

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

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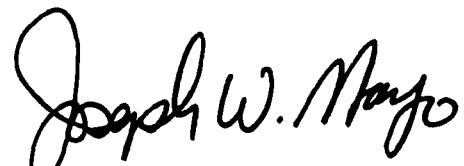
H.P. 483

House of Representatives, February 28, 1995

**An Act Regarding the Functioning of the Department of Mental Health
and Mental Retardation and Several Professional Regulatory Boards.**

(EMERGENCY)

Reported by Representative LEMKE for the Joint Standing Committee on Audit and Program Review of the 116th Legislature pursuant to the Maine Revised Statutes, Title 3, chapter 33.


JOSEPH W. MAYO, Clerk

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

4
6 **Whereas,** those provisions are intended to improve
management, performance, organization, program delivery and
8 fiscal accountability of agencies and independent agencies
reviewed; and

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

16 **Be it enacted by the People of the State of Maine as follows:**

18 **PART A**

20 **Sec. A-1. 3 MRSA §927, sub-§6,** as amended by PL 1993, c. 600,
Pt. A, §§3 and 4, is further amended to read:

22 **6. 2006.**

24 **A. Agencies:**

- 26 (1) Department of Conservation;
- 28 (2) Department of Inland Fisheries and Wildlife;
- 30 (3) Baxter State Park Authority; and
- 32 (4) Department of Mental Health and Mental Retardation.

34 **C. Independent agencies:**

- 36 (1) Saco River Corridor Commission;
- 38 (2) Acupuncture Licensing Board;
- 40 (3) Board of Licensing of Auctioneers;
- 42 (4) Board of Licensing of Dietetic Practice;
- 44 (5) Board of ~~Commercial~~ Driver Education;
- 46 (6) Advisory Board for the Licensing of Taxidermists;
- 48 (7) Maine Turnpike Authority; and
- 50 (8) State Board of Optometry.

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Sec. A-2. 5 MRSA §151, first ¶, as amended by PL 1993, c. 600, Pt. B, §§20 to 22, is further amended to read:

All money received by the Treasurer of State from the Board of Licensure in Medicine, the Board of Examiners in Physical Therapy, the Board of Examiners of Psychologists, the State Board of Nursing, the Board of Accountancy, the Board of Veterinary Medicine, the Board of Osteopathic Licensure, the State Board of Funeral Service, the State Board of Optometry, the Board of Dental Examiners, the State Board of Registration for Professional Engineers, the State Board of Certification for Geologists and Soil Scientists, the Nursing Home Administrators Licensing Board, the State Board of Licensure for Architects and Landscape Architects, the Electricians' Examining Board, the Oil and Solid Fuel Board, Maine State Pilotage Commission, the State Board of Barbers, State Board of Cosmetology, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the Examiners of Podiatrists, the Board of Chiropractic Licensure, the Board of Examiners on Speech Pathology and Audiology, the Maine Real Estate Commission, the Board of ~~Commercial~~ Driver Education, the Board of Registration of Dietetic Practice, the State Board of Registration for Professional Foresters, the Board of Hearing Aid Dealers and Fitters, the Manufactured Housing Board, the Board of Occupational Therapists, Radiologic Technology Board of Examiners, Board of Registration of Substance Abuse Counselors, Maine Athletic Commission, Board of Underground Oil Storage Tank Installers and the Board of Commissioners of the Profession of Pharmacy shall constitute a fund, which ~~shall-be~~ is a continuous carrying account for the payment of the compensation and expenses of the members, the expenses of the board and for executing the law relating to each board respectively and as much thereof as may be required is appropriated for these purposes. The secretary of each board shall must be reimbursed for all expenditures for books, stationery, printing and other necessary expenses incurred in the discharge of ~~his~~ the secretary's duties. All such payments shall must be made from the respective funds held in the State Treasury, after the approval of the State Controller. In no event may these payments exceed the amounts received by the Treasurer of State from the treasurer of each respective board. Any balance remaining to the credit of any board at the end of any year shall must be carried forward to the next year.

Sec. A-3. 10 MRSA §8001, sub-§10, as repealed and replaced by PL 1991, c. 548, Pt. B, §1, is amended to read:

10. Board of Driver Education. ~~Commercial~~ Driver Education, Board of;

2 **Sec. A-4. 22 MRSA §3881, sub-§3**, as enacted by PL 1993, c.
3 600, Pt. A, §16, is repealed and the following enacted in its
4 place:

6 **3. Fund.** "Fund" means the repository for funds donated to
7 the Maine Children's Trust Incorporated by the taxpayers of the
8 State through an income tax checkoff pursuant to Title 36,
9 section 5285 as well as federal grants and contracts, privately
10 donated funds and in-kind donations for prevention programs, or
11 by any means for the purposes of this chapter.

12 **Sec. A-5. 22 MRSA §3881, sub-§7** is enacted to read:

14 **7. Trust.** "Trust" means the Maine Children's Trust
15 Incorporated.

16 **Sec. A-6. 22 MRSA §3882**, as enacted by PL 1993, c. 600, Pt.
17 A, §16, is amended to read:

18 **§3882. Establishment; purpose; nonprofit organization**

19 The Maine Children's Trust Incorporated, referred to in this
20 chapter as the "fund trust," is established to provide a
21 mechanism for voluntary contributions by individuals and groups
22 for annual and long-term funding of prevention programs. ~~The~~
23 ~~fund is the repository for funds donated by taxpayers of the~~
24 ~~State through an income tax checkoff pursuant to Title 36,~~
25 ~~section 5285 as well as federal grants and contracts, privately~~
26 ~~donated funds and in-kind donations for prevention programs.~~

27 The fund trust is a private nonprofit corporation with a
28 broad public purpose pursuant to this chapter. The exercise by
29 the fund trust of the powers conferred by this chapter is held to
30 be an essential governmental function.

31 **Sec. A-7. 22 MRSA §3884, sub-§§1, 7 and 9**, as enacted by PL
32 1993, c. 600, Pt. A, §16, are amended to read:

33 **1. Plan.** Develop a biennial working plan for fund trust
34 activities that sets overall statewide goals and objectives for
35 child abuse prevention activities, establishes priorities for
36 distribution of money in the fund and provides a working plan for
37 the fund trust for the biennium. In developing the plan, the
38 board may:

39 A. Review and evaluate existing prevention programs;

40 B. Ensure that equal opportunity exists for the
41 establishment of prevention programs and receipt of money
42 from the fund among all geographic areas in the State;

2 C. Review and evaluate public and private funding sources;
and

4

D. Submit the plan to the Legislature biennially;

6

7. **Education.** As a primary prevention activity of the fund trust, develop and implement a campaign to provide statewide education and public information to enhance public awareness concerning child abuse and neglect;

9. **Bylaws.** Adopt bylaws, have the general powers accorded corporations under Title 13, chapter 81 and perform other acts as necessary or convenient to carry out the lawful purposes of the fund trust;

16

18 **Sec. A-8. 22 MRSA §3888**, as enacted by PL 1993, c. 600, Pt. A, §16, is amended to read:

20 **§3888. Prohibited interests of officers, directors
and employees**

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24 An officer, director or employee of the fund trust or a spouse or dependent child of an officer, director or employee of the fund trust may not receive direct personal benefit from the activities of the fund trust in assisting a private entity. This provision does not prohibit corporations or other entities with which an officer, director or employee is associated by reason of ownership or employment from participating in prevention programs of the fund trust, if that ownership or employment is made known to the board and the officer, director or employee abstains from voting on matters relating to that participation. This prohibition does not extend to corporators who are not officers, directors or employees of the fund trust.

36 **Sec. A-9. 22 MRSA §3889**, as enacted by PL 1993, c. 600, Pt. A, §16, is amended to read:

38

40 **§3889. Donations to the State**

42

44 The State, through the Governor, may accept donations, bequests, devises, grants or other interests of any nature on behalf of the fund trust and shall transfer those funds, that property or other interests to the fund.

46 **Sec. A-10. 32 MRSA §270** is enacted to read:

48 **§270. Definitions**

50 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

2 1. Auction. "Auction" means the offering of goods or real
4 estate for sale by means of exchanges between an auctioneer and
 members of an audience.

6 2. Auction company. "Auction company" means a person,
8 partnership, corporation, association or other legal entity that
 engages in the business of arranging, managing, sponsoring,
10 advertising or conducting auctions.

12 3. Auctioneer. "Auctioneer" means any person who conducts
14 or offers that person's service to conduct auctions, contracts or
 offers to contract with consignors of real or personal property,
16 with or without receiving or collecting a fee, commission or
 other valuable consideration, or sells or offers to sell property
 at auction.

18 4. Board. "Board" means the Board of Licensing of
20 Auctioneers.

22 5. Small auctioneer. "Small auctioneer" means any person
24 who conducts or offers that person's service to conduct auctions,
 contracts or offers to contract with consignors of real or
26 personal property, with or without receiving or collecting a fee,
 commission or other valuable consideration, or sells or offers to
 sell property at auction and who receives \$10,000 or less in
28 gross income annually from auction sales.

30 **Sec. A-11. 32 MRSA §271-A**, as amended by PL 1985, c. 748,
 §31, is further amended to read:

32 **§271-A. Disposition of fees**

34 All fees received under this chapter ~~shall~~ must be paid to
36 the Treasurer of State to be used for carrying out the purposes
 of this chapter. Any balance of these fees ~~shall~~ may not lapse,
38 but ~~shall~~ must be carried forward as a continuing account to be
 expended for the same purpose in the following fiscal years.

40 **Sec. A-12. 32 MRSA §271-B** is enacted to read:

42 **§271-B. Powers and duties**

44 The board has the following duties and powers, in addition
46 to those otherwise set forth in this chapter.

48 1. Licensure and standards. The board shall license and
50 set standards of practice for auctioneers. The board shall
 evaluate the qualifications and supervise the licensure of
 applicants under this chapter.

2 2. Examination. The board shall administer and supervise
the examination of applicants for licensure under this chapter.

4 3. Contracts. The board may enter into contracts to carry
6 out its responsibilities under this chapter.

8 4. Budget. The board shall submit to the Commissioner of
Professional and Financial Regulation its budgetary requirements
10 in the same manner as is provided in Title 5, section 1665, and
the commissioner shall in turn transmit these requirements to the
12 Bureau of the Budget without any revision, alteration or change,
unless alterations are mutually agreed upon by the Department of
14 Professional and Financial Regulation and the board or the
board's designee. The budget submitted by the board to the
16 commissioner must be sufficient to enable the board to comply
with this chapter.

18 5. Records. The board shall keep records and minutes as
20 are necessary to the ordinary dispatch of its functions.

22 Sec. A-13. 32 MRS §272-A is enacted to read:

24 §272-A. Initial and renewal license fee waived for small
26 auctioneer

28 An applicant for licensure shall indicate on the application
form to the board whether the applicant expects to earn \$10,000
30 or less in gross income annually from auction sales during the
licensure period. Applicants who meet the provisions of this
chapter and who expect to earn \$10,000 or less in gross income
32 annually from auction sales during the licensure period must be
licensed as small auctioneers and a license fee may not be
34 charged.

36 An applicant for renewal of a small auctioneer's license
shall submit a copy of that applicant's federal and state income
38 tax forms, showing gross annual income from auction sales during
the prior licensure period. In order to be licensed an applicant
40 must state on the application that the applicant expects to earn
\$10,000 or less in gross income annually from auction sales
42 during the prospective licensure period. Upon confirming that
the gross income requirement has been met during the prior
44 licensure period and is expected to be maintained throughout the
prospective licensure period, the board shall renew the
46 applicant's small auctioneer license and may not charge a fee for
renewed licensure. Upon finding that the gross income
48 requirement from auction sales during the prior period is not met
or is expected to be exceeded in the prospective licensure

2 period, the board shall renew the license at the level of
3 auctioneer and charge the requisite fee.

4 A person licensed as a small auctioneer shall comply with
5 all other provisions of this chapter.

6
7 **Sec. A-14. 32 MRSA §273, first and 4th ¶¶,** as amended by PL
8 1991, c. 203, §3, are further amended to read:

10 Every resident person in this State desiring to do business
11 as an auctioneer or small auctioneer, who satisfies the board
12 that that person has knowledge of the laws of this State
13 pertaining to auctions and sales, the ethics and practices of
14 auctioneers, the laws relating to the record of sales of used
15 merchandise and such other related subjects as the board may
16 select, upon application in form designated by the board, must
17 receive a license to conduct auctions. The original application
18 must be accompanied by 2 letters of recommendation as evidence of
19 ethical business practice.

20 The application and supporting information must be kept on
21 file together with a record of all licenses issued. The license
22 fee may not exceed \$100 \$125 for a biennium and the original
23 license is effective from date of issue until March 31st of the
24 biennial expiration or when the Commissioner of Professional and
25 Financial Regulation designates.

26
27 **Sec. A-15. 32 MRSA §274,** as amended by PL 1991, c. 203, §4,
28 is further amended to read:

29 **§274. Renewal**

30
31 Notice of expiration must be mailed to each licensee's last
32 known address at least 30 days in advance of the expiration of
33 the license. The renewal notice must include any requests for
34 information necessary to update the individual's records. The
35 biennial license renewal fee may not exceed \$100 \$125.

36
37 A license may be renewed up to 90 days after the date of its
38 expiration upon payment of a late fee of \$10 in addition to the
39 renewal fee. Any person who submits an application for renewal
40 more than 90 days after the license expiration date ~~shall be~~ is
41 subject to all requirements governing new applicants under this
42 chapter.

43
44 **Sec. A-16. 32 MRSA §275,** as enacted by PL 1979, c. 478, §2,
45 is amended to read:

46 **§275. License limitations**

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1. **License not transferable.** A license is not ~~transferrable~~
2 transferable nor does it give authority to more than one person,
3 but each licensee may have the assistance of one or more persons
4 in conducting the auction sale. These individuals may aid the
5 licensee or ~~shall~~ act in the capacity of an apprentice but ~~shall~~
6 may not act for or without the licensee.

8 2. **Advertising.** No auction ~~shall~~ may be advertised in this
9 State without including the name and license number of the
10 auctioneer or small auctioneer.

12 **Sec. A-17. 32 MRSA §276**, as amended by PL 1985, c. 748, §33,
13 is further amended to read:

14 **§276. Nonresident certification**

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

22 In addition, an applicant licensed to conduct auctions in
23 the state in which he the applicant resides shall furnish proof
24 of that licensure to the board.

26 **Sec. A-18. 32 MRSA §277**, as amended by PL 1991, c. 203, §5,
27 is further amended to read:

30 **§277. Nonresident fee; renewal**

32 The applicant shall pay an initial license fee not to exceed
33 \$200 \$225. The license may be renewed biennially upon payment of
34 fees not to exceed \$200 \$225.

36 **Sec. A-19. 32 MRSA §278-A, sub-§1**, as enacted by PL 1983, c.
37 413, §19, is amended to read:

38 1. **Investigations.** The ~~commissioner~~ board shall
39 investigate, or cause to be investigated, all complaints made to
40 ~~him~~ it and all cases of noncompliance with or violation of this
41 chapter.

44 **Sec. A-20. 32 MRSA §279**, as enacted by PL 1979, c. 478, §2,
45 is amended to read:

46 **§279. Inspection of license**

48 Every auctioneer or small auctioneer licensed by the State
49 ~~intending to conduct an auction sale in any city or town shall,~~

2 ~~prior-to-the-sale,~~ must show ~~his~~ that auctioneer's or small
3 auctioneer's state license ~~to-the~~ at any time upon the request of
4 a municipal law enforcement agency or municipal clerk or officers
5 officer in whose municipality the auctioneer or small auctioneer
6 is conducting an auction. The provisions for obtaining a state
7 auctioneer's or small auctioneer's license shall do not prohibit
8 any municipality from establishing its own permit requirements
9 for an auction sale, provided no municipal permit ~~shall-be~~ is
10 required for an auction ~~which-last~~ that lasts less than 2 full
consecutive days.

12 **Sec. A-21. 32 MRSA §280, sub-§1,** as enacted by PL 1979, c.
13 478, §2, is amended to read:

14
15 **1. Statement of ownership of property.** Any law enforcement
16 officer may require the auctioneer or small auctioneer to state
17 whether the merchandise being sold is owned in part or in its
18 entirety by the auctioneer or small auctioneer. If the
19 merchandise is owned by another party, the name and address of
20 that party shall must be stated to law enforcement officials.

22 **Sec. A-22. 32 MRSA §280, sub-§3,** as repealed and replaced by
23 PL 1989, c. 450, §7, is amended to read:

24
25 **3. Real estate brokerage.** If an auctioneer or small
26 auctioneer engages in real estate brokerage, the auctioneer or
27 small auctioneer must be licensed under chapter 114, except that
28 a license is not required if the auctioneer or small auctioneer
29 is hired to call bids on real estate being sold at an auction and
30 the auctioneer or small auctioneer does not prepare contracts or
31 otherwise control the actual sale or take custody of any part of
32 the purchase price.

34 **Sec. A-23. 32 MRSA §280, sub-§4,** as enacted by PL 1991, c.
35 203, §8, is amended to read:

36
37 **4. Contracts.** A person may not conduct an auction in this
38 State without first having a written contract with the owner of
39 any property to be sold. ~~The Board of Licensing of Auctioneers~~
40 ~~shall designate the format of the contract.~~ The contract must
41 contain the date of the contract and the name and license number
42 of the auctioneer. The contract must contain the terms and
43 conditions, including, but not limited to:

- 44
45 A. Listing or description of all items to be sold;
46
47 B. Reserves, if any;
48
49 C. Payment schedule;

50

2 D. Commission rate; and

4 E. Statement of other charges.

6 **Sec. A-24. 32 MRSA §281**, as amended by PL 1979, c. 705, §7,
is further amended to read:

8 **§281. Exemptions**

10 **1. Charitable, educational, religious or nonprofit**
12 **organizations.** The provisions of this chapter shall do not apply
14 to individuals who conduct a sale or auction for a charitable,
16 educational, religious or other nonprofit organization, provided
that the charity retains the total amount of the proceeds with
the exception of advertising fees and the person conducting the
sale or auction receives no fee for his services.

18 **2. Sheriffs, tax collectors, executors and administrators.**
This chapter shall does not apply to sheriffs or their deputies,
20 constables, tax collectors, executors, administrators or any
other officers authorized to sell property by order of any court.

22 **3. Pedigreed animals.** This chapter shall does not prohibit
24 any person employed by the owner of pedigreed animals ~~to sell~~
from selling those animals at public auction.

26 **4. Foreclosure sales.** This chapter shall does not apply to
28 any individual conducting a foreclosure sale pursuant to a court
order.

30 **Sec. A-25. 32 MRSA §282, 3rd ¶**, as enacted by PL 1991, c. 203,
32 §9, is amended to read:

34 The Board of Licensing of Auctioneers may take any action
pursuant to Title 10, section 8003, subsection 5. Any person who
36 purports to be or operates as a licensed auctioneer or small
auctioneer without obtaining a license commits a Class E crime.

38 **Sec. A-26. 32 MRSA §283**, as amended by PL 1991, c. 203, §§10
40 and 11, is further amended to read:

42 **§283. Conditions of auction sales**

44 Each auctioneer or small auctioneer shall post for display
and describe at the beginning of each auction the conditions of
46 the auction sale. The conditions shall must include:

48 **1. Description of property.** A description of the property
to be sold and whether the property is sold "as is;"
50

2 **2. Highest bidder acknowledged.** That the highest bidder
will be acknowledged by the auctioneer or small auctioneer;

4 **3. Bid not commensurate.** Whether a bid not commensurate
with value, in the opinion of the auctioneer or small auctioneer,
6 may be made;

8 **4. Absentee bids.** Whether absentee bids will be allowed;

10 **5. Sales Tax.** Sales tax requirements;

12 **6. Auctioneer, small auctioneer or owner bidding.** Whether
or not the owner ~~or~~, auctioneer or small auctioneer reserves the
14 right to bid;

16 **7. Reserve.** Whether or not the auction has a reserve;

18 **8. Uniform Commercial Code.** A statement that the Uniform
Commercial Code, Title 11, section 2-328 applies to this auction
20 sale; and

22 **9. Statement of buyer's premium.** A statement of buyer's
premium; and

24 **10. Title and address.** The title and address of the Board
26 of Licensure of Auctioneers.

28 **Sec. A-27. 32 MRSA §9902, sub-§5,** as amended by PL 1987, c.
313, §2, is further amended to read:

30 **5. Licensed dietetic technician.** "Licensed dietetic
32 technician" means a person licensed under this chapter who
practices dietetics under the supervision of a dietitian who is
34 licensed in accordance with this chapter.

36 **Sec. A-28. 32 MRSA §9903, sub-§1,** as amended by PL 1987, c.
313, §3, is further amended to read:

38 **1. Establishment and membership.** There is established,
40 within the Department of Professional and Financial Regulation,
the Board of Licensing of Dietetic Practice. The board ~~shall~~
42 ~~consist~~ consists of 5 members appointed by the Governor,
including 2 public members who are residents of this State, who
44 do not hold a license to practice dietetics and who have no
direct or indirect financial interest in the practice or delivery
46 of dietetic services. Other than these public members, the
persons appointed to the board ~~shall~~ must have been engaged in
48 rendering dietetic services to the public or in teaching or
research in dietetics for at least 2 years immediately preceding
50 their appointments. Two board members ~~shall~~ must be dietitians.

2 The 5th member shall must be a dietetic technician. The
3 professional members shall must at all times be holders of valid
4 licenses under this chapter, except for the members of the first
5 board, each of whom shall must fulfill the requirements for
6 licensing under this chapter.

7 **Sec. A-29. 32 MRSA §9903, sub-§§3 and 4**, as enacted by PL 1985,
8 c. 389, §28, are amended to read:

10 **3. Meetings.** The board shall meet at least once a year to
11 conduct its business and to elect a ~~chairperson~~ chair.
12 Additional meetings shall may be held as necessary to conduct the
13 business of the board and may be ~~eevened~~ convened at the call of
14 the ~~chairperson~~ chair or a majority of the board members. A
15 majority of the members of the board shall ~~constitute~~ constitutes
16 a quorum for all purposes.

18 **4. Compensation.** Members of the board shall ~~be compensated~~
19 are entitled to compensation as provided in Title 5, section
20 12002-A chapter 379.

22 **Sec. A-30. 32 MRSA §9904, sub-§3**, as amended by PL 1987, c.
23 313, §3, is further amended to read:

24 **3. Hearings.** Hearings may be conducted by the board to
25 assist with investigations, to determine whether grounds exist
26 for suspension, revocation or denial of a license or as otherwise
27 deemed considered necessary to the fulfillment of its
28 responsibilities under this chapter. Hearings shall must be
29 conducted in accordance with the Maine Administrative Procedure
30 Act, Title 5, chapter 375, subchapter IV, to the extent
31 applicable.

34 **Sec. A-31. 32 MRSA §9906, sub-§1**, as amended by PL 1987, c.
35 313, §5, is further amended to read:

36 **1. Licensing required.** No A person may not practice
37 dietetics or ~~held-himself-out~~ claim to be a dietitian or a
38 dietetic technician unless he that person is licensed in
39 accordance with this chapter.

42 **Sec. A-32. 32 MRSA §9907**, as amended by PL 1991, c. 509, §32,
43 is further amended to read:

44 **§9907. Requirements for licensing; education;**
45 **experience**

48 **1. Dietitian's licensing.** An applicant for licensing as a
49 dietitian shall must file a written application on forms provided
50 by the board, showing to the satisfaction of the board that he
the applicant meets the following requirements.

2 A. The applicant must exhibit adherence to established
4 ethical professional standards.

6 B. An applicant shall must present evidence satisfactory to
8 the board of having successfully completed the academic
10 requirements established by the American Dietetic
12 Association or equivalent requirements as determined by the
14 board and shall must have received a baccalaureate or higher
16 degree from an accredited college or university. As part of
his the applicant's professional education an, the
applicant shall must have completed courses in organic and
inorganic chemistry, human physiology, microbiology,
principles of sociology or psychology, basic communication
skills, economics, food composition, nutrition and
management theory.

18 C. An applicant shall must submit to the board evidence of
20 having successfully completed the experience requirements
approved by the American Dietetic Association or equivalent
22 experience approved by the board. That experience shall
must include at least 6 months full-time experience in the
24 field of dietetics, or its part-time equivalent. The
experience shall must have been acquired during or within 5
26 years of completion of the academic requirements in
paragraph B or not more than 5 years before the date of
license application.

28 D. The applicant must have successfully completed an
30 examination given by the American Dietetic Association or
its equivalent as determined and administered by the board.
32 The examination requirement of this paragraph does not apply
to an applicant who presents evidence of having practiced as
34 a dietitian without censure for a period of 10 years
immediately prior to September 30, 1987.

36 **2. Dietetic technician's licensing.** An applicant for
38 licensing as a dietetic technician shall must file a written
application on forms provided by the board showing to the
40 satisfaction of the board that he the applicant meets the
following requirements.

42 A. The applicant must exhibit adherence to established
44 ethical professional standards.

46 B. The applicant must have graduated from a dietetic
48 technician program approved by the Commission on
Accreditation of the American Dietetic Association or its
50 equivalent, as determined by the board, or graduated with a
Bachelor of Science Degree in Food and Nutrition from an
approved 4-year program.

2 C. An applicant shall must submit to the board evidence of
4 having successfully completed a 2-month work experience
6 approved by the board. That experience shall must have been
8 acquired during or within 5 years from completion of the
academic requirements in paragraph B and not more than 5
years from the date of license application.

10 D. The applicant must have successfully completed an
12 examination given by the American Dietetic Association or
its equivalent as determined by the board.

14 **Sec. A-33. 32 MRSA §9909, sub-§2**, as amended by PL 1987, c.
313, §5, is further amended to read:

16 **2. Continuing education.** Each license renewal shall must be
18 accompanied by evidence of continuing education or other
requirements as established in rule by the board.

20 **Sec. A-34. 32 MRSA §9911, sub-§2**, as enacted by PL 1985, c.
389, §28, is amended to read:

22 **2. Deposit of fees.** All fees received by the board shall
24 must be paid to the Treasurer of State to be used for carrying
out this chapter. Any balance of fees shall may not lapse, ~~but~~
26 shall and must be carried forward as a continuing account to be
expended for the same purposes in the following fiscal years.

28 **Sec. A-35. 32 MRSA §9912**, as amended by PL 1987, c. 313, §8,
30 is further amended to read:

32 **§9912. Reciprocity**

34 The board may, in its discretion, grant a license under this
chapter to an individual licensed in another state if it
36 determines that the requirements or standards for licensure in
that state are equivalent to, or greater than, those established
38 by this chapter. The board may not require an individual
licensed in another state to meet requirements or standards for
40 licensure in the State that are more stringent than requirements
or standards for licensure imposed on in-state applicants.

42 **Sec. A-36. 32 MRSA §9915, sub-§1**, as enacted by PL 1987, c.
44 313, §9, is amended to read:

46 **1. Licensed persons.** Any person licensed or registered in
this State under any other law from engaging in the profession or
48 occupation for which he that person is licensed or registered;

2 **Sec. A-37. 32 MRSA §12406**, as amended by PL 1993, c. 600, Pt.
A, §265, is further amended to read:

4 **§12406. Establishment and compensation**

6 **1. Membership.** There is within the Department of
Professional and Financial Regulation the Acupuncture Licensing
8 Board as established in Title 5, chapter 379. The board ~~shall~~
~~consist~~ consists of 5 members appointed by the Governor. The
10 Governor shall make the initial appointments to the board no
later than 60 days after the effective date of this section and
12 shall inform the Commissioner of Professional and Financial
Regulation. The commissioner shall call the first meeting of
14 this board for a date no more than 30 days after ~~his~~ notification
by the Governor. Three members shall ~~shall~~ must be licensed
16 acupuncturists, one member shall ~~shall~~ must be a licensed, practicing
medical or osteopathic doctor and one member shall ~~shall~~ must be a
18 member of the public who is not licensed to practice any healing
art or science and who is not an acupuncturist. Until such time
20 as a licensing procedure is in place, persons who meet the
qualifications for licensing may be appointed in lieu of the
22 licensed board members.

24 **2. Terms of office.** Appointments are for 3-year terms.
Appointments of members must comply with section 60.

26 **3. Qualifications.** Members of the board shall ~~shall~~ must be
28 residents of this State and shall ~~shall~~ must be trustworthy and
competent to fulfill the responsibilities imposed by this
30 chapter. Each board member, other than the public member and the
practicing physician, shall ~~shall~~ must have been engaged in the active
32 practice of acupuncture for a minimum of 3 years prior to
appointment.

34 The Governor may remove any member for cause.

36 **4. Vacancy.** Any vacancy in the board shall ~~shall~~ must be filled
38 by appointment of a person, as qualified as the board member he
replaces being replaced, to hold office for the unexpired term.

40 **5. Compensation and expenses.** Members of the board shall
42 ~~be--compensated~~ are entitled to compensation according to the
provisions of Title 5, chapter 379, provided that expenses do not
44 exceed the fees collected by the board. If the fees to be
collected under this chapter are insufficient to pay the expenses
46 provided by this section, the board members shall ~~be~~ are entitled
to a pro rata payment in any years in which such those fees are
48 insufficient.

2 **6. Organization and meetings.** The board shall annually
3 elect a ~~chairman~~ chair and a secretary from its membership. The
4 secretary shall keep full and complete records of its proceedings
5 and accounts, which shall must be open to public inspection at
6 all reasonable times.

7 The board shall meet at least once a year to conduct its business
8 and elect its officers. Additional meetings shall may be held as
9 necessary to conduct the business of the board and may be
10 convened at the call of the ~~chairman~~ chair or a majority of the
11 board members.

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

16 The board shall adopt a seal for its use. The seal and records
17 shall must be kept at the Department of Professional and
18 Financial Regulation.

19 **Sec. A-38. 32 MRSA §12407, sub-§§1, 3 and 6,** as enacted by PL
20 1987. c. 488, §3, are amended to read:

21 **1. Licensure and standards.** The board shall ~~certify~~
22 license and set standards of practice for acupuncturists. The
23 board shall evaluate the qualifications and supervise the
24 ~~certification~~ licensure of applicants under this chapter. The
25 board shall adopt standards no less stringent than those
26 established by the National Commission for the Certification of
27 Acupuncturists. The board shall adopt requirements for
28 continuing education as a condition of license renewal.

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

34 The board shall may not refuse to renew ~~registration~~ licensure
35 for any reason other than failure to pay a required fee, unless
36 it has afforded the applicant an opportunity for an adjudicatory
37 hearing. The board shall hold an adjudicatory hearing at the
38 written request of any person who is denied ~~registration~~
39 licensure without a hearing for any reason other than failure to
40 pay a required fee, provided that the request for hearing is
41 received by the board within 30 days of the applicant's receipt
42 of written notice of denial of the application, the reasons
43 therefore and ~~his~~ the applicant's right to request a hearing.
44 Hearings shall must be conducted in conformity with the Maine
45

Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The board may subpoena witnesses, records and documents in any hearing it conducts.

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

Sec. A-39. 32 MRSA §12408, first ¶, as enacted by PL 1987, c. 488, §3, is amended to read:

To be eligible to apply for a license to practice acupuncture, an applicant shall must:

Sec. A-40. 32 MRSA §12409, as enacted by PL 1987, c. 488, §3, is amended to read:

§12409. Licensing

1. Licensed acupuncturist. The board shall issue a ~~certificate of licensing~~ license upon the affirmative vote of at least 3 members of the board to an applicant who has satisfactorily met the following minimal requirements:

A. ~~Met--the~~ The eligibility requirements set forth in section 12408; and

B. ~~Met--any~~ Any other reasonable criteria the board may prescribe by its rules.

Sec. A-41. 32 MRSA §12410, as enacted by PL 1987, c. 488, §3, is amended to read:

§12410. Fees

1. Application. Application for licensing as an acupuncturist shall must be on forms prescribed and furnished by the board. The application fee shall ~~be is~~ set by the board by rule, shall ~~be is~~ nonrefundable and shall must be in amounts which that are reasonable and necessary for their respective purposes.

2. Licensure. A ~~certificate~~ license for a ~~licensed~~ an acupuncturist shall ~~be is~~ in effect for 2 years. The ~~certificate~~ license fee shall ~~be is~~ established by the board in an amount not to exceed ~~\$250-biennially~~ \$200 annually. The board may raise the fee by rule within the limits of the statutory cap only as an action of last resort determined necessary to maintain the financial solvency of the board.

2 Fees for initial and renewal licenses shall must be set so that
4 total fee receipts do not exceed the amount projected as
6 necessary to properly cover the expenses of performing the duties
imposed upon the board.

8 **3. Deposit of fees.** All fees received by the board shall
10 must be paid to the Treasurer of State to be used for carrying
out this chapter. Any balance of fees shall may not lapse, but
12 shall must be carried forward as a continuing account to be
expended for the same purposes in the following fiscal years.

14 **Sec. A-42. 32 MRSA §12412, sub-§1,** as amended by PL 1989, c.
307, §6, is further amended to read:

16 **1. Requirements.** Prior to the expiration of a ~~certificate~~
18 ~~of--licensing~~ license, renewal application may be made by the
~~certificate~~ license holder who shall ~~pay a biennial~~ pays an
20 annual renewal fee, which shall may not exceed the initial
~~registration~~ licensure fee, and who shall ~~submit~~ submits
22 satisfactory proof of having completed continuing education
requirements adopted by the board as a condition of renewal. It
24 is not a condition of renewal that an applicant who qualified for
licensure as a licensed registered nurse continue to be licensed
as a registered nurse.

26 **Sec. A-43. 32 MRSA §12413, first ¶,** as enacted by PL 1987, c.
28 488, §3, is amended to read:

30 The board may suspend or revoke a ~~certificate of--licensing~~
32 license pursuant to Title 5, section 10004. In addition, the
board may refuse to issue or renew or the Administrative Court
34 may suspend, revoke or refuse to renew a ~~certificate of--licensing~~
license on any of the following grounds:

36 **Sec. A-44. 32 MRSA §12413, sub-§§1 and 3,** as enacted by PL
38 1987, c. 488, §3, are amended to read:

40 **1. Fraud or deceit.** The practice of fraud or deceit in
obtaining a ~~certificate~~ license under this chapter or in
42 connection with services rendered as an acupuncturist;

44 **3. Aiding and abetting misrepresentation.** Aiding or
abetting a person, not duly licensed under this chapter, in
46 ~~representing-himself-as~~ claiming to be an acupuncturist;

48 **Sec. A-45. 32 MRSA §12414** is enacted to read:

50 **§12414. Findings**

2 The Legislature finds that the regulation of the practice of
3 acupuncture is warranted in order to protect the health, safety
4 and welfare of the public.

6 **Sec. A-46. Maine Children's Trust Incorporated; transition;**
7 **retroactivity.** The Maine Children's Trust Incorporated is the
8 successor in every way to the Maine Children's Trust Fund.

10 All accrued expenditures, assets, liabilities, balances of
11 funds, transfers, revenues or other available funds of the former
12 Maine Children's Trust Fund must be reallocated to the Maine
13 Children's Trust Incorporated.

14 All existing rules, regulations and procedures in effect, in
15 operation or promulgated by the former Maine Children's Trust
16 Fund or any of its administrative units or officers are in effect
17 and continue in effect until rescinded, revised or amended by the
18 proper authority.

20 All existing contracts, agreements and compacts that are in
21 effect for the Maine Children's Trust Fund continue in effect.

22 Any positions authorized and allocated subject to the
23 personnel laws to the Maine Children's Trust Fund may continue to
24 be authorized.

26 All records, property and equipment, belonging to or
27 allocated for the use of the Maine Children's Trust Fund may be
28 used by the Maine Children's Trust Incorporated until existing
29 supplies of those items are exhausted.

32 This section applies retroactively to July 1, 1994.

34 **Sec. A-47. Revision clause.** Wherever in the Maine Revised
35 Statutes the words "Board of Commercial Driver Education" appear
36 or reference is made to those words, they are amended to read and
37 mean "Board of Driver Education" and the Revisor of Statutes
38 shall implement these revisions when updating, publishing or
39 republishing the statutes.

42 PART B

44 **Sec. B-1. 34-B MRSA §1208, sub-§2,** as enacted by PL 1983, c.
45 459, §7, is amended to read:

46 **2. Commissioner's powers.** The commissioner may disburse
47 funds to a community agency for the purpose of financially
48 supporting a human service, only if the disbursement is covered
49 by a written agreement between the department and the agency,
50 specifying at least the following:

- 2 A. The human service to be provided by the community agency;
- 4 B. The method of payment by the department to the community
6 agency; and
- 8 C. The criteria for monitoring and evaluating the
10 performance of the community agency in the provision of the
12 human service.

14 Unless exempted by the commissioner, a written agreement issued
16 to a qualified community agency must be issued for a period of
18 not less than 3 years. The implementation of these 3-year
20 contracts must be staggered to ensure staggered termination dates.

22 **Sec. B-2. 34-B MRSA §1208-A, sub-§2**, as enacted by PL 1993, c.
24 737, §3, is amended to read:

26 **2. Performance-based contract.** The commissioner shall
28 ensure that any agreement with the board of the regional
30 authority for Region V established pursuant to Public Law 1991,
32 chapter 781, Part C entered into on or after July 1, 1994 is a
34 performance-based contract. The commissioner shall ensure that
36 all agreements to purchase human services entered into on or
38 after July 1, 1997 are performance-based contracts. All
40 performance-based contracts must be issued for a period of not
42 less than 3 years, unless exempted by the commissioner. The
44 implementation of these 3-year contracts must be staggered to
46 ensure staggered termination dates.

48 **Sec. B-3. 34-B MRSA §3604, sub-§3, ¶A-1** is enacted to read:

A-1. Unless exempted by the commissioner, a grant of funds
made by the commissioner to a qualified community agency
must be made for a period of not less than 3 years. The
implementation of these 3-year contracts must be staggered
to ensure staggered termination dates.

Sec. B-4. 34-B MRSA §3604, sub-§3, ¶E, as amended by PL 1993,
c. 624, §1, is repealed.

Sec. B-5. 34-B MRSA §3604, sub-§3, ¶E-1 is enacted to read:

E-1. Any new contract must be awarded through a
request-for-proposal procedure and any contract of \$500,000
per year or more that is renewed must be awarded through a
request-for-proposal procedure at least every 8 years
according to the following procedure.

- 2 (1) For the purposes of this paragraph, "historical
3 recipient" means that community agency, defined by
4 section 1208, that submits a bid for a contract
5 pursuant to this paragraph, for which that community
6 agency has served as the immediate past administrator
7 or has been the immediate past recipient.
- 8 (2) The commissioner must publicly announce in
9 newspapers of general circulation the department's
10 intent to rebid contracts pursuant to this paragraph
11 one year prior to the actual time of rebidding.
- 12 (3) The department shall hold informational meetings
13 for prospective bidders or any member of the public to
14 provide additional information about the contracts
15 subject to rebidding within 3 months of the
16 announcement of the intent to rebid, pursuant to
17 subparagraph (1). Informational meetings must be
18 sufficiently advertised in newspapers of general
19 circulation with the location, date, time and subject
20 of the meetings. The purpose of the informational
21 meetings is to provide information about the contracts
22 to be rebid pursuant to this paragraph, highlight major
23 changes anticipated from the antecedent contract and
24 respond to questions from participants.
- 25 (4) All parties interested in submitting a bid for a
26 contract pursuant to this paragraph shall submit a
27 formal notice of intent to bid at least 6 months prior
28 to the submission of the actual bid as a mandatory
29 prerequisite condition for the opportunity to submit
30 that bid. In preparing the notice of intent to bid
31 form for distribution to prospective bidders, the
32 department may request no more than minimal
33 requirements necessary to demonstrate a prospective
34 bidder's competency, ability and commitment to comply
35 with the requirements of the contract.
- 36 (5) If no bidder submits a formal bid for the contract
37 pursuant to this paragraph, other than the historical
38 recipient of the contract, the department must employ a
39 negotiated contract process with the historical
40 recipient of the contract, rather than a competitive
41 bidding process. The negotiated contract process must
42 be simpler and more abbreviated than the competitive
43 bidding process.
- 44 (6) For the purposes of this paragraph, the department
45 retains the right to reject any bids submitted.
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2 (7) The following are exempt from the provisions of
3 this paragraph.

4 (a) Renewal contracts for a provider are not
5 subject to the request-for-proposal procedure
6 requirement if all contracts executed with that
7 provider under this subsection are
8 performance-based contracts.

10 (b) Notwithstanding division (a), the department
11 shall subject a contract to a request-for-proposal
12 procedure when necessary to comply with paragraph
13 G.

14 **Sec. B-6. 34-B MRSA §6203, sub-§1, ¶I-1** is enacted to read:

16 I-1. Unless exempted by the commissioner, ensure that any
17 written agreement, with a qualified community agency for the
18 purpose of financially supporting a human service, as
19 defined in section 1208, is issued for a period of not less
20 than 3 years. The implementation of these 3-year contracts
21 must be staggered in order to ensure staggered termination
22 dates.

24 **Sec. B-7. 34-B MRSA §6203, sub-§1, ¶J,** as amended by PL 1993,
25 c. 624, §3, is repealed.

28 **Sec. B-8. 34-B MRSA §6203, sub-§1, ¶J-1** is enacted to read:

30 J-1. Any new contract must be awarded through a
31 request-for-proposal procedure and any contract of \$500,000
32 per year or more that is renewed must be awarded through a
33 request-for-proposal procedure at least every 8 years
34 according to the following procedure.

36 (1) For the purposes of this paragraph, "historical
37 recipient" means that community agency, defined by
38 section 1208, that submits a bid for a contract
39 pursuant to this paragraph, for which that community
40 agency has served as the immediate past administrator
41 or has been the immediate past recipient.

42 (2) The commissioner must publicly announce in
43 newspapers of general circulation the department's
44 intent to rebid contracts pursuant to this paragraph
45 one year prior to the actual time of rebidding.

48 (3) The department shall hold informational meetings
49 for prospective bidders or any member of the public to
50 provide additional information about the contracts

2 subject to rebidding within 3 months of the
3 announcement of the intent to rebid, pursuant to
4 subparagraph (1). Informational meetings must be
5 sufficiently advertised in newspapers of general
6 circulation with the location, date, time and subject
7 of the meetings. The purpose of the informational
8 meetings is to provide information about the contracts
9 to be rebid pursuant to this paragraph, highlight major
10 changes anticipated from the antecedent contract and
11 respond to questions from participants.

12 (4) All parties interested in submitting a bid for a
13 contract pursuant to this paragraph shall submit a
14 formal notice of intent to bid at least 6 months prior
15 to the submission of the actual bid as a mandatory
16 prerequisite condition for the opportunity to submit
17 that bid. In preparing the notice of intent to bid
18 form for distribution to prospective bidders, the
19 department may request no more than minimal
20 requirements necessary to demonstrate a prospective
21 bidder's competency, ability and commitment to comply
22 with the requirements of the contract.

23 (5) If no bidder submits a formal bid for the contract
24 pursuant to this paragraph, other than the historical
25 recipient of the contract, the department must employ a
26 negotiated contract process with the historical
27 recipient for the contract, rather than a competitive
28 bidding process. The negotiated contract process must
29 be simpler and more abbreviated than the competitive
30 bidding process.

31 (6) For the purposes of this paragraph, the department
32 retains the right to reject any bid submitted.

33 (7) The following are exempt from the provisions of
34 this paragraph.

35 (a) Renewal contracts for a provider are not
36 subject to the request-for-proposal procedure
37 requirement if all contracts executed with that
38 provider under this subsection are
39 performance-based contracts.

40 (b) Notwithstanding division (a), the department
41 shall subject a contract to a request-for-proposal
42 procedure when necessary to comply with paragraph
43 L;

2 Sections A-14, A-15 and A-18 increase licensure fees by \$25
for the Board of Licensing of Auctioneers.

4 Section A-19 shifts certain authority from the Commissioner
6 of Professional and Financial Regulation to the Board of
Licensing of Auctioneers.

8 Section A-20 relieves an auctioneer of a duty to show that
10 auctioneer's license to a municipal official prior to an auction.

12 Section A-23 relieves the Board of Licensing of Auctioneers
of the responsibility to designate the format of a contract with
14 the owner of the property to be sold.

16 Section A-26 requires the auctioneer to post the title and
address of the Board of Licensing of Auctioneers at auctions.

18 Section A-35 specifies that the Board of Licensing of
20 Dietetic Practice must have equivalent licensure requirements for
in-state and out-of-state applicants.

22 Section A-41 raises the cap for licensure to \$200 annually
24 for the Acupuncture Licensing Board.

26 Section A-45 clarifies legislative intent.

28 Section A-47 is a revision clause.

30 Sections B-1 to B-3 and B-6 require most service contracts
between the Department of Mental Health and Mental Retardation
32 and community service providers to span a minimum period of 3
years.

34 Sections B-4, B-5, B-7 and B-8 amend the periodic contract
36 rebidding process to retain its benefit, but reduce unnecessary
expenditure of time, effort and money.

38