

# MAINE STATE LEGISLATURE

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L.D. 1969

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EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 727, L.D. 1969, Bill, "An Act to Protect Students of Barbering, Cosmetology and Other Proprietary Schools"

Amend the bill by striking out all of section 1 and inserting in its place the following:

'Sec. 1. 20-A MRSa §9502, sub-§§1 and 2, as amended by PL 1997, c. 266, §12, are further amended to read:

**1. Application requirements; licensing; bonding and revocation of license.** The application for a license required by this chapter must be made on forms furnished by the commissioner and be accompanied by a fee of \$100 and a surety bond ~~in the penal sum of \$10,000.~~ For applicants that participate in state or federal financial aid programs, except the Federal Direct Student Loan Program under the federal Higher Education Act of 1965, 20 United States Code, Section 1087a et seq., the bond must be in favor of the Finance Authority of Maine. For all other applicants, the bond must be in favor of the department. The amount of the bond for a new applicant is \$20,000. For renewal applicants, the amount of the bond must be equal to the greater of 10% of the applicant's gross receipts from tuition in the 12 months prior to the application for renewal or \$20,000.

A. A license is valid for the calendar year in which it is issued.

B. The bond must be continuous and must provide indemnification to any student suffering loss as a result of any fraud ~~or~~ misrepresentation, violation of this chapter or rules adopted under this chapter or breach of contract.

COMMITTEE AMENDMENT "A" to S.P. 727, L.D. 1969

2 The bond must provide for written notification by the surety  
to the commissioner in the event of cancellation.  
4 Cancellation of the bond by the surety, or of payment under  
the bond by the surety to the department or the Finance  
6 Authority of Maine, results in the revocation of the  
license. The bond must specifically provide that proceeds  
8 are available to pay tuition refunds to students or to  
student loan lenders on behalf of students eligible for  
10 those refunds pursuant to the policies of the school or  
state or federal law, rule or regulation.

12 C. If one or more students notify the department or the  
Finance Authority of Maine of a claim the student has  
14 against the school for fraud, misrepresentation, breach of  
contract or refund due, or that the school has violated the  
16 provisions of this chapter or applicable rules, or if any  
such event is discovered by the department or the Finance  
18 Authority of Maine from other sources and the holder of the  
bond has reason to believe the claim is valid, the holder  
20 may make a claim against the bond on behalf of the student  
or students affected, or on behalf of the department. The  
22 department and the Finance Authority of Maine have the  
concurrent right at any time to review the school's  
24 operations and all its records to determine if the school is  
in compliance with this chapter and rules adopted under this  
26 chapter, or to determine if any claim of a student against  
the school is valid.

28  
30 2. **Renewal fee and requirements.** A fee of \$50 is charged  
for the renewal of a license. Each submission for a license  
32 renewal must include the school's most recent financial audit  
conducted by a certified public accountant unaffiliated with the  
34 school. When a school does not participate in federal or state  
financial aid programs, internally prepared financial statements  
36 signed by the applicant are acceptable. Every renewal  
application must include a bond in the required amount. The  
38 commissioner shall provide copies of the audit or financial  
statements and, when the bond is not in favor of the department,  
40 the original bond to the Finance Authority of Maine and may  
provide financial information regarding the school to other state  
42 agencies with an interest in the operation of the school. When a  
school applies for renewal of a license, the school must certify  
44 that:

46 A. The school has included information in all school  
brochures and handbooks provided to students and has posted  
48 information in a location in the school frequented by  
students advising students of their rights to receive  
50 refunds and where to direct any complaints the students have  
concerning their education; and

2 B. The school is in compliance with all applicable federal  
4 and state laws and regulations.

6 **Sec. 2. 20-A MRSA §9502, sub-§4** is enacted to read:

8 4. Definitions. As used in this section, the term "bond"  
10 means a bond, letter of credit or cash equivalent acceptable to  
12 the holder, in its discretion.

14 Further amend the bill by striking out all of section 3 and  
16 inserting in its place the following:

18 **'Sec. 3. 32 MRSA §9503, sub-§2,** as enacted by PL 1983, c. 841,  
20 §4, is amended to read:

22 **2. Enforcement actions.** The State may bring an action in  
24 Superior Court to enjoin any person from violating this chapter,  
26 regardless of whether proceedings have been or may be instituted  
28 in the Administrative Court or whether criminal proceedings have  
30 been or may be instituted. A violation of the provisions of this  
32 chapter or any rules adopted under this chapter is prima facie  
34 evidence of a violation of the Maine Unfair Trade Practices Act.  
36 Responsible owners, officers and employees of licensees are  
38 personally liable to any person harmed by intentional violations  
40 of this chapter or applicable rules, including violations of  
42 rules regarding refunds, for the amount of damage caused by the  
44 violation.'

46 Further amend the bill in section 7 in that part designated  
48 "**§14211-A.**" by striking out all of section 1 and inserting in its  
place the following:

1 **'1. Membership.** The Board of Barbering and Cosmetology, as  
2 established by Title 5, section 12004-A, subsection 6, consists  
3 of 10 members including the Commissioner of Education or the  
4 commissioner's designee who is an ex officio and a nonvoting  
5 member. The Governor shall appoint the remaining 9 members, of  
6 whom 2 must be representatives of the public; 3 must be licensed  
7 and practicing cosmetologists; 2 must be licensed and practicing  
8 barbers; one must be a licensed instructor having no affiliation  
9 with any school currently licensed in the State; and one must be  
10 the owner of a licensed barbering or cosmetology school.'

11 Further amend the bill by striking out all of section 10 and  
12 inserting in its place the following:

13 **'Sec. 10. 32 MRSA §14246,** as enacted by PL 1997, c. 266, §18,  
14 is amended to read:

2 §14246. License application form; fee; bond

4 1. Application requirements; licensing; bonding and  
6 revocation of license. The application for a license required by  
8 this subchapter must be made on forms furnished by the board and  
10 be accompanied by an application fee not to exceed \$100 and a  
12 surety bond ~~in the penal sum of \$10,000.~~ For applicants that  
14 participate in state or federal financial aid programs, except  
16 the Federal Direct Student Loan Program under the federal Higher  
Education Act of 1965, 20 United States Code, Section 1087a et  
seq., the bond must be in favor of the board. The amount of the  
bond for a new applicant is \$20,000. For renewal applicants, the  
amount of the bond must be equal to the greater of 10% of the  
applicant's gross receipts from tuition in the 12 months prior to  
the application for renewal or \$20,000.

18 A. A license is valid for the calendar year in which it is  
20 issued.

22 B. The bond must be continuous and must provide  
24 indemnification to any student suffering loss as a result of  
26 any fraud ~~or~~, misrepresentation, violation of this  
subchapter or rules adopted under this subchapter or breach  
of contract. The bond must provide for written notification  
by the surety to the board in the event of cancellation.  
Cancellation of the bond by the surety, or payment under the  
bond by the surety to the board or the Finance Authority of  
Maine, results in the revocation of the license. The bond  
must also specifically provide that proceeds are available  
to pay tuition refunds to students or to student loan  
lenders on behalf of students eligible for those refunds  
pursuant to the policies of the school or state or federal  
law, rule or regulation.

36 C. If one or more students notify the board or the Finance  
Authority of Maine of a claim the student has against the  
school for fraud, misrepresentation, breach of contract or  
refund due, or that the school has violated the provisions  
of this subchapter or applicable rules, or if any such event  
is discovered by the board or the Finance Authority of Maine  
from other sources and the holder of the bond has reason to  
believe the claim is valid, the holder may make a claim  
against the bond on behalf of the student or students  
affected, or on behalf of the board. The board and the  
Finance Authority of Maine have the concurrent right at any  
time to review the school's operations and all its records  
to determine if the school is in compliance with this  
subchapter and rules adopted under this subchapter, or to  
determine if any claim of a student against the school is  
valid.

2           **2. License fee; renewal fee; renewal requirements.** A fee  
3 not to exceed \$500 is charged for the initial license and for the  
4 annual renewal of a license. Each submission for a license  
5 renewal must include the school's most recent financial audit  
6 conducted by a certified public accountant unaffiliated with the  
7 school. When a school does not participate in federal or state  
8 financial aid programs, internally prepared financial statements  
9 signed by the applicant are acceptable. Every renewal  
10 application must include a bond in the required amount. The  
11 board shall provide copies of the audit or financial statements  
12 and, in cases in which the bond is not in favor of the board, the  
13 original bond to the Finance Authority of Maine and may provide  
14 financial information regarding the school to other state  
15 agencies with an interest in the operation of the school. When a  
16 school applies for renewal of a license the school must certify  
17 that:

18           A. The school has included information in all school  
19 brochures and handbooks provided to students, and has posted  
20 information in a location in the school frequented by  
21 students advising students of their rights to receive  
22 refunds and where to direct any complaints the students have  
23 concerning their education; and

24           B. The school is in compliance with all applicable federal  
25 and state laws and regulations.'

26           **3. Definitions.** As used in this section, the term "bond"  
27 means a bond, letter of credit or cash equivalent, acceptable to  
28 the holder, in its discretion.'

29           Further amend the bill in section 13 in that part designated  
30 "**§14251.**" in the first paragraph in the 8th and 9th lines (page  
31 7, lines 6 and 7 in L.D.) by striking out the following:  
32 "licensed schools" and inserting in its place the following:  
33 'licensees' and in the 10th line (page 7, line 8 in L.D.) by  
34 inserting after the following: "harmed by" the following:  
35 'intentional'

36           Further amend the bill in section 13 in that part designated  
37 "**§14252.**" in the first paragraph in the 5th and 6th lines (page  
38 7, line 18 and 19 in L.D.) by striking out the following: "breach of contract or failure to pay refunds of tuition due from the school or its owners or employers"

39           Further amend the bill by relettering or renumbering any  
40 nonconsecutive Part letter or section number to read  
41 consecutively.

Further amend the bill by inserting at the end before the summary the following:

#### FISCAL NOTE

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.

The additional costs associated with participating as a member of the Board of Barbering and Cosmetology and with administering enhanced licensing provisions can be absorbed by the Department of Education utilizing existing budgeted resources.

The Finance Authority of Maine will incur some minor additional costs to administer the enhanced licensing provisions. These costs can be absorbed within the authority's existing budgeted resources.

The Board of Barbering and Cosmetology which is an internal board of the Department of Professional and Financial Regulation will experience annual savings of approximately \$1,000 beginning in fiscal year 1998-99 from the reduced number of board members who are entitled to per diem and expenses. This annual savings will be offset in fiscal year 1998-99 by a one-time cost of revising certain rules.

The Board of Barbering and Cosmetology will incur some minor additional costs to administer certain regulatory requirements pertaining to the professions of barbering and cosmetology. These costs can be absorbed within the board's existing budgeted resources.'

#### SUMMARY

This amendment corrects language in the bill and amends sections 1, 3, 7, 10 and 13 to accomplish the following:

1. Amends sections 1 and 10 of the bill to clarify that bonds are required with every license renewal application and to define the term "bond"; adds further language to indicate that these bonds should not run in favor of the Finance Authority of Maine only when the school's sole participation in state or federal financial aid programs is the Federal Direct Student Loan Program, and also provides that the licensing authority and the

COMMITTEE AMENDMENT "A" to S.P. 727, L.D. 1969

2 Finance Authority of Maine have the right to review the school's  
operations and records for certain purposes;

4 2. Amends sections 3 and 13 of the bill to clarify that  
responsible owners, officers and employees of a licensee are  
6 personally liable to any person harmed by intentional violations  
of this subchapter or applicable rules, including violations of  
8 rules regarding refunds, for the amount of damages caused by the  
violations; and

10 3. Amends section 7 of the bill to add a member to the  
12 Board of Barbering and Cosmetology.

14 This amendment also adds a fiscal note to the bill.