

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 1969

S.P. 727

In Senate, January 8, 1998

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**An Act to Protect Students of Barbering, Cosmetology and Other  
Proprietary Schools.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TREAT of Kennebec.  
Cosponsored by Senators: CATHCART of Penobscot, LaFOUNTAIN of York,  
Representatives: COLWELL of Gardiner, KONTOS of Windham, MITCHELL of Portland,  
RICHARD of Madison, ROWE of Portland, VIGUE of Winslow.

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

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

6       **1. Application requirements; licensing; bonding and**  
7       **revocation of license.** The application for a license required by  
8       this chapter must be made on forms furnished by the commissioner  
9       and be accompanied by a fee of \$100 and a surety bond ~~in the~~  
10       ~~penal sum of \$10,000.~~ For applicants that participate in state  
11       or federal financial aid programs, the bond must be in favor of  
12       the Finance Authority of Maine. For all other applicants, the  
13       bond must be in favor of the department. The amount of the bond  
14       for a new applicant is \$20,000. For renewal applicants, the  
15       amount of the bond must be equal to the greater of 10% of the  
16       applicant's gross receipts from tuition in the 12 months prior to  
17       the application for renewal or \$20,000.

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

20           B. The bond must be continuous and must provide  
21           indemnification to any student suffering loss as a result of  
22           any fraud ~~or~~ misrepresentation, violation of this chapter or  
23           rules adopted under this chapter or breach of contract. The  
24           bond must provide for written notification by the surety to  
25           the commissioner in the event of cancellation. Cancellation  
26           of the bond by the surety results in the revocation of the  
27           license. The bond must specifically provide that proceeds  
28           are available to pay tuition refunds to students or to  
29           student loan lenders on behalf of students eligible for  
30           those refunds pursuant to the policies of the school or  
31           state or federal law, rule or regulation.

32           C. If one or more students notify the department or the  
33           Finance Authority of Maine of a claim the student has  
34           against the school for fraud, misrepresentation, breach of  
35           contract or refund due, or that the school has violated the  
36           provisions of this chapter or applicable rules, or if any  
37           such event is discovered by the department or the Finance  
38           Authority of Maine from other sources and the holder of the  
39           bond has reason to believe the claim is valid, the holder  
40           may make a claim against the bond on behalf of the student  
41           or students affected or on behalf of the department.

42       **2. Renewal fee and requirements.** A fee of \$50 is charged  
43       for the renewal of a license. Each submission for a license  
44       renewal must include the school's most recent financial audit  
45       conducted by a certified public accountant unaffiliated with the  
46       school. When a school does not participate in federal or state

2 financial aid programs, internally prepared financial statements  
3 signed by the applicant and a bond in the required amount are  
4 acceptable. The commissioner shall provide copies of the audit  
5 or financial statements and, when the bond is not in favor of the  
6 department, the bond to the Finance Authority of Maine and may  
7 provide financial information regarding the school to other state  
8 agencies with an interest in the operation of the school. When a  
9 school applies for renewal of a license, the school must certify  
10 that:

11 A. The school has included information in all school  
12 brochures and handbooks provided to students and has posted  
13 information in a location in the school frequented by  
14 students advising students of their rights to receive  
15 refunds and where to direct any complaints the students have  
16 concerning their education; and

17 B. The school is in compliance with all applicable federal  
18 and state laws and regulations.

19 Sec. 2. 20-A MRSA §9502-A is enacted to read:

20  
21 §9502-A. Complaints; license; refusal to renew; suspension;  
22 revocation  
23

24  
25 The commissioner may investigate complaints involving a  
26 school including any allegation of noncompliance with or  
27 violation of this chapter and applicable rules. The commissioner  
28 shall promptly notify the Finance Authority of Maine of any  
29 complaints involving student financial assistance. After a  
30 hearing in conformance with Title 5, chapter 375, subchapter IV,  
31 the commissioner may amend or modify a license and may suspend or  
32 refuse to renew a license as provided in Title 5, section 10004.  
33

34 The Administrative Court may suspend or revoke the license  
35 of any person, partnership, association or corporation in  
36 violation of this chapter or any lawful order or rule issued by  
37 the department.  
38

39 Sec. 3. 20-A MRSA §9503, sub-§2, as enacted by PL 1983, c.  
40 841, §4, is amended to read:

41  
42 2. Enforcement actions. The State may bring an action in  
43 Superior Court to enjoin any person from violating this chapter,  
44 regardless of whether proceedings have been or may be instituted  
45 in the Administrative Court or whether criminal proceedings have  
46 been or may be instituted. A violation of this chapter or any  
47 rule adopted under this chapter is prima facie evidence of a  
48 violation of the Maine Unfair Trade Practices Act. Responsible  
49 owners, officers and employees of licensed schools are personally  
50 liable for such violations.

2 liable to any person harmed by violations of this chapter or  
3 applicable rules, including violations of rules regarding payment  
4 of refunds, for the amount of damage caused by the violation.

5 **Sec. 4. 20-A MRSA §9504**, as amended by PL 1983, c. 841, §5,  
6 is further amended to read:

7 **§9504. Rules**

8 The commissioner ~~may~~ shall adopt rules for the  
9 administration and enforcement of this chapter. The rules ~~may~~  
10 must establish requirements relating to advertising, records and  
11 ~~recordkeeping~~ record keeping, health and sanitation, safety,  
12 personnel, tuition, fees, contracts and other matters ~~which may~~  
13 that protect the public and consumer interests and must establish  
14 requirements for payment of refunds, and notices and information  
15 to be provided to students. Rules adopted pursuant to this  
16 chapter are routine technical rules pursuant to Title 5, chapter  
17 375, subchapter II A.

18 **Sec. 5. 20-A MRSA §9508** is enacted to read:

19 **§9508. Actions on behalf of students**

20 In addition to other powers or remedies under this chapter,  
21 the State may bring one or more actions in any state or federal  
22 court having jurisdiction on behalf of students harmed by fraud,  
23 misrepresentation, violation of this chapter or applicable rules,  
24 breach of contract or failure to pay refunds of tuition due from  
25 the school or its owners or employees. The Finance Authority of  
26 Maine has concurrent power to bring one or more actions in any  
27 state or federal court having jurisdiction on behalf of students  
28 harmed by failure to pay refunds of tuition due from the school  
29 or its owners or employees.

30 **Sec. 6. 32 MRSA §14211**, as amended by PL 1995, c. 397, §120,  
31 is repealed.

32 **Sec. 7. 32 MRSA §14211-A** is enacted to read:

33 **§14211-A. Board**

34 **1. Membership.** The Board of Barbering and Cosmetology, as  
35 established by Title 5, section 12004-A, subsection 6, consists  
36 of 9 members including the Commissioner of Education or the  
37 commissioner's designee. The Governor shall appoint the  
38 remaining 8 members: Two members must be representatives of the  
39 public; 3 members must be licensed and practicing cosmetologists;  
40 2 members must be licensed and practicing barbers; and one member  
41 must be the owner of a licensed barbering or cosmetology school.

2           2. Term. Appointments are for 3-year terms and must comply  
with section 60. A member may be removed by the Governor for  
4           cause.

6           3. Qualifications. Each member of the board must be a  
citizen of the United States and a resident of this State. The  
8           cosmetologist and barber members must be currently licensed by  
the State and have engaged in active practice of their profession  
10           for at least 4 years immediately prior to appointment. The  
cosmetologist and barber members must hold valid licenses and  
12           must be actively engaged in the practice of cosmetology or  
barbering while serving on the board.

14           4. Meetings; quorum. The board shall meet at least once a  
16           year to conduct its business. Additional meetings may be held as  
necessary to conduct the business of the board and may be  
18           convened at the call of the chair or a majority of the board  
members. All meetings of the board must be open to the public,  
20           except that the board may hold closed sessions to prepare,  
approve, grade or administer examinations, or to prepare or  
22           provide a response upon request of an applicant for the review of  
an examination. A majority of the board constitutes a quorum for  
24           all purposes.

26           5. Conflict of interest. The licensed barbering or  
cosmetology school owner member may not participate in any  
28           licensing or disciplinary proceeding before the board that  
involves the member's school or any former or current student of  
30           the member's school.

32           **Sec. 8. 32 MRSA §14212, sub-§11 is enacted to read:**

34           11. Inspections. The board or its agents or assistants  
shall inspect each establishment for compliance with the  
36           applicable requirements of this subchapter and the applicable  
rules of the board adopted pursuant to this subchapter. Each  
38           establishment must be inspected at least once a year for  
compliance with the applicable laws and rules relating to the  
40           public health and safety and the conduct and operation of  
establishments.

42           **Sec. 9. 32 MRSA §14245, sub-§3, as enacted by PL 1997, c. 266,**  
44           **§18, is repealed.**

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

48           **§14246. License application form; fee; bond**

50

1. **Application requirements; licensing; bonding and revocation of license.** The application for a license required by this subchapter must be made on forms furnished by the board and be accompanied by an application fee not to exceed \$100 and a surety bond ~~in the penal sum of \$10,000~~. For applicants that participate in state or federal financial aid programs, the bond must be in favor of the Finance Authority of Maine. For all other applicants, 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.

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 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 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.

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 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.

2. **License fee; renewal fee; renewal requirements.** A fee not to exceed \$500 is charged for the initial license and for the annual renewal of a license. Each submission for a license renewal must include a copy of the school's most recent financial audit conducted by a certified public accountant unaffiliated with the school. When a school does not participate in federal or state financial aid programs, internally prepared financial statements signed by the applicant and a bond in the required amount are acceptable. The board shall provide copies of the audit or financial statements and, when the bond is not in favor

2 of the board, the bond to the Finance Authority of Maine and may  
4 provide financial information regarding the school to other state  
6 agencies with an interest in the operation of the school. When a  
8 school applies for renewal of a license, the school must certify  
10 that:

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

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

28 **Sec. 11. 32 MRSA §14247**, as enacted by PL 1997, c. 266, §18,  
30 is amended to read:

32 **§14247. Rules**

34 The board shall adopt rules for the licensing of persons,  
36 partnerships, associations or corporations to maintain and  
38 operate schools of barbering and schools of cosmetology. The  
40 rules must include standards relating to educational programs,  
42 instructor qualifications, records and ~~record~~ record  
44 keeping, health and sanitation, safety and physical facilities,  
46 payment of refunds, and notices and information to be provided to  
48 students. Rules adopted pursuant to this subchapter ~~chapter~~  
50 are routine technical rules pursuant to Title 5, chapter 375,  
subchapter II-A.

52 **Sec. 12. 32 MRSA §14249, first ¶**, as enacted by PL 1997, c.  
54 266, §18, is amended to read:

56 The board may investigate complaints involving a school  
58 including any allegation of noncompliance with or violation of  
60 this subchapter and applicable rules. The board shall promptly  
62 notify the Finance Authority of Maine of any complaints involving  
64 student financial assistance. After a hearing in conformance  
66 with Title 5, chapter 375, subchapter IV, the board may amend or  
68 modify any license and may suspend or refuse to renew a license  
70 as provided in Title 5, section 10004.

72 **Sec. 13. 32 MRSA §§14251 and 14252** are enacted to read:

74 **§14251. Enforcement actions**

76 The State may bring an action in Superior Court to enjoin  
78 any person from violating this subchapter or rules adopted under



2 this subchapter regardless of whether proceedings have been or  
4 may be instituted in the Administrative Court or whether criminal  
6 proceedings have been or may be instituted. A violation of this  
8 subchapter or any rule adopted under this subchapter is prima  
10 facie evidence of a violation of the Maine Unfair Trade Practices  
12 Act. Responsible owners, officers and employees of licensed  
14 schools are personally liable to any person harmed by violations  
16 of this subchapter or applicable rules, including violations of  
18 rules regarding the payment of refunds, for the amount of damage  
20 caused by the violation.

22 **§14252. Actions on behalf of students**

24 In addition to other powers or remedies under this  
26 subchapter, the State may bring one or more actions in any state  
28 or federal court having jurisdiction on behalf of students harmed  
30 by fraud, misrepresentation, violation of this subchapter or  
32 applicable rules, breach of contract or failure to pay refunds of  
34 tuition due from the school or its owners or employees. The  
36 Finance Authority of Maine has concurrent power to bring one or  
38 more actions in any state or federal court having jurisdiction on  
40 behalf of students harmed by failure to pay refunds of tuition  
42 due from the school or its owners or employees.

44 **SUMMARY**

46 This bill reduces the size of the Board of Barbering and  
48 Cosmetology from 11 to 9 members to bring it into conformity with  
50 the size of other state licensing boards. In addition, it  
changes the membership to include the Commissioner of Education  
or the commissioner's designee and an owner of a barbering or  
cosmetology school. It repeals the law that required that a  
licensed instructor of cosmetology be a member of the board. It  
provides that a majority of the board constitutes a quorum and  
includes conflict of interest provisions for the school owner  
member.

The bill also moves the provision regarding inspection of  
establishments by board members to the section of law  
establishing the powers and duties of the board.

The bill amends the licensing and bond requirements for  
schools of cosmetology, schools of barbering and other  
proprietary schools. The bill requires each school to post a  
bond, based on the amount of gross tuition the school receives,  
to more closely match the bond to an amount that may assist  
students in the event of fraud, misrepresentation or failure to  
pay refunds due to the students.

2 The bill imposes a requirement that all schools submit a  
copy of the most recent financial audit or financial statements  
4 when applying for its annual license renewal. The bill requires  
schools to notify students of where to make complaints with  
6 regard to their education.