

# MAINE STATE LEGISLATURE

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# E I G H T Y - N I N T H   L E G I S L A T U R E

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**Legislative Document**

**No. 307**

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H. P. 915

House of Representatives, February 2, 1939.

On motion of Mr. Jewett of Ripley tabled pending reference and 750 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Miller of Bath by request.

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## S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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### AN ACT Relating to Painting, Decorating and Paperhanging.

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

**Sec. 1. Registration of painters.** No person, firm or corporation shall engage in or work at the business or occupation of contractor or journeyman painter unless registered to do so by the painters and decorators examining board hereinafter created.

**Sec. 2. Regulation.** No person, firm or corporation shall engage in the business of painting, decorating, paperhanging or preparatory work incidental thereto unless at all times registered to do so by the board.

**Sec. 3. Definitions.** The following words and phrases when used in this act shall be construed as follows:

1. The term "painting" as used in this act shall mean the application of surface coating materials whether liquid or semi-liquid, for the purpose of preservation or decoration including the preparation of surfaces incidental to the application of paint or other surface coating to the interior or exterior of new or old buildings and structures of every kind, excluding, however, sign, advertising or scenic painting, white wash, asphaltum or similar covering compounds and roofing compounds.

2. The term “decorating” as used in this act either independently or with the term painting shall mean the same as the term “painting”.

3. The term “paperhanging” means the application or installation of wall paper, burlap or other decorative fabricated materials to the interior surface of new or old buildings.

4. The term “contractor” within the meaning of this act means any person, firm or corporation who for compensation or valuable consideration undertakes to perform any contract of painting, decorating or paperhanging as herein defined.

5. The term “journeyman painter” is any other than a contracting painter or apprentice, who as his principal occupation is engaged in the practical work of painting, decorating, and/or paperhanging, and in the mixing and tinting of paints, and painting materials.

6. The term “painter apprentice” is any person other than a contracting painter, or journeyman painter, not less than 16 years of age, who, as his principal occupation, is engaged in the learning, and assisting in the practical work of painting, decorating, and/or paperhanging.

7. The term “permanent employe” means and includes any employe who is given regular and continuous employment for a period not less than 6 months except that, as to farmers, the term shall mean and include any person working as hired help for a definite or indefinite period.

8. The term “dealer” shall mean a person whose principal business is the sale at wholesale or retail of paints and painting materials and who is not a contractor or journeyman painter as herein defined.

9. The term “person” or “persons” shall include firms and corporations.

**Sec. 4. Exceptions.** Home owners and householders including farmers shall not be included within the definition of contractors or journeyman painters in their performance individually or by their permanent servants or other help of like character on their home premises of services within the terms painting, decorating, and paperhanging, nor shall any such person or any building owner or tenant performing such services by his permanent employees, and not for hire, on or in buildings or structures owned or occupied by him, be deemed to be included in such term. A contractor may also work as a journeyman painter provided that if the contractor is a corporation not over 2 officers thereof who shall be designated may so work unless registered as journeyman painters.

The provisions of this act shall apply only to cities and towns having a population of 3000 or more.

**Sec. 5. Appointment of painters and decorators examining board; vacancies and removal of members.** The painters and decorators examining board, hereinafter called the board, is hereby created, which shall consist of 5 members, hereinafter called the appointive members, who shall be appointed by the governor with the advice and consent of the council. Two of said appointive members shall be contractors, as herein defined, 2 of said members shall be journeyman painters, as herein defined, and 1 of said members shall be a dealer. Two of said appointive members shall be appointed for a term of 3 years, 2 of said appointive members shall be appointed for a term of 2 years, and 1 of said appointive members shall be appointed for a term of 1 year. Thereafter as the terms of said appointive members expire, new appointive members shall be appointed for terms of 3 years. Any vacancy in said board caused by death, resignation, or removal of any member shall be filled by the appointment of a person qualified as aforesaid to hold office during the unexpired term of the member whose place is thus filled. Any member of said board may be removed from office for cause, by the governor, with the advice and consent of the council.

**Sec. 6. Organization of board.** The board shall organize as soon as may be after the effective date of this act by electing 1 of its members as chairman, and such organization shall continue until the appointment and qualification of any new member of said board.

**Sec. 7. Meetings; rules and regulations.** The board shall hold regular meetings semi-annually and shall hold additional meetings at such times as they shall determine by their rules, or upon request of any 2 appointive members of their board. Said board shall adopt a seal, shall keep correct records of all proceedings and shall be authorized to make such rules and regulations as it shall deem necessary for the holding of examinations and for carrying out the purpose of the provisions of this act, and to provide for reciprocity of registration with similar boards of other states which maintain standards at least equal to this state.

**Sec. 8. Registration of contractors.** Any person shall, upon the payment of a fee of \$15 be entitled to examination, and if found qualified by a majority of the members of the board shall be registered as a contractor, and shall receive a certificate thereof under the seal of the board, and with the signatures of the chairman and secretary, which shall state the facts and which must be publicly displayed at the principal place of business of said contractor as long as said person continues in the business as herein defined. Any person refused registration may be reexamined at any sub-

sequent meeting of said board, within 1 year of the time of such refusal, without additional fee and thereafter may be examined as often as he may desire upon payment of the fee of \$15 for each examination.

**Sec. 9. Registration of journeymen painters.** Any person shall, upon payment of a fee of \$3 be entitled to examination, and if found qualified by a majority of the members of the board shall be registered as a journeyman painter, and shall receive a certificate thereof under the seal of the board, and with the signatures of the chairman and secretary, which shall state the facts, and which shall be carried on the person and displayed at any time upon request. Any journeyman painter refused registration may be reexamined at any subsequent meeting of said board, within 1 year of the time of such refusal, without additional fee and thereafter may be examined as often as he may desire upon payment of a fee of \$3 for each examination.

**Sec. 10. Examination for registration; exceptions.** The board, upon application made within 60 days after this act shall go into effect, shall, without examination and upon the payment of \$15 in the case of a contractor, and \$3 in the case of a journeyman painter, issue registration to any applicant who shall present satisfactory written evidence that he has engaged in the business or occupation, as hereinbefore defined, within the state, for at least 5 years in the case of contractors and 3 years in the case of journeymen painters, prior to June 30, 1939. Each applicant for registration other than as above provided, shall present to the chairman and secretary of the board on blanks furnished by the board, a written application for examination and registration, containing such information as the board may require, accompanied by the fee hereinbefore provided. Examinations shall be in whole or in part in writing and shall be of a thorough and practical character. They shall cover the theoretical and practical nature of painting, decorating and paperhanging, and such branches thereof as they may deem necessary.

**Sec. 11. Renewal of registration; contractors.** All registrations issued as aforesaid shall expire on the last day of April of the fiscal year in which issued, and they may be renewed thereafter annually without further examination on payment of a fee of \$10 for each year for a contractor. Any contractor who fails to renew his registration during any fiscal year may renew his registration in subsequent years only after payment of the original application fee.

**Sec. 12. Renewal of registration; journeymen painters.** All registrations issued as aforesaid shall expire on the last day of April of the fiscal year in which issued, and they may be renewed thereafter annually without

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further examination on payment of a fee of \$2 for each year for a journeyman painter. Any journeyman painter who fails to renew his registration during any fiscal year may renew his registration in subsequent years only after payment of the amount of the original application fee.

**Sec. 13. Corporations and partnerships may be registered.** The board may issue its registration to corporations and partnerships engaged as contractors and applying therefor provided that 1 or more officers or employees of any such corporation directly in charge of the business affairs of such corporation, or the members of such partnership directly in charge of the business affairs, apply for the examinations hereinbefore provided and satisfy the board of their qualifications as contractors.

**Sec. 14. Apprentices.** One apprentice may be employed by each contractor, and contractors employing more than 5 journeymen painters may employ 1 additional apprentice for each 5, or part thereof, additional journeymen painters employed.

**Sec. 15. Records.** The board shall keep a record of the name and residence of all persons registered hereunder and a record of all moneys received and disbursed by it, and said records or duplicates thereof be open for inspection during office hours.

**Sec. 16. Investigation of complaints; registrations may be revoked.** The board shall investigate all complaints made to it and all cases of non-compliance with or violation of the provisions of this act and shall bring all such cases to the notice of the proper prosecuting officers. The board, after a conviction for crime in the course of painting business, of any person, firm or corporation to whom registration has been issued by them, and after a hearing, may by vote of a majority of the board, suspend or revoke the registration of the person, firm or corporation to whom the same was issued. Said board may also suspend or revoke any registration by a majority vote of the board, in any case where such registration has been wrongfully obtained, or for any fraud connected with said registration.

**Sec. 17. Penalty for violation.** Any person who does any painting, decorating or paperhanging, as defined herein, without having first been registered either as a contractor or as a journeyman painter or any contractor employing a person to do painting who has not been registered, unless he be an apprentice within the meaning of the provisions of this act, shall be deemed guilty of a misdemeanor and, if convicted thereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months, or by both such fine and imprisonment.

**Sec. 18. Special causes of suspensions.** In addition to other causes the board may, upon its own motion, and shall promptly upon the verified complaint in writing of any person having an interest in the subject matter, investigate any action or transaction of any registered painting, decorating or paperhanging contractor, and shall, after hearing, suspend the registration of any registrant for not more than 45 days for the first violation, not more than 90 days for the second violation, and for a period of not less than 60 days, nor more than 1 year, for each subsequent violation of any provisions of this act, or for any 1 or more of the following causes herein declared to be grounds for suspension of such registration in relation to said business or services:

(1) Causing or permitting liens to be filed and to remain unsatisfied by reason of the failure to pay for labor, materials or equipment.

(2) Failure to apply the number of coats called for by a contract.

(3) Substitution of materials in violation of a contract or contrary to what the purchaser or owner has been led to believe would be applied, without the consent of said purchaser or owner or his agent.

(4) Failure to complete a contract without lawful excuse.

(5) Charging journeymen's wages for the services of any apprentice or representing an apprentice as a journeyman.

(6) Diverting funds or property entrusted to a registrant for the completion of a contract, or for a specific purpose in the prosecution of any contract to any other contract, obligation or purpose, to the injury of the contracting purchaser or others who may have an interest in the contract.

(7) Any deviation from specifications without the consent of the purchaser of such services or his agent.

(8) Misrepresentation of or respecting the kind or quality of material or workmanship to be used in performing any services described in section 1 hereof.

(9) False, deceptive, fraudulent, or misleading advertising.

(10) Offering or giving any bribe, rebate, commission or other thing of value to any employe, representative or agent of another or to any other person under contract with the employer, principal or owner, for the purpose of influencing the procurement, award or performance of a contract for service described in section 1 hereof, without the knowledge and consent of such employer, principal or owner.

(11) Failure to comply with the State Workmen's Compensation Law.

(12) Carrying on the business of a person whose registration has been suspended, with intent to evade the provisions of this act.

**Sec. 19. Procedure for suspension or revocation.** The board shall have the power to administer oaths, issue subpoenas to compel the attendance of witnesses and the production of books and documents relating to any such matter under investigation, and in case of disobedience to a subpoena, may invoke the aid of any court of this state. Before any registration shall be suspended, the board shall cause a notice to be served upon the registrant setting forth the charges against him and shall fix a day and place for such hearing, which shall be not less than 15 days after the service of such notice. At such hearing the registrant shall have the right to appear in person and/or by counsel and present evidence in his defense, and otherwise show cause why his registration should not be suspended. All testimony taken in such proceeding shall be reduced to writing and filed by the board. If the board shall be of the opinion that such registration should be suspended, it shall make a report of its findings as to facts and shall make an order suspending such registration, both of which shall forthwith be served upon the registrant.

Evidence may be taken out before any member of the board designated by the board for that purpose.

Orders and all other process of the board may be served:

(a) By delivery of a copy thereof by any officer of the state authorized to serve processes.

(b) By registering and mailing a copy thereof addressed to each person, firm, partnership, or corporation at his or its place of business and the returned post office receipt for such order or other process registered and mailed as aforesaid shall be proof of service of the same.

Any order of the board suspending or revoking a registration shall be final and conclusive unless within 15 days after the entry of such order the registrant whose registration has been suspending or revoked shall apply to the superior court of the county where such person resides or has his principal place of business for a review of such order, in accordance with the proceedings for review as hereinafter set forth.

**Sec. 20. Review of the orders of the board.** Any person aggrieved by the order of the board in any proceeding under this act, to which such person is a party, may apply to the superior court in the county where such person resides or has his principal place of business, for a review of any such order of the board, within 15 days after the entry of such order by filing a petition in said court praying that the order of the board may be



notified or set aside. Upon the filing of such petition, the court shall issue an order directed to the board requiring the board to certify and file in the court a transcript of the record upon which the order complained of was entered. The filing of such petition shall operate as a stay of the board's order, and, thereupon, the court shall have the exclusive jurisdiction to affirm, modify, enforce or set aside such order. The finding of the board as to facts, if supported by substantial evidence, shall be conclusive on the court. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for failure to adduce the same before the board, the court may order such additional evidence to be taken before the board and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The board may modify its findings as to the facts by reason of the additional evidence so taken and shall file such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. Exceptions may be taken to the supreme court of any decision of the superior court affirming, modifying, enforcing or setting aside any order of the board.

**Sec. 21. Employees.** The board shall employ a secretary and shall be empowered to appoint and remove such other employees as it shall deem necessary and to fix their compensation, all expenses in carrying out all the provisions of this act, however, to be paid only from fees collected.

**Sec. 22. Compensation and travelling expenses of the board.** The members of the board shall each be allowed the sum of \$10 per day and their necessary travelling expenses for actual attendance upon any examination of candidates for registration, and for any necessary hearings.

**Sec. 23. Disposal of fees.** All fees not used by the board in carrying out the provisions of this act shall become a part of the general funds of the state, provided that a surplus of fees collected and not used in any 1 year shall be held over and may be used by the board, if required, during the next succeeding year.