaged in the active practice of acupunc-
11 ture for a minimum of 3 years prior to appointment.

12 The Governor may remove any member for cause.

13 4. Vacancy. Any vacancy in the board shall be
14 filled by appointment of a person, as qualified as
15 the board member he replaces, to hold office for the
16 unexpired term.

17 5. Compensation and expenses. Members of the
18 board shall be compensated according to the provi-
19 sions of Title 5, chapter 379, provided that expenses
20 do not exceed the fees collected by the board. If
21 the fees to be collected under this chapter are in-
22 sufficient to pay the expenses provided by this sec-
23 tion, the board members shall be entitled to a pro
24 rata payment in any years in which such fees are in-
25 sufficient.

26 6. Organization and meetings. The board shall
27 annually elect a chairman and a secretary from its
28 membership. The secretary shall keep full and com-
29 plete records of its proceedings and accounts, which
30 shall be open to public inspection at all reasonable
31 times.

32 The board shall meet at least once a year to conduct
33 its business and elect its officers. Additional
34 meetings shall be held as necessary to conduct the
35 business of the board and may be convened at the call
36 of the chairman or a majority of the board members.

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1 Three members shall constitute a quorum for the
2 transaction of board business, except that when only
3 3 members are present, one of them must be a
4 nonacupuncturist member in order for the board to
5 conduct any business.

6 The board shall adopt a seal for its use. The seal
7 and records shall be kept at the Department of Pro-
8 fessional and Financial Regulation.

9 §12407. Powers and duties of the board

10 The board shall have the following powers and du-
11 ties in addition to all other powers and duties oth-
12 erwise set forth in this chapter.

13 1. Registration and standards. The board shall
14 certify and set standards of practice for
15 acupuncturists. The board shall evaluate the quali-
16 fications and supervise the certification of appli-
17 cants under this chapter. The board shall adopt
18 standards no less stringent than those established by
19 the National Commission for the Certification of
20 Acupuncturists. The board shall adopt requirements
21 for continuing education as a condition of license
22 renewal.

23 2. Rules. The board, in accordance with proce-
24 dures established by the Maine Administrative Proce-
25 dure Act, Title 5, chapter 375, subchapter II, may
26 adopt such rules as may reasonably be necessary for
27 the proper performance of its duties and the adminis-
28 tration this chapter.

29 3. Hearings. Hearings may be conducted by the
30 board to assist with investigations, to determine
31 whether grounds exist for suspension, revocation or
32 denial or registration or as otherwise deemed neces-
33 sary to the fulfillment of its responsibilities under
34 this chapter.

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1 The board shall not refuse to renew registration for
2 any reason other than failure to pay a required fee,
3 unless it has afforded the applicant an opportunity
4 for an adjudicatory hearing. The board shall hold an
5 adjudicatory hearing at the written request of any
6 person who is denied registration without a hearing
7 for any reason other than failure to pay a required
8 fee, provided that the request for hearing is re-
9 ceived by the board within 30 days of the applicant's
10 receipt of written notice of denial of the applica-
11 tion, the reasons therefore and his right to request
12 a hearing. Hearings shall be conducted in conformity
13 with the Maine Administrative Procedure Act, Title 5,
14 chapter 375, subchapter IV, to the extent applica-
15 ble. The board may subpoena witnesses, records and
16 documents in any hearing it conducts.

17 4. Complaints. The board shall investigate, or
18 cause to be investigated, all complaints made to it
19 and all cases of noncompliance with this chapter.

20 5. Contracts. The board may enter into con-
21 tracts to carry out its responsibilities under this
22 chapter.

23 6. Budget. No later than May 1st of each year,
24 the board shall submit to the commissioner for his
25 review and recommendation a proposed budget for each
26 of the next 2 fiscal years.

27 7. Reporting. No later than August 1st of each
28 year, the board shall submit to the commissioner an
29 annual report of its operations and financial posi-
30 tion for the preceding fiscal year ending June 30th,
31 together with such comments and recommendations as
32 the board deems essential.

33 SUBCHAPTER III

34 LICENSING REQUIREMENTS

35 §12408. Eligibility requirements for acupuncturists

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- 1 To be eligible to apply for a license to practice
2 acupuncture, an applicant shall:
- 3 1. Age limit. Be at least 21 years of age; and
- 4 2. Qualifications. Have met education and experi-
5 ence requirements as established by the board.
6 Such requirements shall include the following:
- 7 A. A baccalaureate degree from an accredited in-
8 stitution of higher learning;
- 9 B. A minimum of 1,000 hours of classroom in-
10 struction in acupuncture and related subjects at
11 an institution approved by the board;
- 12 C. A minimum of 300 hours of clinical experience
13 in the field of acupuncture; and
- 14 D. Certification by the National Commission for
15 the Certification of Acupuncturists or passage of
16 a written examination administered by the board.
- 17 An applicant who possesses a current, valid license
18 to practice acupuncture from another state with re-
19 quirements at least equal to these requirements shall
20 be issued a certificate of licensing by the board.
- 21 Except, as provided in this subchapter, any per-
22 son currently practicing acupuncture in the State
23 upon the effective date of this section shall comply
24 with the requirements of this section within one year
25 of the effective date in order to continue in the
26 practice of acupuncture.
- 27 §12409. Certificate of licensing
- 28 1. Licensed acupuncturist. The board shall is-
29 sue a certificate of licensing upon the affirmative
30 vote of at least 3 members of the board to an appli-
31 cant who has satisfactorily met the following minimal

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1 requirements:

2 A. Met the eligibility requirements set forth in
3 section 12408; and

4 B. Met any other reasonable criteria the board
5 may prescribe by its rules.

6 §12410. Fees

7 1. Application. Application for licensing as an
8 acupuncturist shall be on forms prescribed and fur-
9 nished by the board. The application fee shall be
10 set by the board by rule, shall be nonrefundable and
11 shall be in amounts which are reasonable and neces-
12 sary for their respective purposes.

13 2. Registration. A certificate for a licensed
14 acupuncturist shall be in effect for 2 years. The
15 certificate fee shall be established by the board in
16 an amount not to exceed \$250 biennially.

17 Fees for initial and renewal licenses shall be set so
18 that total fee receipts do not exceed the amount pro-
19 jected as necessary to properly cover the expenses of
20 performing the duties imposed upon the board.

21 3. Deposit of fees. All fees received by the
22 board shall be paid to the Treasurer of State to be
23 used for carrying out this chapter. Any balance of
24 fees shall not lapse, but shall be carried forward as
25 a continuing account to be expended for the same pur-
26 poses in the following fiscal years.

27 §12411. Reapplication

28 Any applicant who is not issued a license as an
29 acupuncturist may again apply for licensing after a
30 period of not less than 6 months from the date of the
31 last denial.

32 §12412. Application for renewal

COMMITTEE AMENDMENT "H" TO S.P. 865, L.D. 1100

1 ing or abetting a person, not duly licensed under
2 this chapter, in representing himself as an
3 acupuncturist;

4 4. Unprofessional conduct or negligency. Any
5 gross negligence, incompetency or misconduct in the
6 performance of acupuncture;

7 5. Criminal conviction. Subject to the limita-
8 tions of Title 5, chapter 341, conviction of a Class
9 A, Class B or Class C crime or of a crime which, if
10 committed in this State, would be punishable by one
11 year or more of imprisonment; or

12 6. Good cause. Any other good cause, relevant
13 to qualifications to practice.

14 **Sec. 4. Allocation.** The following funds are al-
15 located from Other Special Revenue Funds to carry out
16 the purposes of this Act.

17 1987-88 1988-89

18 PROFESSIONAL AND FINANCIAL
19 REGULATION, DEPARTMENT OF

20 Acupuncture Licensing Board

21 All Other \$3,000 \$2,000

22 FISCAL NOTE

23 This bill will have the following effect on reve-
24 nues:

25 1987-88

26 Other Special Revenue \$5,000'

COMMITTEE AMENDMENT "A" to S.P. 365, L.D. 1100

1 STATEMENT OF FACT

2 This amendment sets up an Acupuncture Licensing
3 Board within the Department of Professional and Fi-
4 nancial Regulation. This board is to license persons
5 as acupuncturists. The board is to have 5 members of
6 whom 3 shall be licensed acupuncturists, one shall be
7 a licensed, practicing physician and one shall be a
8 public member.

9 The fee for application for registration is to be
10 set by the board. The board may set initial and re-
11 newal registration fees up to \$250 biennially.

12 The following information is provided in accord-
13 ance with the Maine Revised Statutes, Title 5, sec-
14 tion 12015, subsection 3, paragraphs A to G, as jus-
15 tification for establishing this new board.

16 A. Acupuncture is not part of traditional West-
17 ern medicine; however, it is a healing art in-
18 volving the health and physical and psychological
19 well-being of people who are treated with its
20 techniques. Its basic procedure involves inser-
21 tion of needles into the skin. Therefore, there
22 is some risk of infection if proper sterilization
23 techniques are not used by acupuncturists. Fur-
24 ther more, there is the possibility that an
25 untrained acupuncturist may fail to recognize a
26 condition or situation which warrants referral to
27 another medical or healing arts practitioner,
28 such as a physician. For these reasons, there is
29 some degree of threat to the public health or
30 safety if the occupation of acupuncture is not
31 properly regulated. The nature of the threat is
32 one which involves physical and psychological
33 well-being and, therefore, justifies regulation
34 by State Government.

35 B. The existing legal remedies concerning the
36 practice of acupuncture present something of a

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1 paradox. On the one hand, the 15 to 20 individu-
2 als currently practicing acupuncture in the State
3 are technically operating without benefit of any
4 state regulation. Therefore, the current legal
5 remedies may be viewed as inadequate. On the
6 other hand, the laws governing the practice of
7 medicine restrict acupuncture to that profession.
8 If this interpretation of the law is fully en-
9 forced, the State will be forced to simply put
10 those existing acupuncturists out of business en-
11 tirely. From this point of view, the current le-
12 gal remedies may be viewed as over adequate. It
13 seems clear, therefore, that appropriate legal
14 remedies must be enacted in order for the prac-
15 tice of acupuncture to continue to be available
16 in this State to those who desire it and also to
17 be regulated in a manner which protects the pub-
18 lic health and safety.

19 C. There are presently both national and local
20 organizations which provide private credentials
21 for acupuncture practitioners. On the national
22 level, there is the National Commission for the
23 Certification of Acupuncturists which provides
24 certification to those who complete a lengthy and
25 rigid educational and certification program. At
26 the local level, there is also the Maine Associa-
27 tion of Acupuncture and Oriental Medicine which
28 has adopted a code of ethics for member practi-
29 tioners. However, the practice of acupuncture is
30 still unknown to a large segment of the consuming
31 public, and it appears that, despite the exist-
32 ence of these private certification organiza-
33 tions, most individuals who seek out an
34 acupuncturist do so based on the personal recom-
35 mendations of their physicians or friends. If
36 all that was being sought was to give the public
37 some assurance of the qualifications of practi-
38 tioners, it might be sufficient to rely on the
39 national commission and the State association for
40 this purpose. However, given that there is the
41 possibility of a threat to the public health and

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1 safety, State Government regulation is warranted.

2 D. Reference was made in the previous response
3 to the national commission and the State associa-
4 tion. Those organizations have developed both
5 standards of performance and a code of ethics for
6 practitioners of acupuncture. There is presently
7 no formal procedure developed for resolving dis-
8 putes with consumers and the national commission
9 is not aware of any such complaints at this time.
10 It is questionable whether a dispute-resolving
11 procedure developed within the profession and
12 without any governmental supervision is adequate
13 with regard to questions of public health and
14 safety.

15 E. Regulation breaks down into 4 basic catego-
16 ries. The State presently is one of 26 states
17 within the largest of these 4 categories in which
18 acupuncture is considered the practice of medi-
19 cine and is restricted to physicians. This
20 amendment will place this State as one of 26
21 states in the 2nd largest category of states
22 which permit licensed acupuncturists to practice
23 as independent practitioners. It will permit the
24 licensing board to require qualifications at
25 least as strict as those adopted by the national
26 commission. Those standards currently involve
27 a 3-year education component and minimum experi-
28 ence requirements. Even if those standards
29 should be weakened in those respects, this legis-
30 lation permits the board to require both an edu-
31 cation and experience component in the minimum
32 qualifications for licensing.

33 F. This legislation proposes a 5-member board
34 whose qualifications will be as follows:

35 (1) Three members who are licensed
36 acupuncturists or, prior to the licensing of
37 any acupuncturists in this State,
38 acupuncturists who meet the conditions for

