

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1933

S.P. 733

In Senate, January 4, 2006

An Act To Maintain Standards for Consumers of Mechanical Services

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

Reference to the Committee on Business, Research and Economic Development 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 President EDMONDS of Cumberland.

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

4 Sec. 1. 5 MRSA §12004-A, sub-§47 is enacted to read:

6 47. Heating, Expenses 32 MRSA §15322
Cooling and Air Only
8 Distribution Board

10 Sec. 2. 32 MRSA c.134 is enacted to read:

12 CHAPTER 134

14 HEATING, COOLING AND AIR DISTRIBUTION BOARD

16 §15321. Definitions

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

20 1. Heating, cooling and air distribution equipment.
22 "Heating, cooling and air distribution equipment" does not
include self-contained home appliances, plumbing and piping
24 systems subject to regulation under chapter 49, oil and solid
fuel equipment subject to regulation under chapter 33 or fire
sprinkler systems subject to regulation under chapter 20.

26 §15322. Appointment; vacancies; removal; compensation

28 The Heating, Cooling and Air Distribution Board, as
30 established by Title 5, section 12004-A, subsection 47 and
referred to in this chapter as "the board," consists of the
32 Commissioner of Public Safety or a representative and 6 other
members, referred to in this chapter as "the appointive members,"
34 who are appointed by the Governor.

36 Four of the appointive members must be licensees of the
board who are active in the trade. One of these 4 appointive
38 members must have at least 5 years' experience, and the other 3
must have at least 10 years' experience, as heating, cooling and
40 air distribution equipment installers. Of the remaining
appointive members, one must be a representative of the heating,
42 cooling and air distribution industry and one must be a
representative of the public.

44 The appointive members are appointed for terms of 4 years.
46 Any appointive member of the board may be removed from office by
the Governor for cause. Annually, the 6 appointive members of
48 the board shall choose one of their members as chair.

50 §15323. Employees

2 The Commissioner of Professional and Financial Regulation,
4 with the advice of the board, may appoint, subject to the Civil
6 Service Law, such employees as may be necessary to carry out this
8 chapter. Any persons so employed are located in the Department
10 of Professional and Financial Regulation under the administrative
12 and supervisory direction of the Commissioner of Professional and
14 Financial Regulation. In addition, the board may enter into
16 contracts to carry out its responsibilities under this chapter.

18 **§15324. Meetings; rules**

20 The board shall meet at least once a year to conduct its
22 business and elect its officers. Additional meetings may be held
24 as necessary to conduct the business of the board and may be
26 convened at the call of the chair or a majority of the board
28 members. Four members of the board constitute a quorum for all
30 purposes. The board may adopt standards and rules as necessary,
32 pursuant to Title 5, chapter 375, for the holding of examinations
34 and for carrying out this chapter and may provide for reciprocity
36 of licensing with similar boards of other states that maintain
38 standards equivalent to those provided under this chapter.

40 **§15325. Investigation of complaints; suspension or**
42 **revocation of licenses**

44 1. Investigation. The board shall investigate all
46 complaints made to it and all cases of noncompliance with or
48 violation of this chapter. The board may suspend or revoke a
50 license issued under this chapter pursuant to Title 5, section
 10004.

2. Grounds for suspension, revocation, refusal to issue or
 renew. The board may refuse to issue or renew a license or the
 District Court may suspend, revoke or refuse to renew the license
 of any licensee who is found guilty of:

A. The practice of fraud or deceit in obtaining a license;

B. Any gross negligence, incompetency or misconduct in the
 performance of the work of installing, altering or repairing
 heating, cooling or air distribution equipment. Continued
 failure to conform to standards or rules adopted by the
 board is prima facie evidence of gross negligence or
 incompetency; or

C. Any violation of this chapter.

3. Surrender of license. Any license suspended by the
 board or suspended or revoked by the District Court Judge must be

2 immediately surrendered to the board and held during any period
3 of suspension or, if revoked, until reinstated as provided in
4 this chapter.

6 4. Failure to pass examination. There is no appeal from
7 the failure of the board to issue a license as a result of an
8 applicant's failing to pass an examination when the results of
9 the examination have been unanimously certified by the board to
10 be correct.

12 5. Reinstatement; return of license. A person whose
13 license is suspended or revoked for more than 90 days shall
14 establish that the person meets all requirements governing new
15 applicants under this chapter as a condition of reinstatement or
16 return of that person's license, except that the board may in its
17 discretion, giving due consideration to the protection of the
18 public, waive examination if the period of suspension is less
19 than 2 years or, in the case of revocation of license, the
20 applicant is both eligible and has made application for
21 reinstatement of license within 2 years of the effective date of
22 revocation.

24 **§15326. Records**

26 The board shall keep such records and minutes as are
27 necessary to the ordinary performance of its functions.

28 **§15327. Hearings**

30 1. Board authorized to conduct hearings. Hearings may be
31 conducted by the board to assist with investigations and to
32 determine whether grounds exist for suspension, revocation or
33 denial of a license, or as otherwise considered necessary to the
34 fulfillment of its responsibilities under this chapter.

36 2. Opportunity for hearing. The board may not refuse to
37 renew a license for any reason other than failure to pay a
38 required fee unless it has afforded the licensee an opportunity
39 for an adjudicatory hearing. The board shall hold an
40 adjudicatory hearing at the written request of any person who is
41 denied a license without a hearing for any reason other than
42 failure to pay a required fee, as long as the request for hearing
43 is received by the board within 30 days of the applicant's
44 receipt of written notice of the denial of the applicant's
45 application, the reasons for the denial and the applicant's right
46 to request a hearing. Hearings must be conducted in conformity
47 with Title 5, chapter 375, subchapter 4, to the extent
48 applicable. The board may subpoena witnesses, records and
49 documents in any hearing it conducts.

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3 **§15328. License required**

4 A person may not perform the installation, alteration or
5 repair of heating, cooling or air distribution equipment unless
6 the person is licensed pursuant to this chapter.

7 **§15329. Exceptions**

8 The licensing provisions of this chapter do not apply to:

9
10 1. Electricians. An electrician duly licensed under
11 chapter 17 insofar as the installation of electrical equipment or
12 the performance of any electrical work involved in the
13 installation of heating, cooling and air distribution equipment
14 is concerned;

15
16 2. Plumbers. A plumber duly licensed under chapter 49
17 insofar as the work covered by that chapter is involved;

18
19 3. Fire sprinkler contractors. A fire sprinkler contractor
20 duly licensed under chapter 20 insofar as the work covered by
21 that chapter is involved; and

22
23 4. Engineers and operators. A person holding an engineer's
24 license issued under section 15109 or working under the general
25 supervision of one so licensed while performing heating, cooling
26 and air distribution equipment repair and maintenance insofar as
27 the work covered by that section is involved, if that work
28 conforms with board rules; or a person employed by companies
29 under the jurisdiction of the Public Utilities Commission or the
30 United States Nuclear Regulatory Commission whose facilities are
31 subject to inspection under Title 32, chapter 131.

32
33 Nothing in this chapter prevents a person from installing,
34 altering or repairing heating, cooling and air distribution
35 equipment in a single-family residence occupied or to be occupied
36 by that person as that person's bona fide personal abode, as long
37 as the installation conforms with board rules.

38
39 **§15330. Issuance of licenses**

40
41 1. Application; qualifications. The board shall issue a
42 license to any person who files a sworn application, who passes
43 an examination approved by the board and who meets the following
44 applicable qualifications.

45
46 A. For a journeyman heating, cooling and air distribution
47 technician license, a person must present satisfactory
48 evidence to the board of at least:

2 (1) One year's licensed practical experience as an
4 apprentice heating, cooling and air distribution
 technician pursuant to subsection 2;

6 (2) Six months of licensed practical experience and
8 completion of a heating, cooling and air distribution
 technician course at a Maine community college, career
10 and technical education center or career and technical
12 education region or a comparable institute from Maine
 or another state consisting, at a minimum, of 160 hours
14 of study, of which at least 75 hours are made up of
 laboratory work on heating, cooling and air
 distribution equipment and related systems; or

16 (3) Successful completion of a minimum one-year
18 accredited heating course at a Maine community college
 consisting, at a minimum, of 320 hours of study, of
20 which at least 150 hours are made up of laboratory work
 on heating, cooling and air distribution equipment and
22 related systems.

An out-of-state applicant must present satisfactory evidence
24 to the board of experience in installing, cleaning,
 servicing, altering and repairing heating, cooling and air
26 distribution equipment.

28 B. For a master heating, cooling and air distribution
 technician license, a person must present to the board
30 satisfactory evidence of a total of 4 years' licensed
 practical experience as an apprentice heating, cooling and
32 air distribution technician and a journeyman heating,
 cooling and air distribution technician and evidence that
34 the licensed practical experience for at least 2 of those 4
 years was as a licensed journeyman heating, cooling and air
36 distribution technician, or fulfill other such requirements
 as the board may establish. Courses approved for a
38 journeyman license may not be applied toward the licensing
 requirements for a master. An out-of-state applicant must
40 present satisfactory evidence to the board of experience in
 installing, cleaning, servicing, altering and repairing
42 heating, cooling and air distribution equipment.

44 2. Apprentice. The board may issue an apprentice license
 without examination to any person who applies and submits a fee
46 as adopted by the Director of the Office of Licensing and
 Registration within the Department of Professional and Financial
48 Regulation by rule. Any such person employed by, or under the
 direct supervision of, a master licensee must apply for an
50 apprentice license immediately upon employment or immediately

2 after beginning school in a heating, cooling and air distribution
3 program. An apprentice heating, cooling and air distribution
4 technician may clean heating, cooling and air distribution
5 equipment as specified by rule.

6 3. License certificate. All persons licensed by the board
7 must receive a license certificate that must be publicly
8 displayed at the principal place of business of the licensee, if
9 any, and a pocket card license that must be carried on the person
10 and displayed at any time upon request.

12 **§15331. Rules**

14 The board may adopt reasonable rules for the issuance of
15 various types and classes of licenses to cover heating, cooling
16 and air distribution equipment installations, alterations and
17 repairs and to set forth standards and rules for product
18 approval. A license may cover one or more types of
19 installations. The board may further adopt reasonable rules
20 concerning the term and type of experience required by candidates
21 for examination. Rules adopted pursuant to this section are
22 routine technical rules as defined in Title 5, chapter 375,
23 subchapter 2-A.

24 **§15332. Fees**

26 The Director of the Office of Licensing and Registration
27 within the Department of Professional and Financial Regulation
28 may establish by rule fees for purposes authorized under this
29 chapter in amounts that are reasonable and necessary for their
30 respective purposes, except that the fee for any one purpose may
31 not exceed \$350 biennially. Rules adopted pursuant to this
32 section are routine technical rules pursuant to Title 5, chapter
33 375, subchapter 2-A.

34 **§15333. Examinations**

36 1. Application for examination. An applicant for a master
37 or journeyman heating, cooling and air distribution technician
38 license shall present to the board a written application for
39 examination containing such information as the board may require,
40 accompanied by the prescribed fee.

41 2. Form; content. Examinations must be in whole or in part
42 in writing, must be conducted by the board and must be of a
43 thorough and practical character commensurate with the
44 responsibilities of the type of license applied for.
45 Examinations may include questions on the rules of the board and
46 any standards and codes as may be applicable to the installations
47 and the equipment.

2 3. Reexamination. A person failing to pass the first
4 examination in any one category may be reexamined at a time
 agreeable to the board upon payment of the examination fee.

6 **§15334. Renewals**

8 All licenses expire 2 years from the original date of issue
10 or at such other time as the Commissioner of Professional and
 Financial Regulation may designate. The licenses may be renewed
12 on a biennial basis without further examination upon the payment
 of the proper fee. The board shall notify everyone registered
14 under this chapter of the date of expiration of the license and
 the amount of fee required for its renewal for a 2-year period.
16 The notice must be mailed to the person's last known address at
 least 30 days in advance of the expiration date of the license.
18 A license may be renewed up to 90 days after the date of
 expiration upon payment of a late fee in addition to the renewal
20 fee. A person who submits an application for renewal more than
 90 days after the license renewal date is subject to all
22 requirements governing new applicants under this chapter, except
 that the board may, giving due consideration to the protection of
24 the public, waive examination or other requirements. The board
 may assess penalties for late renewals more than 90 days after
 the date of expiration.

26 **§15335. Corporations, firms and partnerships**

28 The board may issue a company license to a corporation,
30 firm, partnership or limited liability company. Such a license
 may not be issued unless the applicant provides satisfactory
32 evidence that it has a licensed master heating, cooling and air
 distribution technician directly in charge of its heating,
34 cooling and air distribution business activities who is an
 officer in the case of a corporation, or full-time employee in
36 the case of a firm or partnership, and the license must be issued
 in the name of that master technician. Upon the death or
38 severance from the company of the licensed master heating,
 cooling and air distribution technician in whose name the company
40 license is held, the company license automatically terminates 30
 days from the date of that death or severance, unless the company
42 applies for reissuance of its license in the name of another
 licensed master heating, cooling and air distribution technician
44 who is qualified under this section.

46 **§15336. Installations to conform to standards**

48 A person may not perform an installation, alteration or
50 repair of heating, cooling or air distribution equipment unless
 the installation, alteration or repair complies with all

standards and regulations adopted by the board. Whenever installation, alteration or repair of heating, cooling and air distribution equipment is separately contracted, the master license holder in charge of installation is responsible for ascertaining total conformance to the standards. Whenever any state heating, cooling and air distribution compliance officer finds a person installing or assisting in a heating, cooling or air distribution equipment installation, the person shall, on request of the compliance officer, provide evidence of being properly licensed when required by this chapter and, if unable to provide the evidence, shall furnish the compliance officer with that person's full name and address and, if applicable, the full name and address of the master in charge.

§15337. State heating, cooling and air distribution compliance officers

1. Inspection. State heating, cooling and air distribution compliance officers, upon written complaint of any owner, lessee or tenant of a building, state fire inspector, fire chief, fire department inspector, personnel of a transmission and distribution utility or local electrical inspector, or whenever the compliance officers consider it necessary, for purposes of examination of heating, cooling and air distribution equipment installation, alteration or repairs, may at all reasonable hours enter into and upon all buildings or premises within their jurisdiction and inspect the buildings or premises. The inspectors may enter a building only with the permission of the person having control of the building or, after hearing, upon order of the court. Whenever a compliance officer finds any heating, cooling and air distribution equipment in any building or structure that does not comply with the requirements of this chapter, that officer shall order the equipment to be removed or remedied, and the order must forthwith be complied with by the owner or occupant of that building or structure or the installer of the equipment. If the compliance officer finds an installation that falls under the compliance officer's jurisdiction in a building or structure that creates a danger to other property or to the public, the compliance officer may forbid the use of the building or structure by serving a written order upon the owner and the occupant, if any, to vacate within a reasonable period of time to be stated in the order.

2. Order to correct deficiency; appeal. A person ordered by a state heating, cooling and air distribution compliance officer to correct a deficiency or to vacate a building or structure may appeal the order by filing with the board within 7 days of receipt of the order a written notice of appeal. The board shall review that appeal and issue its written decision within a reasonable time after receipt of the notice of appeal.

2 If the board upholds the compliance officer's order, it shall
4 prescribe a time period for the requisite correction specified in
6 its written decision or the time within which that person must
8 vacate the building or structure. The decision must be complied
10 with, unless appealed as provided. A person ordered by the board
12 to correct a deficiency or to vacate a building or structure may
14 appeal the order to the Superior Court in accordance with Title
16 5, chapter 375, subchapter 7 by filing a petition for review
18 within 48 hours of receipt of the order. The court shall issue
20 its written decision within 20 days after receipt of the petition
22 for review.

24 **3. Final orders.** The decision of the Superior Court on an
26 appeal is final. An order by a state heating, cooling and air
28 distribution compliance officer and any order by the board are
30 final and subject to no further appeal upon failure to file a
32 timely, written appeal as provided in subsection 2.

34 **4. Injunction to enforce order.** Upon the failure of a
36 person to carry out a final order as provided in subsection 3,
38 the board may petition the Superior Court for the county in which
40 the building or premises are located for an injunction to enforce
42 that order. If the court determines, upon hearing such a
44 petition, that a lawful final order was issued, it shall order
46 compliance.

48 **5. Powers of heating, cooling and air distribution**
50 **compliance officers.** Heating, cooling and air distribution
52 compliance officers have powers throughout the several counties
54 of the State, similar to those of sheriffs in their respective
56 counties, relating to enforcement of this chapter and rules
58 adopted under this chapter. These powers are limited to the
60 issuing of citations, the serving of summonses, the conducting of
62 investigations, the ordering of corrections of violations and the
64 issuance of orders to vacate a building or structure in
66 accordance with this chapter. State heating, cooling and air
68 distribution compliance officers may review the heating, cooling
70 and air distribution equipment installation records of any person
72 licensed under this chapter or any person performing
74 installations, alterations or repairs as authorized under this
76 chapter.

78 **§15338. Failure to comply with order of compliance officer**

80 If the owner, occupant of any building or an installer
82 neglects or refuses, without justification, for more than 10 days
84 to comply with any order of a heating, cooling and air
86 distribution compliance officer concerning heating, cooling and
88 air distribution equipment installations, alterations or repairs
90 as provided by this chapter, that person commits a civil

2 violation for which a forfeiture of not less than \$100 for each
3 day's neglect may be adjudged.

4 **§15339. Violations; penalties**

6 **1. Penalties.** The following penalties apply to violations
7 of this chapter.

8 A. A person, firm or corporation who installs, alters or
9 repairs heating, cooling and air distribution equipment
10 without being licensed as provided by this chapter commits a
11 Class E crime.

12 B. A person, firm or corporation in the heating, cooling
13 and air distribution business that employs an unlicensed
14 person, unless the work is exempted under this chapter,
15 commits a Class E crime.

16 C. A person who procures a license as provided in this
17 chapter wrongfully or by fraud commits a Class E crime.

18 **2. Strict liability.** Except as otherwise specifically
19 provided, violation of this section is a strict liability crime
20 as defined in Title 17-A, section 34, subsection 4-A.

21 **3. Injunctive relief.** The State may bring an action in
22 Superior Court to enjoin a person from violating this chapter,
23 regardless of whether proceedings have been or may be instituted
24 in the District Court or whether civil proceedings to impose a
25 fine have been or may be instituted.

26 **Sec. 3. Application.** For a period of one year beginning on
27 the effective date of this Act, the Commissioner of Professional
28 and Financial Regulation may grant a journeyman heating, cooling
29 and air distribution technician license to a person without
30 examination if the person pays the appropriate fee and presents
31 satisfactory evidence that the person has 5 years' experience
32 installing, altering or repairing heating, cooling and air
33 distribution equipment.

34 **Sec. 4. Initial members of board.** Notwithstanding the Maine
35 Revised Statutes, Title 32, section 15322, the initial appointive
36 members of the Heating, Cooling and Air Distribution Board need
37 not be licensees of the board.

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47 **SUMMARY**

48 This bill establishes the Heating, Cooling and Air
49 Distribution Board within the Department of Professional and
50

2 Financial Regulation and establishes the powers and duties of the
board, including the adoption of rules and standards governing
4 the installation, alteration and repair of heating, cooling and
air distribution equipment and enforcement of those rules and
standards. The bill also creates a licensing system for master,
6 journeyman and apprentice heating, cooling and air distribution
technicians.