

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2278

H.P. 1644

House of Representatives, March 26, 2008

**An Act To Create Efficiencies in Professional Licensing Laws
Pursuant to the State Government Evaluation Act Review of the
Department of Professional and Financial Regulation**

Reported by Representative SMITH of Monmouth for the Joint Standing Committee on Business, Research and Economic Development pursuant to the Maine Revised Statutes, Title 3, section 955, subsection 4.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§44**, as amended by PL 2001, c. 166, §1, is
3 repealed.

4 **Sec. 2. 10 MRSA §8003, sub-§5-A, ¶A**, as enacted by PL 2007, c. 402, Pt. C,
5 §3, is amended to read:

6 A. The office, board or commission may deny or refuse to renew a license, may
7 suspend or revoke a license and may impose other discipline as authorized in this
8 subsection for any of the following reasons:

- 9 (1) The practice of fraud, deceit or misrepresentation in obtaining a license from
10 a bureau, office, board or commission, or in connection with services rendered
11 while engaged in the occupation or profession for which the person is licensed;
- 12 (2) Any gross negligence, incompetence, misconduct or violation of an
13 applicable code of ethics or standard of practice while engaged in the occupation
14 or profession for which the person is licensed;
- 15 (3) Subject to the limitations of Title 5, chapter 341, conviction of a Class A, B
16 or C crime or of a crime that bears directly on the licensed profession or
17 occupation;
- 18 (4) Any violation of the governing law of an office, board or commission;
- 19 (5) Any violation of the rules of an office, board or commission;
- 20 (6) Engaging in any activity requiring a license under the governing law of an
21 office, board or commission that is beyond the scope of acts authorized by the
22 license held;
- 23 (7) Continuing to act in a capacity requiring a license under the governing law of
24 an office, board or commission after expiration, suspension or revocation of that
25 license;
- 26 (8) Aiding or abetting unlicensed practice by a person who is not licensed as
27 required by the governing law of an office, board or commission;
- 28 (9) Noncompliance with an order or consent agreement of an office, board or
29 commission;
- 30 (10) Failure to produce any requested documents in the licensee's possession or
31 under the licensee's control concerning a pending complaint or proceeding or any
32 matter under investigation; or
- 33 (11) Any violation of a requirement imposed pursuant to ~~paragraph D,~~
34 ~~subparagraph (1) or (2)~~ subsection 5-B.

35 **Sec. 3. 10 MRSA §8003, sub-§5-A, ¶D**, as enacted by PL 2007, c. 402, Pt. C,
36 §3, is amended to read:

37 D. The office, board or commission may:

- 1 ~~(1) Require all applicants for license renewal to respond to all inquiries set forth~~
2 ~~on renewal forms;~~
- 3 ~~(2) Require all licensees and applicants for licensure to report in writing any of~~
4 ~~the following to the office, board or commission no later than 10 days after the~~
5 ~~change or event, as the case may be:~~
- 6 ~~(a) Change of name or address;~~
- 7 ~~(b) Criminal conviction;~~
- 8 ~~(c) Revocation, suspension or other disciplinary action taken in this or any~~
9 ~~other jurisdiction against any occupational or professional license held by the~~
10 ~~applicant or licensee; or~~
- 11 ~~(d) Any material change in the conditions or qualifications set forth in the~~
12 ~~original application for licensure submitted to the office, board or~~
13 ~~commission.~~
- 14 (3) Except as provided in Title 37-B, section 390-A, adopt rules requiring
15 continuing professional or occupational education and require applicants for
16 license renewal to present proof of satisfactory completion of continuing
17 professional or occupational education in accordance with such rules. Failure to
18 comply with the continuing education rules is punishable by nonrenewal of the
19 license and other discipline authorized by this subsection. Notwithstanding any
20 contrary provision set forth in the governing law of an office, board or
21 commission, continuing education requirements may coincide with the license
22 renewal period. Rules adopted pursuant to this subparagraph are routine
23 technical rules as described in Title 5, chapter 375, subchapter 2-A;
- 24 (4) Issue continuing education deferments in cases of undue hardship;
- 25 (5) Grant inactive status licenses to licensees in accordance with rules that may
26 be adopted by each office, board or commission. The fee for an inactive status
27 license may not exceed the statutory fee cap for license renewal set forth in the
28 governing law of the office, board or commission. Licensees in inactive status
29 are required to pay license renewal fees for renewal of an inactive status license
30 and may be required to pay a reinstatement fee as set by the Director of the
31 Office of Licensing and Registration if the license is reactivated on a date other
32 than the ordinary renewal date of the license. Any rules of an office, board or
33 commission regulating inactive status licensure must describe the obligations of
34 an inactive status licensee with respect to any ongoing continuing education
35 requirement in effect for licensees of the office, board or commission and must
36 set forth any requirements for reinstatement to active status, which requirements
37 may include continuing education. Rules adopted pursuant to this subparagraph
38 are routine technical rules as described in Title 5, chapter 375, subchapter 2-A;
39 and
- 40 (6) Delegate to staff the authority to review and approve applications for
41 licensure pursuant to procedures and criteria established by rule. Rules adopted
42 pursuant to this subparagraph are routine technical rules as described in Title 5,
43 chapter 375, subchapter 2-A.

1 **Sec. 4. 10 MRSA §8003, sub-§5-B** is enacted to read:

2 **5-B. Office of Licensing and Registration; duty to require certain information**
3 **from applicants.** The Office of Licensing and Registration, referred to in this
4 subsection as "the office," including the licensing boards and commissions and regulatory
5 functions within the office, shall require:

6 A. All applicants for license renewal to respond to all inquiries set forth on renewal
7 forms; and

8 B. All licensees and applicants for licensure to report in writing to the office no later
9 than 10 days after the change or event, as the case may be:

10 (1) Change of name or address;

11 (2) Criminal conviction;

12 (3) Revocation, suspension or other disciplinary action taken in this or any other
13 jurisdiction against any occupational or professional license held by the applicant
14 or licensee; or

15 (4) Any material change in the conditions or qualifications set forth in the
16 original application for licensure submitted to the office.

17 **Sec. 5. 32 MRSA §2315, sub-§3**, as repealed by PL 2007, c. 402, Pt. M, §3, is
18 reenacted to read:

19 **3. Final orders.** The decision of the Superior Court on an appeal is final. An order
20 by a state oil and solid fuel compliance officer and any order by the board are final and
21 subject to no further appeal upon failure to file a timely, written appeal as provided in
22 subsection 2.

23 **Sec. 6. 32 MRSA §2315, sub-§4**, as repealed by PL 2007, c. 402, Pt. M, §4, is
24 reenacted to read:

25 **4. Injunction to enforce order.** Upon the failure of any person to carry out a final
26 order as provided in subsection 3, the board may petition the Superior Court for the
27 county in which the building or premises are located for an injunction to enforce that
28 order. If the court determines, upon hearing such a petition, that a lawful final order was
29 issued, it shall order compliance.

30 **Sec. 7. 32 MRSA §3112, first ¶**, as amended by PL 2007, c. 402, Pt. N, §3, is
31 further amended to read:

32 The Board of Examiners in Physical Therapy, as established by Title 5, section
33 12004-A, subsection 31, and within the Department of Professional and Financial
34 Regulation, consists of ~~2~~ 4 physical therapists, ~~one physical therapist assistant, one~~
35 ~~physician~~ and one public member as defined in Title 5, section 12004-A.

36 **Sec. 8. 32 MRSA §3651-A**, as amended by PL 2007, c. 402, Pt. P, §§7 and 8, is
37 further amended to read:

1 **§3651-A. Requirements and licensure**

2 **1. Residency requirement.** An applicant who has graduated after January 1, 1991
3 from podiatric medical school as set forth in section ~~3651-B~~ 3651-C seeking licensure to
4 practice podiatry shall provide the board with evidence of satisfactory completion of at
5 least one year of postgraduate clinical training in a podiatric residency training program
6 approved by the accrediting body of the American Podiatric Medical Association, or its
7 successor or other organization approved by the board.

8 **2. Residency licensure.** A doctor of podiatric medicine who has graduated after
9 January 1, 1991 from podiatric medical school as set forth in section ~~3651-B~~ 3651-C may
10 not practice podiatric medicine in a podiatric residency program without first having
11 applied for and obtained a residency license from the board.

12 A. An applicant for a residency license must be a doctor of podiatric medicine who
13 is a graduate of a school of podiatry, as set forth in this chapter. An examination is
14 not required for applicants for residency licensure. The fee for residency licensure is
15 the same as the fee for licensure for that year. A residency license may be denied for
16 a reason for which a podiatric medical license may be disciplined under section
17 3655-A.

18 B. A residency license is valid only for the practice of podiatric medicine as part of
19 the postgraduate residency program. A residency license is subject to discipline for a
20 reason for which a podiatric medical license may be disciplined under section
21 3655-A. If the holder of a residency license is terminated from or otherwise ceases to
22 be a resident in the postgraduate residency program, the residency license becomes
23 void as of the date the resident is terminated or ceases to be a resident.

24 C. A residency license is valid for up to one year, and may be renewed annually
25 before the first day of July of every year, not to exceed an aggregate of 4 years.
26 Renewal of a residency license is subject to the same requirements and conditions as
27 the initial residency license.

28 **Sec. 9. 32 MRSA §6217-B, sub-§1**, as enacted by PL 2007, c. 402, Pt. U, §12, is
29 amended to read:

30 **1. Active abuse.** Active abuse of alcohol or any other drug that in the judgment of
31 the board is detrimental to the performance or competency of a ~~certified alcohol and drug~~
32 ~~counselor, alcohol and drug counseling aide or certified clinical supervisor~~ licensee of the
33 board; or

34 **Sec. 10. 32 MRSA §7026**, as amended by PL 2007, c. 402, Pt. V, §4, is further
35 amended to read:

36 **§7026. State Board of Social Worker Licensure**

37 The State Board of Social Worker Licensure, as established by Title 5, section
38 12004-A, subsection 38, within the Department of Professional and Financial Regulation,
39 shall administer this chapter. The board consists of 7 members appointed by the
40 Governor. ~~Three~~ Five members of the board must be licensed clinical social workers; or

1 licensed master social workers ~~or certified social workers—~~independent practice; 2 must
2 ~~be licensed social workers~~; and there must be 2 public members as defined in Title 5,
3 section 12004-C. In addition, board members must meet the qualifications required under
4 section 7027.

5 Appointments are for 3-year terms. Appointments of members must comply with
6 Title 10, section 8009.

7 **Sec. 11. 32 MRSA §12213**, as amended by PL 2007, c. 402, Pt. Z, §5, is further
8 amended to read:

9 **§12213. Appointment**

10 The Board of Accountancy, as established by Title 5, section 12004-A, subsection 1,
11 within the department consists of 5 members appointed by the Governor. Each member of
12 the board must be a resident of this State. ~~Three~~ Four members must be holders of
13 certificates issued under section 12227 and licenses issued under section 12251 and must
14 have had, as their principal occupation, active practice as certified public accountants for
15 at least the 5 preceding years. ~~One member must hold a certificate issued under section~~
16 ~~12239 and a license issued under section 12251 and must have had, as a principal~~
17 ~~occupation, active practice as a noncertified public accountant for at least the 5 preceding~~
18 ~~years.~~ One member of the board must be a public member as defined in Title 5, section
19 12004-A. Appointments are for 3-year terms. Appointments of members must comply
20 with Title 10, section 8009. The Governor may remove a member of the board for cause.

21 **Sec. 12. 32 MRSA §12506**, as enacted by PL 1995, c. 671, §13, is amended to
22 read:

23 **§12506. Rulemaking**

24 Rules adopted pursuant to section 12522, subsection 4; ~~and section 12526, subsection~~
25 ~~3~~ are major substantive rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A. All
26 other rules adopted pursuant to this chapter are routine technical rules.

27 **Sec. 13. 32 MRSA c. 115**, as amended, is repealed.

28 **Sec. 14. 32 MRSA §13852, sub-§2**, as amended by PL 2007, c. 402, Pt. EE, §2,
29 is further amended to read:

30 **2. Members.** The board consists of ~~9~~ 8 members, ~~8~~ 7 of them appointed by the
31 Governor. Each member must be a resident of this State. Six members must be licensed
32 clinical counseling professionals under this chapter, ~~2~~ 4 of whom must be clinical
33 professional counselors, ~~2 must be clinical professional counselors~~, one of whom must be
34 a marriage and family therapist and one of whom must be a pastoral counselor. Each
35 counselor member must have been, for at least 5 years immediately preceding
36 appointment, actively engaged as a practitioner, educator or researcher. ~~Two members~~
37 One member must be a public ~~members~~ member as defined in Title 5, section 12004-A
38 and may not be currently practicing counseling or receiving compensation for counseling
39 services. ~~One of the 2 public members must be a consumer of counseling services.~~ One

1 member, appointed by the Chancellor of the University of Maine System, must be a
2 member of the university faculty involved in the training of counselors.

3 **Sec. 15. 32 MRSA §13852, sub-§7**, as amended by PL 2007, c. 402, Pt. EE, §2,
4 is further amended to read:

5 **7. Meetings; chair; quorum.** The board shall meet at least once a year to conduct
6 its business and to elect a chair. Additional meetings must be held as necessary to
7 conduct the business of the board and may be convened at the call of the chair or a
8 majority of the board members. ~~Five~~ Four members of the board constitute a quorum.

9 **Sec. 16. 32 MRSA §13861-A, sub-§2**, as enacted by PL 2007, c. 402, Pt. EE, §9,
10 is repealed.

11 **Sec. 17. 32 MRSA §13863, sub-§9** is enacted to read:

12 **9. Sunset.** This section applies only to an individual who is validly registered under
13 this section by August 1, 2008.

14 **Sec. 18. 32 MRSA §13911**, as enacted by PL 1989, c. 346, §3, is repealed.

15 **Sec. 19. 32 MRSA §14805, sub-§4**, as repealed by PL 2007, c. 402, Pt. LL, §5, is
16 reenacted to read:

17 **4. Final orders.** The decision of the Superior Court on an appeal as provided is
18 final. An order by a state propane and natural gas inspector and an order by the board are
19 final and subject to no further appeal upon failure to file a timely, written appeal as
20 provided.

21 **Sec. 20. 32 MRSA §14805, sub-§5**, as repealed by PL 2007, c. 402, Pt. LL, §6, is
22 reenacted to read:

23 **5. Injunction to enforce order.** Upon the failure of any person to carry out a final
24 order as provided, the board may petition the Superior Court for the county in which the
25 building or premises are located for an injunction to enforce that order. If the court
26 determines, upon hearing such a petition, that a lawful final order was issued, it shall
27 order compliance.

28 **Sec. 21. Appointments and vacancies; Board of Examiners in Physical**
29 **Therapy and Board of Counseling Professionals Licensure.** The Governor shall
30 make the appointments to the Board of Examiners in Physical Therapy pursuant to the
31 Maine Revised Statutes, Title 32, section 3112 as soon as possible, but not later than
32 December 1, 2008. The change in the qualifications distribution of members appointed to
33 the Board of Counseling Professionals Licensure pursuant to Title 32, section 13852,
34 subsection 2 must be achieved by attrition. One public member position is eliminated
35 upon the effective date of this Act.

36 **Sec. 22. Streamlining initiative for licensing programs.** The Commissioner
37 of Professional and Financial Regulation is responsible for developing criteria and a

1 process for reviewing all licensing programs within the Office of Licensing and
2 Registration that may include the following: program history; complaint history; the
3 number of licensees; growth in applicants; existence of national certification; oversight in
4 the practice setting; and public safety. The commissioner shall submit a summary of the
5 findings pursuant to review to the joint standing committee of the Legislature having
6 jurisdiction over business, research and economic development matters by January 15,
7 2009. The joint standing committee of the Legislature having jurisdiction over business,
8 research and economic development matters is authorized to submit legislation related to
9 its findings to the First Regular Session of the 124th Legislature.

10 **Sec. 23. Appropriations and allocations.** The following appropriations and
11 allocations are made.

12 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**
13 **Licensing and Enforcement 0352**

14 Initiative: Deallocates funds due to a reduction in the number of members of the Board of
15 Counseling Professionals Licensure from 9 to 8 and the elimination of the Maine Athletic
16 Commission.

17	OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
18	Personal Services	\$0	(\$420)
19	All Other	\$0	(\$3,829)
20			
21	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	(\$4,249)

22 **SUMMARY**

23 This bill clarifies the legal requirement that licensees report name, address or other
24 material change information to the Department of Professional and Financial Regulation
25 within 10 days of the change; reenacts provisions that permit 2 boards to enforce orders
26 of correction; changes the configuration of certain licensing boards; corrects cross-
27 references in certain board statutes; eliminates unnecessary documentation requirements;
28 repeals the Maine Athletic Commission; and sunsets the "registered counselor" license
29 category.

30 **FISCAL NOTE REQUIRED**
31 **(See attached)**



123rd MAINE LEGISLATURE

LD 2278 LR 3571(01)

An Act To Create Efficiencies in Professional Licensing Laws Pursuant to the State Government Evaluation Act Review of the Department of Professional and Financial Regulation

Fiscal Note for Original Bill
Committee: Business, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Appropriations/Allocations				
Other Special Revenue Funds	\$0	(\$4,249)	(\$4,259)	(\$4,259)
Revenue				
Other Special Revenue Funds	\$0	(\$21,500)	(\$21,500)	(\$21,500)

Fiscal Detail and Notes

The Board of Counseling Professionals Licensure within the Office of Licensing and Registration, Department of Professional and Financial Regulation will require an Other Special Revenue Funds deallocation of \$4,249 in fiscal year 2008-09 as a result of the elimination of the Maine Athletic Commission and the reduction in the number of members on the Board of Counseling Professionals Licensure from 9 members to 8 members.

Repealing the Maine Athletic Commission will reduce the amount of dedicated revenue received by the Office of Licensing and Registration from licensing fees and penalties by approximately \$21,500 per year beginning in fiscal year 2008-09.