

MAINE STATE LEGISLATURE

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L.D. 305

(Filing No. H- 404)

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 225, L.D. 305, Bill, "An Act Amending Various Licensure Laws of Boards and Commissions within the Department of Professional and Financial Regulation"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, this bill provides operating funds for the Board of Licensure of Railroad Personnel; and

Whereas, unless this bill is enacted as an emergency that board will be without funds for the first quarter of fiscal year 1989-90; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 5 MRSA §12004-A, sub-§§18, 26 and 38, as enacted by PL 1987, c. 786, §5, are amended to read:

18. State Board of Funeral Service	\$20/Day <u>\$35/Day</u>	32 MRSA §1451
26. Board of Occupa- tional Therapy Practice	Expenses <u>Only</u> <u>\$35/Day</u>	32 MRSA §2273

1 38. State Board of Expenses 32 MRSA §7026
Social Worker Licensure Only
3 \$35/Day'

5 Further amend the bill by inserting after section 4 the
following:

7 'Sec. 5. 10 MRSA §8001-A is enacted to read:

9 §8001-A. Department; affiliation

11 The following boards and commissions are affiliated with the
13 Department of Professional and Financial Regulation:

15 1. State Board of Registration of Architects and Landscape
17 Architects. Architects and Landscape Architects, State Board of
Registration of;

19 2. State Board of Cosmetology. Cosmetology, State Board of;

21 3. Board of Dental Examiners. Dental Examiners, Board of;

23 4. Board of Registration in Medicine. Medicine, Board of
25 Registration in;

27 5. State Board of Nursing. Nursing, State Board of;

29 6. Board of Optometric Examiners. Optometric Examiners,
Board of;

31 7. Board of Osteopathic Examination and Registration.
33 Osteopathic Examination and Registration, Board of;

35 8. Board of Examiners of Podiatrists. Podiatrists, Board
of Examiners of; and

37 9. Board of Registration for Professional Engineers.
39 Professional Engineers, Board of Registration for.'

41 Further amend the bill by striking out all of section 5 and
inserting in its place the following:

43 'Sec. 5. 10 MRSA §8003, sub-§5, as amended by PL 1987, c. 595,
45 §2, is further amended to read:

47 5. Authority of bureaus, boards or commissions. Nothing in
49 this section may be construed to diminish or deprive any bureau,
51 board or commission within or affiliated with the department of
its statutory duty and sole authority to regulate its profession,
occupation or industry.

COMMITTEE AMENDMENT "A" to H.P. 225, L.D. 305

1 In addition to authority otherwise conferred, unless expressly
precluded by language of denial in its own governing law, each
3 licensing board and commission within or affiliated with the
department may take one or more of the following actions.

5
6 ~~A.---Suspend a violator's license for up to 90 days or impose~~
7 ~~a civil penalty of up to \$500, or both, for any violation of~~
8 ~~the applicable laws, rules or license terms under its~~
9 ~~jurisdiction, or~~

11 A-1. For each violation of applicable laws, rules or
12 conditions of licensure or registration, the bureau, board
13 or commission may take one or more of the following actions:

15 (1) Issue warnings, censures or reprimands to a
16 licensee or registrant. Each warning, censure and
17 reprimand issued shall be based upon violations of
18 different applicable laws, rules or conditions of
19 licensure or shall be based upon separate instances of
20 actionable conduct or activity;

21
22 (2) Suspend a license or registration for up to 90
23 days for each violation of applicable laws, rules and
24 conditions of licensure or registration or for instance
25 of actionable conduct or activity. Suspensions may be
26 set to run concurrently or consecutively and, in total,
27 may not exceed one year. Execution of all or any
28 portion of a term of suspension may be stayed pending
29 successful completion of conditions of probation,
30 although the suspension shall remain part of the
31 licensee's or registrant's record;

32
33 (3) Impose civil penalties of up to \$1,500 for each
34 violation of applicable laws, rules and conditions of
35 licensure or registration or for instances of
36 actionable conduct or activity; and

37
38 (4) Impose conditions of probation upon an applicant,
39 licensee or registrant. Probation may run for such
40 time period as the bureau, board or commission deems
41 appropriate. Probation may include such conditions
42 as: additional continuing education; medical,
43 psychiatric or mental health consultations or
44 evaluations; mandatory professional or occupational
45 supervision of the applicant, licensee or registrant;
46 and such other conditions as the bureau, board or
47 commission deems appropriate. Costs incurred in the
48 performance of terms of probation shall be borne by the
49 applicant, licensee or registrant. Failure to comply
50 with the conditions of probation shall be a ground for
51 disciplinary action against a licensee or registrant.

1 B. ~~Execute~~ The bureau, board or commission may execute a
2 consent agreement, with the consent of all parties and the
3 counsel to the licensing board or commission, to resolve any
4 which resolves a complaint or investigation without further
5 proceedings. Consent agreements may be entered into only
6 with the consent of: the applicant, licensee or registrant;
7 the bureau, board or commission; and the Department of the
8 Attorney General. Any remedy, penalty or fine that is
9 otherwise available by law, even if only in the jurisdiction
10 of the Administrative Court, may be achieved by consent
11 agreement, including temporary or long-term suspension and
12 permanent surrender of an revocation of a professional or
13 occupational license or registration. A consent agreement is
14 not subject to review or appeal, and may be modified only by
15 a writing executed by all parties to the original consent
16 agreement. A consent agreement is enforceable by an action
17 in Superior Court.

18 C. The bureau, board or commission may:

19 (1) Require all applicants for license or registration
20 renewal to have responded under oath to all inquiries
21 set forth on renewal forms; or

22 (2) Require applicants for license or registration
23 renewal to present proof of satisfactory completion of
24 continuing professional or occupational education in
25 accordance with each bureau's, board's or commission's
26 rules. Failure to comply with the continuing education
27 rules may, in the bureau's, board's or commission's
28 discretion, result in a decision to deny license or
29 registration renewal or may result in a decision to
30 enter into a consent agreement and probation setting
31 forth terms and conditions to correct the licensee's or
32 registrant's failure to complete continuing education.
33 Terms and conditions of a consent agreement may include
34 requiring completion of increased hours of continuing
35 education, civil penalties, suspension and such other
36 terms as the bureau, board, commission, the licensee or
37 registrant and the Department of the Attorney General
38 deem appropriate.

39 D. The bureau, board or commission may require surrender of
40 licenses and registrations. In order for a licensee's or
41 registrant's surrender of a license or registration to be
42 effective, a surrender must first be accepted by vote of the
43 bureau, board or commission. Bureaus, boards and
44 commissions may refuse to accept surrender of licenses and
45 registrations if the licensee or registrant is under
46 investigation or is the subject of a pending complaint or
47 proceeding, unless a consent agreement is first entered into
48 pursuant to this chapter.

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

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter IV, and shall be subject to judicial review exclusively in the Administrative Court in accordance with Title 5, chapter 375, subchapter VII, substituting the term "Administrative Court" for "Superior Court," notwithstanding any other provision of law.'

Further amend the bill by striking out all of section 13

Further amend the bill by striking out all of section 19 and inserting in its place the following:

'Sec. 19. 32 MRSA §1455-A, sub-§2, ¶¶E and K, as enacted by PL 1983, c. 413, §60, are amended to read:

E. Employment, directly or indirectly, of a resident practitioner trainee, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

K. Gross incompetency, negligence or misconduct in carrying on the business or profession of funeral service; or'

Further amend the bill in section 23 in that part designated "§1503-A." in the first line (page 11, line 2 in L.D.) by striking out the following: "Resident" and inserting in its place the following: 'Practitioner'

Further amend the bill by inserting after section 24 the following:

'Sec. 25. 32 MRSA §1601, sub-§4, as amended by PL 1983, c. 812, §208, is further amended to read:

4. Compensation. The members of the board shall be compensated according to the provisions of Title 5, chapter 379 ~~for no more than 18 meetings per calendar year, or, in the case of the chairman, for no more than 25 days per calendar year. Expenses as related to duties out of the State shall be reimbursable for no more than 5 calendar days per calendar year unless approved in advance by the Governor.~~

1 Sec. 26. 32 MRSA §1657, first ¶, as amended by PL 1987, c. 677,
2 §5, is further amended to read:

3
4 The board shall furnish to each licensed cosmetologist,
5 aesthetician or manicurist a license ~~bearing--the--seal--of--the~~
6 ~~board~~ certifying that the holder of that license is entitled to
7 practice in this State. It shall be the duty of the holder of
8 such that license to post it in a conspicuous place where it may
9 be readily seen by all persons served.'

11 Further amend the bill by striking out all of sections 25,
12 26, 27, 28 and 29

13
14 Further amend the bill by renumbering the sections to read
15 consecutively

17 Further amend the bill by inserting before the statement of
18 fact the following:

19
20 'Emergency clause. In view of the emergency cited in the
21 preamble, this Act shall take effect when approved.'

23

25

STATEMENT OF FACT

27 This amendment makes the following changes to the bill.

29 1. It increases the per diem for the State Board of Funeral
30 Service.

31

32 2. A section is added to identify those boards and
33 commissions which are affiliated with the Department of
34 Professional and Financial Regulation.

35

36 3. The amendment clarifies the authority of the bureaus,
37 boards and commissions to take disciplinary actions, enter into
38 consent agreements, require renewal or continuing education and
39 cause the surrender of licenses or registrations.

41 4. The section making changes to the laws on solicitation
42 of prearranged funerals is deleted from the bill.

43

44 5. Technical changes are made in 2 provisions concerning
45 the practice and training of funeral services.

47 6. The amendment adds to changes to the Board of
48 Cosmetology laws by eliminating the limit on the number of
49 meetings per year authorized and by allowing the board to use the
50 license forms produced by the Department of Professional and
51 Financial Regulation.

