

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1713

H.P. 1255 House of Representatives, May 29, 1987
Referred to the Committee on Business Legislation. Sent
up for concurrence and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative CURRAN of Westbrook.

Cosponsored by Representatives TELOW of Lewiston and
RACINE of Biddeford.

STATE OF MAINE

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

AN ACT to Amend Laws Relating to Certain
Licensing Boards.

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4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 32 MRSA §1658-A, sub-§§1 and 2, as re-
7 pealed and replaced by PL 1983, c. 413, §75, is
8 amended to read:

9 1. License for person. No person may engage in
10 the sale of or practice of fitting and dealing in
11 hearing aids or display a sign or in any other way
12 advertise or represent himself as a person who prac-
13 tices the fitting, dealing and sale of hearing aids,
14 unless he holds a valid license issued by the board
15 as provided in section 1658-I. The board shall issue

1 a license to any person who applies for the license
2 and who is qualified for the license pursuant to section
3 1658-I; upon payment of a fee of \$100. ~~The--li-~~
4 ~~cence--shall-be-effective-for-12-months-following-the~~
5 ~~date-of-issuance.~~ Licenses shall expire annually on
6 January 31st or on such other date as the Commission-
7 er of Professional and Financial Regulation deter-
8 mines. The license required by this chapter shall be
9 conspicuously posted in the licensee's office or
10 place of business. The board shall, without requiring
11 additional payment, issue duplicate licenses to li-
12 cense holders operating more than one office. A li-
13 cense issued under this chapter shall confer on the
14 holder the right to select, fit and sell hearing
15 aids.

16 2. License for business organization. Any cor-
17 poration, partnership, trust, association or other
18 like organization engaged in the business of selling
19 or offering for sale hearing aids at retail in the
20 State shall apply to the board for a license to en-
21 gage in that business. No business entity may so en-
22 gage in the business of selling or offering for sale
23 hearing aids without a license to do so. The board
24 shall issue a license upon payment by the business
25 entity of a fee in such amount as the board may es-
26 tablish up to \$150 and upon filing of a sworn state-
27 ment from a person with authority from the business
28 entity. That sworn statement shall list the names and
29 addresses of all hearing aid dealers and fitters di-
30 rectly or indirectly employed by the entity and shall
31 certify that the entity employs only hearing aid
32 dealers and fitters who are duly licensed by the
33 State. ~~The--license-shall-be-effective-for-12-months~~
34 ~~following-the-date-of-issuance.~~ Licenses shall ex-
35 pire annually on January 31st or on such other date
36 as the Commissioner of Professional and Financial
37 Regulation determines. Licenses may be renewed annu-
38 ally by each such business engaged in the fitting and
39 sale of hearing aids by filing an application for a
40 renewal of its license accompanied by a fee in such
41 amount as the board may establish up to \$150. A li-
42 cense may be renewed up to 90 days after the date of
43 its expiration upon payment of a late fee of \$10 in
44 addition to the renewal fee. Any application for re-
45 newal submitted more than 90 days after the license
46 expiration date shall be subject to all requirements
47 governing new applicants under this chapter.

1 The license required by this chapter shall be con-
2 spicuously posted in the licensee's office or place
3 of business. Notwithstanding this subsection, the
4 board may, whenever it deems necessary, extend exist-
5 ing licenses so that an equal number expire each
6 month to allow for the equal distribution of
7 relicensure throughout the year.

8 Sec. 2. 32 MRSA §1658-B, as repealed and re-
9 placed by PL 1975, c. 463, §3, is amended to read:

10 §1658-B. Payment; trial period

11 At the time of purchase of one or more hearing
12 aids, the seller-licensee may demand and accept no
13 more than 50% of the purchase price. The purchaser,
14 however, has the right to pay in full at this time
15 the total price of the purchase. Not less than 20
16 days nor more than 35 days after the purchase of one
17 or more hearing aids, the seller-licensee shall make
18 personal contact with the purchaser and provide, free
19 of charge, any service, fitting or repair that may be
20 necessary for the beneficial and comfortable use of
21 the hearing aid. The purchaser, during this trial pe-
22 riod, may cancel the transaction by notifying the
23 seller-licensee on or before the day of personal ser-
24 vice contact and shall have the right to a refund. If
25 at the time the seller-licensee makes personal con-
26 tact with the purchaser, the purchaser in writing ex-
27 presses his satisfaction with the hearing aid, then
28 the balance of the purchase price is due and payable
29 to the seller-licensee. If service or repair of the
30 hearing aid is necessary, there shall be a further
31 trial period of the same duration, with the same
32 right of cancellation.

33 In the event of cancellation pursuant to this
34 section, the seller-licensee, at the time he makes
35 the personal contact required by this section, shall
36 refund the downpayment less 10% of the purchase price
37 ~~of one hearing aid and less the reasonable price of~~
38 ~~the ear mold or ear molds of one or more hearing aids~~
39 and less the reasonable price of the ear mold or ear
40 molds and lab fees. In the event of cancellation pur-
41 suant to this section, the purchaser shall return the
42 hearing aid to the seller-licensee at the time of the
43 personal contact and the seller-licensee shall return

1 to the purchaser all hearing aid or aids, devices,
2 accessories and ear molds that the seller-licensee
3 has received from the purchaser.

4 Any person who practices the fitting and sale of
5 hearing aids shall, in addition to the notice re-
6 quired in section 1658-C, advise the prospective pur-
7 chaser in a separate writing of that purchaser's
8 right to cancel the transaction and right to have a
9 refund of the downpayment made less 10% of the pur-
10 chase price of ~~one hearing aid and less the reason-~~
11 ~~able price of the ear mold or ear molds one or more~~
12 hearing aids and less the reasonable price of the ear
13 mold or ear molds and lab fees.

14 Any provision of a contract which limits or con-
15 ditions in any way the rights guaranteed to purchas-
16 ers by this section shall be deemed to be against
17 public policy and void. Any violation of the require-
18 ments of this section shall, in addition to being
19 deemed unethical conduct as defined by the regula-
20 tions pursuant to section 1658-N, constitute a viola-
21 tion of Title 5, chapter 10, Unfair Trade Practices
22 Act.

23 Sec. 3. 32 MRSA §1658-C, sub-§4, ¶D, as repealed
24 and replaced by PL 1975, c. 463, §3, is amended to
25 read:

26 D. The notice shall state that the purchaser may
27 cancel the transaction if he consults an
28 ~~audiologist~~ audiologist or a physician with spe-
29 cialized training in the field of otolaryngology
30 who in writing states that the hearing aid is not
31 advisable and in writing specifies the audiologi-
32 cal or medical reason or both therefor. This no-
33 tice shall state that the purchaser may cancel
34 only if the written opinion from the audiologist
35 or physician is submitted to the seller within 60
36 calendar days from the date of purchase. If the
37 purchaser cancels a transaction pursuant to this
38 paragraph, the seller-licensee shall within 60
39 days of the notice of the cancellation and the
40 return by the purchaser of the hearing aid or
41 aids refund to the purchaser the amount paid less
42 10% of the purchase price of one or more hearing
43 aid aids and less the reasonable price of the ear
44 mold or molds and lab fees.

1 Sec. 4. 32 MRSA §2276, sub-§1, as enacted by PL
2 1983, c. 746, §2, is amended to read:

3 1. License required. No person may practice, or
4 hold himself out as authorized to practice occupa-
5 tional therapy, as an occupational therapist or certi-
6 fied occupational therapist in this State or use
7 the words "occupational therapist" or "certified oc-
8 cupational therapy assistant" or the letters "O.T."
9 "C.O.T.A." or other words or letters to indicate that
10 the person using the words or letters is a licensed
11 occupational therapist or certified occupational
12 therapy assistant, unless he is licensed in accord-
13 ance with this chapter.

14 Sec. 5. 32 MRSA §3301, sub-§4, as amended by PL
15 1985, c. 389, §17, is further amended to read:

16 3. Journeyman plumber. "Journeyman plumber"
17 shall mean any person who customarily performs the
18 work of installing plumbing and drainage under the
19 employment and direction of a master plumber or, not
20 being a master plumber, does plumbing repair work as
21 a regular part time occupation. The biennial fee for
22 a journeyman plumber's license shall ~~be-\$30~~ not ex-
23 ceed \$75.

24 Sec. 6. 32 MRSA §3301, sub-§4, as repealed and
25 replaced by PL 1977, c. 469, §3, is amended to read:

26 4. Limited license. "Limited license" shall mean
27 a limited plumber's license to install and service
28 plumbing work related to a specific type of plumbing
29 equipment or to specific plumbing installations shall
30 be granted to any person who has passed a satisfacto-
31 ry examination before the board. It shall specify the
32 name of the person who shall be limited to engage in
33 the occupation of installing and servicing the plumb-
34 ing work related to the type of equipment or to spec-
35 ific plumbing installations only as authorized by
36 the license. The biennial fee for a limited license
37 shall ~~be-\$30~~ not exceed \$75.

38 Sec. 7. 32 MRSA §3301, sub-§5, as amended by PL
39 1983, c. 468, §13, is further amended to read:

1 5. Master plumber. "Master plumber" means any
2 person, firm or corporation, qualified under this
3 chapter, engaging in, or about to engage in, the
4 business of installing plumbing or plumbing systems.
5 The license shall specify the name of the person,
6 firm or corporation to whom the license is issued and
7 in the case of a firm or corporation the license
8 shall further specify the licensed master plumber in
9 whose name it is issued, pursuant to the requirements
10 of section 3507. The biennial fee for a master
11 plumber's license shall be ~~-\$80~~ not exceed \$150.

12 Sec. 8. 32 MRSA §3301, sub-~~\$6~~, as amended by PL
13 1983, c. 413, §14, is amended to read:

14 6. Trainee plumber. "Trainee plumber" means any
15 person who is engaged in assisting in making plumbing
16 installations under the direct supervision of a jour-
17 neyman plumber or master plumber, whether for the
18 purpose of learning the trade or otherwise. The bi-
19 ennial fee for a trainee plumber license shall be ~~--\$4~~
20 not exceed \$40.

21 Sec. 9. 32 MRSA §3401, as amended by PL 1983, c.
22 812, §229, is repealed and the following enacted in
23 its place:

24 §3401. Membership; vacancies; removal; compensation

25 A Plumbers' Examining Board, as established by
26 Title 5, section 12004, subsection 1, shall consist 5
27 members, who shall be appointed by the Governor. One
28 of the members shall be a representative of the pub-
29 lic, 2 shall be master plumbers as defined in section
30 3301, and 2 shall be journeyman plumbers as defined
31 in section 3301, both of whom have been engaged in
32 the business of plumbing for at least 2 years.

33 The appointive members shall be appointed for
34 terms of 4 years, except that at least one appointive
35 member's term shall expire in each calendar year and
36 appointments for terms of less than 4 years may be
37 made in order to comply with this limitation. Upon
38 expiration of a member's term, that member shall
39 serve until a successor is qualified and appointed.
40 The successor's term shall be 4 years from the date
41 of the expiration, regardless of the date of his ap-

1 pointment. No appointive member may be eligible to
2 serve more than 2 full consecutive terms, provided
3 that, for this purpose only, a period actually which
4 exceeds 1/2 of the 4-year term shall be deemed a full
5 term.

6 Any member of the board may be removed from of-
7 fice for cause, by the Governor. The members of the
8 board shall each be compensated according to the pro-
9 visions of Title 5, chapter 379.

10 Sec. 10. 32 MRSA §3501, sub-§2, ¶A, as repealed
11 and replaced by PL 1983, c. 468, §17, is amended to
12 read:

13 A. A minimum of at least 2 years with 4,000
14 hours of work in the field of plumbing installa-
15 tions as a trainee plumber under the supervision
16 of a master plumber, or the equivalent thereof,
17 and obtaining a passing grade as determined by
18 the board on the journeyman's examination; or

19 Sec. 11. 32 MRSA §3501, sub-§2-A, ¶A, as enacted
20 by PL 1983, c. 468, §18, is amended to read:

21 A. A minimum of at least one year with 2,000
22 hours of work in the field of plumbing installa-
23 tions as a journeyman plumber or a minimum of at
24 least 4 years with 8,000 hours of work in the
25 field of plumbing installations as a trainee
26 plumber under the supervision of a master plumb-
27 er, or the equivalent; and

28 Obtaining a passing grade, as determined by the
29 board on the master's examination.

30 Sec. 12. 32 MRSA §3501, sub-§5, as amended by PL
31 1983, c. 553, §44, is further amended to read:

32 5. Examinations. The following applicants for
33 license shall present to the board a written applica-
34 tion for examination and license, containing such in-
35 formation as the board may require, accompanied by
36 the required fee of \$15 for a master plumber's exami-
37 nation, \$10 for a journeyman plumber's examina-
38 tion and \$15 for a limited plumber's examination a re-
39 quired fee as set forth by board rules. Examinations

1 shall be in whole or in part in writing, shall be
2 conducted by the board and shall be of a thorough and
3 practical character commensurate with the responsi-
4 bilities of the prospective license holder.

5 Applications for a first examination shall be re-
6 ceived by the board at least 15 days prior to a
7 scheduled meeting of the board.

8 The passing grade on any examination shall be not
9 less than 70%. A candidate failing one examination
10 may apply for reexamination, which may be granted
11 upon payment of a fee established by the board. Any
12 candidate for registration having an average grade of
13 less than 50% may not apply for reexamination for one
14 year.

15 When the unexpired term of license of an applicant is
16 or will be more than one year at the time of licen-
17 sure, the board may require the applicant to pay an
18 additional fee not to exceed 1/2 the biennial license
19 fee.

20 Sec. 13. 32 MRSA §3507, as repealed and replaced
21 by PL 1983, c. 468, §21, is amended to read:

22 §3507. Corporations, firms and partnerships

23 The board may issue a master plumber license to a
24 corporation, firm or partnership which submits an ap-
25 plication therefor on a form prescribed by the board.
26 Such a license shall not be issued unless the appli-
27 cant provides satisfactory evidence that it has a
28 licensed master plumber directly in charge of its
29 plumbing business activities who is an officer or
30 full-time employee, in the case of a corporation, or
31 a partner, member or full-time employee, in the case
32 of a firm or partnership, and the license shall be
33 issued in the name of that master plumber. A master
34 plumber can only be affiliated with one corporation.
35 Upon the death or severance from the company of the
36 licensed master plumber in whose name the company li-
37 censed is held, the company license shall automati-
38 cally terminate 30 days from the date of that death
39 or severance, unless the company applies for reissu-
40 ance of its license in the name of another licensed
41 master plumber who is qualified under this section.

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STATEMENT OF FACT

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This bill accomplishes the following.

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1. It allows the Division of Licensing and Enforcement to prorate initial license fees in order to bring licensees into the current licensing cycle.

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2. It allows the purchasers of hearing aids to pay in full the total price of a hearing aid at the time of purchase.

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3. It allows licensees to recoup 10% of the cost of more than one hearing aid should a purchaser cancel a transaction. Also, it allows the licensee to recover ear mold and lab fees.

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4. It removes the current wording that allows an audiologist or physician to determine if a purchaser of an aid actually needs the hearing aid. Licensees, under the current law, are competently trained to make this decision before the sale is made.

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There are 2 levels of accepted practitioners of occupational therapy in the State. The Maine occupational therapy practice laws acknowledge this throughout the law. The 2 levels are: Occupational therapist and certified occupational therapy assistant.

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The Maine Revised Statutes, Title 32, section 2276, subsection 1, by oversight does not contain the wording "certified occupational therapist assistant" and therefore by omission does not conform with the intent of the rest of the law. This has caused problems with interpretation on several occasions. This bill corrects this omission.

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This bill also accomplishes the following.

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1. It allows the board to set fees by rulemaking with caps set for these fees. Proposed increases will help fund an additional compliance officer position. Presently there is only one compliance officer to cover the entire State.

1 2. It clearly defines the time span over which a
2 trainee or journeyman must earn the required hours of
3 experience to sit for either the journeyman or
4 Masters' license.

5 3. It limits a master plumber from serving as a
6 Master Plumber with more than one corporation. It
7 clarifies this section in regard to full-time employ-
8 ee.

9 4. It increases the size of the board to 5 mem-
10 bers, with nonconcurrent terms. The present 3-member
11 board has been greatly handicapped by the small size
12 of the board membership.

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