

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 1980 to June 19, 1981

AND AT THE

FIRST SPECIAL SESSION
August 3, 1981

**PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
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PUBLIC LAWS
OF THE
STATE OF MAINE

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1981

5. **Recommendations.** Recommendations regarding continuation of this chapter.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
EXECUTIVE DEPARTMENT		
Office of Energy Resources		
All Other	\$15,000	\$15,000

Effective September 18, 1981

CHAPTER 500
S. P. 223 — L. D. 610

AN ACT to Provide for Reimbursement under the Education Finance Act for Programs for Gifted and Talented Children.

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

Sec. 1. 20 MRSA § 4743, sub-§ 18, ¶¶ A and B, as enacted by PL 1977, c. 625, § 8, are amended to read:

A. The costs of certified professionals, assistants and aides or persons contracted to perform a special education service; ~~and~~

B. The costs of tuition and board to other schools for programs which have been approved by the commissioner; ~~and~~

Sec. 2. 20 MRSA § 4743, sub-§ 18, ¶ C is enacted to read:

C. The costs of programs for gifted and talented children which have been approved by the commissioner.

Effective September 18, 1981

CHAPTER 501
H. P. 1453 — L. D. 1597

AN ACT to Update and Clarify Legislation Concerning Agencies within or Affiliated with the Department of Business Regulation.

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

Sec. 1. 2 MRSA § 6, sub-§ 2, as amended by PL 1979, c. 488, § 1, is further amended to read:

2. **Range 90.** The salaries of the following state officials and employees shall be within salary range 90:

Bank Superintendent;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor; and

Insurance Superintendent.

Sec. 2. 5 MRSA § 711, sub-§ 2, ¶ A, sub-¶ (2), div. (b), as repealed and replaced by PL 1977, c. 674, § 6, is amended to read:

(b) Superintendent, Bureau of Consumer Credit Protection;

Sec. 3. 8 MRSA § 101, first ¶, last 2 sentences, as repealed and replaced by PL 1977, c. 682, § 1, are repealed and the following enacted in their place:

No member may receive any compensation or remuneration for promoting, competing or otherwise engaging in boxing or wrestling.

Sec. 4. 8 MRSA § 101, 2nd ¶, as repealed and replaced by PL 1977, c. 682, § 1, is repealed.

Sec. 5. 8 MRSA § 111, as amended by PL 1965, c. 461, is further amended to read:

§ 111. Taxes

The promoter or promoters of all boxing contests or exhibitions held under this chapter shall pay to the Treasurer of State, for credit to the General Fund, a tax of 3% of the gross receipts from such contest or exhibition. **On the day on which the contest or exhibition is held, the promoter or promoters shall either tender the tax to the commissioner in attendance, or provide a surety bond acceptable to the commission in the amount of \$5,000 payable to the Treasurer of State and conditioned for payment of the tax and any penalties imposed under this section.** This tax shall have been paid to the Treasurer of State ~~by the last day of the month following the month in~~ **within 15 days of the date on which such contest or exhibition is held, in the event a bond is provided.** Upon failure to pay such tax to the Treasurer of State, such promoter or promoters shall be liable to pay a penalty of 25% of the amount of the tax due, which penalty **and the tax due** shall be recovered by a civil action **upon the bond** brought in the name of the ~~said~~ commission, and the ~~said~~ penalty ~~if recovered~~ **and the tax due** shall be paid to the

Treasurer of State to be credited to the General Fund. **Failure by a promoter to pay the tax or provide the surety under this section shall be cause for cancellation of the event by the commissioner in attendance. The commission may examine the promoter's records to verify the amount of gross receipts and tax due under this section. On the failure of any promoter or promoters to pay such a tax, the commission shall revoke the promoter's license may be revoked or suspended by the Administrative Court.** This section shall apply to all boxing contests or exhibitions which are shown over closed circuit television.

Sec. 6. 8 MRSA § 139, as enacted by PL 1977, c. 13, is amended to read:

§ 139. Taxes

The promoter or promoters of all professional wrestling matches, shows or exhibitions held under this chapter shall pay to the Treasurer of State, for credit to the General Fund, a tax of 3% of the gross receipts from professional matches, shows or exhibitions. **On the day on which the contest or exhibition is held, the promoter or promoters shall either tender the tax to the commissioner in attendance, or provide a surety bond acceptable to the commission in the amount of \$5,000 payable to the Treasurer of State and conditioned for payment of the tax and any penalties imposed under this section.** This tax shall have been paid to the Treasurer of State ~~by the last day of the month following the month in~~ **within 15 days of the date on which a match, show or exhibition is held, in the event a bond is provided.** Upon failure to pay the tax to the Treasurer of State, the promoter or promoters shall be liable to pay a penalty of 25% of the amount of the tax due, which penalty **and the tax due** shall be recovered by a civil action **upon the bond** brought in the name of the commission, and the penalty ~~if recovered~~ **and the tax due** shall be paid to the Treasurer of State to be credited to the General Fund. **Failure by a promoter to pay the tax or provide a surety under this section shall be cause for cancellation of the event by the commissioner in attendance. The commission may examine the promoter's records to verify the amount of gross receipts and tax due under this section. On the failure of any promoter or promoters to pay a tax, the commission shall revoke the promoter's license may be revoked or suspended by the Administrative Court.**

Sec. 7. 9 MRSA § 3722, sub-§ 2, as last amended by PL 1975, c. 381, § 4, is further amended to read:

2. **Superintendent.** "Superintendent" means the Superintendent, Bureau of Consumer Credit Protection ~~of the State of Maine~~ and includes those members of his bureau designated by him to administer and enforce this chapter.

Sec. 8. 9 MRSA § 3724, sub-§ 7, as last amended by PL 1975, c. 381, § 4, is further amended to read:

7. **Signs.** Any provision for a payment or credit to any owner for the privilege of placing any sign on the premises where the work is being done, unless such provision has been approved by the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent.**

Sec. 9. 9 MRSA § 3736, last ¶, as last amended by PL 1975, c. 381, § 4, is further amended to read:

With respect to all other contracts, the holder, upon payment in full by the retail buyer of the time sales price and other amounts lawfully due under a home repair contract, shall furnish the owner with such instruments as the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** may by regulation provide.

Sec. 10. 9 MRSA § 3738, first sentence, as last amended by PL 1975, c. 381, § 4, is further amended to read:

No person shall engage in or transact any business of a home repair financing agency, a home repair contractor or home repair salesman in this State without first obtaining a license from the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** as provided for in this chapter.

Sec. 11. 9 MRSA § 3739, first ¶, as last amended by PL 1975, c. 381, § 4, is further amended to read:

Application for a license under this chapter shall be in writing, under oath, and shall be in the form prescribed by the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent**.

Sec. 12. 9 MRSA § 3739, 2nd ¶, last sentence, as last amended by PL 1975, c. 381, § 4, is further amended to read:

It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** may require.

Sec. 13. 9 MRSA § 3740, first sentence, as last amended by PL 1979, c. 541, Pt. A, § 84, is further amended to read:

Within 60 days after the filing of the application and the payment of the fees set forth, the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall:

Sec. 14. 9 MRSA § 3741, first sentence, as last amended by PL 1975, c. 381, § 4, is further amended to read:

If the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** refuses to issue a license, he shall:

Sec. 15. 9 MRSA § 3741, sub-§ 2, as enacted by PL 1965, c. 501, § 1, is amended to read:

2. **License fee.** If the applicant does not request a hearing, return the sum paid as a license fee; **and**

Sec. 16. 9 MRSA § 3741, sub-§ 3, as last amended by PL 1975, c. 381, § 4, is further amended to read:

3. Hearing. If the applicant requests such a hearing, give notice of the grounds for refusal and hold a hearing thereon, and within 30 days after such hearing the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall file a written decision containing his findings and conclusions and serve a copy thereof upon the applicant.

Sec. 17. 9 MRSA § 3742, last sentence, as last amended by PL 1975, c. 381, § 4, is further amended to read:

In case such location ~~be~~ is changed, the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall endorse the change of location on the license without charge.

Sec. 18. 9 MRSA § 3743-A is enacted to read:

§ 3743-A. Disposal of fees

All fees received under this chapter shall be paid to the Treasurer of State to be used for carrying out the purposes of this chapter. Any balance of these fees shall not lapse, but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Sec. 19. 9 MRSA § 3746, as last amended by PL 1975, c. 381, § 4, is further amended to read:

§ 3746. Investigation of licensees

The ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall have power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of any person who is a party to or holder of a home repair contract. The ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall have power to administer oaths and affirmations to any person whose testimony is required.

Sec. 20. 9 MRSA § 3747, as last amended by PL 1975, c. 381, § 4, is further amended to read:

§ 3747. Superintendent's power of subpoena; contempt

The ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter pertaining to this chapter.

In case of a failure of any person to comply with any subpoena issued by the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** or to testify to

any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent**, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished as for contempt.

Sec. 21. 9 MRSA § 3748, as last amended by PL 1975, c. 381, § 4, is further amended to read:

§ 3748. Records of transactions

Every home repair contractor, home repair financing agency and holder of a home repair contract shall maintain a place of business in this State and keep at its place or places of business such books, accounts and records, including records relating to disclosure required by state or federal law relating to all transactions under this chapter, as will enable the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** to enforce full compliance with the provisions thereof. All such books, accounts and records shall be preserved and kept available for such period of time as the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** may by regulation require. The ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** to determine compliance with this chapter.

Sec. 22. 9 MRSA § 3751, first sentence, as last amended by PL 1975, c. 381, § 4, is further amended to read:

The ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** is authorized and empowered to make such general rules and regulations and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this chapter, in addition hereto and not inconsistent herewith.

Sec. 23. 9 MRSA § 3752, as last amended by PL 1975, c. 381, § 4, is repealed.

Sec. 24. 9 MRSA § 4052, sub-§ 9, as enacted by PL 1975, c. 429, § 1, is amended to read:

9. Superintendent. "Superintendent" means the Superintendent of the Bureau of Consumer **Credit** Protection.

Sec. 25. 9 MRSA § 4069, 2nd ¶, first sentence, as enacted by PL 1975, c. 429, § 1, is amended to read:

The aggregate of license and examination fees provided for by this Part is appropriated for the use of the Bureau of Consumer **Credit** Protection.

Sec. 26. 9-A MRSA § 6-103, first 3 sentences, as enacted by PL 1973, c. 762, § 1, are amended to read:

There is created and established the Bureau of Consumer Credit Protection within the Department of Business Regulation. The Superintendent of Consumer Credit Protection is the head of the Bureau of Consumer Credit Protection. As used in this Act, "administrator" means the Superintendent of the Bureau of Consumer Credit Protection.

Sec. 27. 9-A MRSA § 6-104-A is enacted to read:

§ 6-104-A. Deputy superintendent

1. **Deputy superintendent.** The superintendent may appoint a deputy superintendent subject to the applicable Personnel Laws.

2. **Powers.** The superintendent may designate the deputy superintendent to perform the duties of the superintendent whenever the latter is absent from the State, whenever the deputy superintendent is directed to do so by the superintendent, whenever there is a vacancy in the office of the superintendent or whenever the superintendent is incapacitated by illness. In the event of a vacancy in the office of the superintendent, his incapacitating illness or absence from the State at a time when there is no deputy superintendent, the Commissioner of Business Regulation may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months.

Sec. 28. 9-B MRSA § 161, sub-§ 2, ¶ D, as amended by PL 1977, c. 696, § 115, is further amended to read:

D. The making of reports or returns required under ~~chapter 61 of the United States Internal Revenue Code of 1954, chapter 61, and investigatory activity authorized by the United States Internal Revenue Code;~~

Sec. 29, 9-B MRSA § 216, as enacted by PL 1975, c. 500, § 1, is repealed.

Sec. 30. 9-B MRSA § 317, sub-§ 1, 3rd sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

~~Any~~ **No more than 2** offices may be held by the same person **without the approval of the superintendent.**

Sec. 31. 9-B MRSA § 327, sub-§ 1, 2nd sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

~~Any~~ **No more than 2** offices may be held by the same person **without the approval of the superintendent.**

Sec. 32. 9-B MRSA § 465, sub-§ 1, ¶ B, as enacted by PL 1975, c. 500, § 1, is amended to read:

B. Notwithstanding any prohibition contained in subsection 1, a trust company may make a loan to a person in its employ who is not a director or corporator if

the loan does not exceed ~~\$5,000~~ **\$10,000** in amount or if it is secured by collateral, other than that specified in subsection 1, having a value of at least 105% of the amount of the loan, and if such loan is confirmed within 30 days of its making by the board of directors or executive committee.

Sec. 33. 9-B MRSA § 465, sub-§ 2, ¶ A, as amended by PL 1977, c. 152, § 5, is further amended to read:

A. Except for loans adequately secured by a first mortgage on real estate, a savings deposit, a certificate of deposit or a share account, or personal loans having an aggregate value of ~~\$5,000~~ **\$10,000** or less, no thrift institution or credit union subject to the laws of this State shall make any loans to its **policy-making** officers or directors. No thrift institution shall make a loan to its corporators, **policy-making** officers or directors and no credit union shall make a loan to its officers or directors unless such loans are on the same terms as are generally available to the public or its members.

Sec. 34. 9-B MRSA § 532, first sentence, as enacted by PL 1975, c. 500, § 1, is amended to read:

Subject to the conditions and limitations set forth in this section, a savings bank may make loans to individuals or corporations, to be secured by a first mortgage of real estate **and subsequent mortgages held by the same bank, provided that the real estate is** located in any of the New England states, or located anywhere if the loan is authorized under subsections 3, 4 or 5 as follows:

Sec. 35. 9-B MRSA § 833, sub-§ 3, as enacted by PL 1975, c. 500, § 1, is repealed.

Sec. 36. 9-B MRSA § 833, sub-§ 3-A is enacted to read:

3-A. Dividend rate. A credit union authorized to do business in this State may pay any dividend rate approved for federally-chartered credit unions by the National Credit Union Administration or its successor.

Sec. 37. 10 MRSA § 8001, 2nd sentence, as last amended by PL 1979, c. 606, § 2, is repealed and the following enacted in its place:

The department shall be composed of the following bureaus, boards and commissions:

Banking, Bureau of;

Consumer Credit Protection, Bureau of;

Insurance, Bureau of;

Athletic Commission, Maine;

Real Estate Commission;
Running Horse Racing Commission, State;
Arborist Examining Board;
Claims Board, State;
Electricians' Examining Board;
Foresters, State Board of Registration for Professional;
Geologists and Soil Scientists, State Board of Certification for;
Manufactured Housing Board;
Oil and Solid Fuel Board;
Physical Therapy, Board of Examiners in;
Psychologists, State Board of Examiners of;
Social Worker Registration, State Board of;
Speech Pathology and Audiology, Board of Examiners on; and
Substance Abuse Counselors, Board of Registration of.

Sec. 38. 24-A MRSA § 230, as last amended by PL 1977, c. 694, §§ 390 to 392, is repealed and the following enacted in its place:

§ 230. Notice of hearing

1. Notice of hearing shall be given in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Except when a different period is expressly provided by the Maine Administrative Procedure Act, Title 5, chapter 375, or by this Title, the superintendent shall give written notice of hearing not less than 14 days in advance. Notice of hearing may be waived and the hearing held at a time mutually fixed by the superintendent and the parties.

Sec. 39. 24-A MRSA § 415, sub-§ 1, ¶ B, as repealed and replaced by PL 1977, c. 222, § 1, is amended to read:

B. Due filing by the insurer of its annual statements ~~for the 2 preceding calendar years~~ as required by section 423; and

Sec. 40. 24-A MRSA § 415, sub-§ 4, as enacted by PL 1975, c. 767, § 11, is amended to read:

4. When an insurer is issued a first-time certificate of authority and if its assigned biennial continuation date is ~~more than one year away, the superintendent may require the insurer to pay an additional fee, as a result of such assignment, will be less than one year hence, the fee assessed for the certificate of authority shall not to exceed 1/2 the biennial continuation and annual statement filing fees in effect at that time according to the fee schedule, subject to any applicable retaliatory provisions.~~

Sec. 41. 24-A MRSA § 601, sub-§ 1, ¶ A, as enacted by PL 1969, c. 132, § 1, is repealed and the following enacted in its place:

A. For filing application for initial certificate of authority, including all documents submitted as part of the application. If an applicant requests deferral and new data filings respecting the application are required, a fee in equal amount shall be required upon the filing of the new information \$750

Sec. 42. 24-A MRSA § 901, sub-§ 12, as enacted by PL 1969, c. 132, § 1, is amended to read:

12. As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, ~~at not to exceed the cost thereof as measured by the cost of the plant and equipment to the insurer, but subject to the limitation in section 1129;~~

Sec. 43. 24-A MRSA § 927, sub-§ 2, as amended by PL 1969, c. 177, § 16, is further amended by adding at the end a new paragraph to read:

The contingency reserve established by the insurer shall be maintained for 120 months. Subject to the superintendent's approval, that portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.

Sec. 44. 24-A MRSA § 3358, sub-§ 4, first sentence, as enacted by PL 1969, c. 132, § 1, is amended to read:

Noncumulative dividends, not exceeding in any one year ~~7% of the amount paid to the insurer for the same~~ 12% or lesser reasonable amount as determined by prevailing rates for loans of similar risk characteristics at the time the shares are issued, may be declared and paid by the insurer on outstanding guaranty capital shares out of that portion of the insurer's expendable surplus representing net realized earnings from its operations; and may be so paid even though the amount of the insurer's expendable surplus is then less in amount than any prior total of expendable contributed, borrowed or paid-in surplus.

Sec. 45. 24-A MRSA § 3364, sub-§ 1, as enacted by PL 1969, c. 132, § 1, is amended to read:

1. Except as provided otherwise in section 3367 with respect to nonassessable policies, each member of a domestic mutual insurer shall have a contingent

liability, ~~prorata~~ **pro rata** and not one for another, for the discharge of its obligations, which contingent liability shall ~~be in such maximum amount not less than 1 or more~~ **not be greater** than 6 times the annual premium for the member's policy at the annual premium rate, as shall be specified in the insurer's certificate of organization or bylaws.

Sec. 46. 24-A MRSA § 3408, sub-§ 2, ¶¶ A and B, as enacted by PL 1969, c. 132, § 1, are amended to read:

- A. Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; ~~and~~
- B. Such property of the insurer as may be customary, necessary and convenient to enable and facilitate the operation of its branch offices located outside this State as referred to in subsection 4; ~~and~~

Sec. 47. 24-A MRSA § 3408, sub-§ 2, ¶ C is enacted to read:

C. **United States public obligations and other corporate securities for which definitive certificates have not been issued, but are issued through the book-entry systems of federal reserve banks or depository trust companies. Insurers investing in securities in book-entry form shall make available at the time of examination the following:**

- (1) **A copy of the custodial or safekeeping agreement entered into by the insurer and the custodian, a state-chartered bank, a member bank of the federal reserve system or a depository trust company if the deposit was made directly to the entity, which sets forth the provisions for the use of the book-entry securities on behalf of the insurer by the custodian. The agreement shall provide for a standard of responsibility on the part of the custodian which shall be the responsibility of a bailee for hire under the law of the jurisdiction of the custodian's state of domicile. The agreement shall provide that the securities held by the custodian are subject to the instructions of the insurer and may be withdrawn immediately upon demand of the insurer; and**
- (2) **Affidavits evidencing ownership of the book-entry securities signed by a responsible official of the custodian and stating that the custodian is holding the securities for the insurer pursuant to the terms of the custodial agreement. These book-entry securities shall be treated as "admitted assets" of the insurer on production of the affidavit.**

The required custodial agreement and affidavit shall conform to such standards as may be prescribed from time to time by the Superintendent of Insurance.

Sec. 47-A. 24-A MRSA § 3409, sub-§§ 1 and 3, as enacted by PL 1969, c. 132, § 1, are amended to read:

1. **No insurer shall make any disbursement of \$50 or more, unless such disbursement is evidenced by a voucher or other document correctly describing**

the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money, or made through an electronic or wire funds transfer system supported by accurate records identifying the payor, payee, date of electronic or wire transfer payment, and the nature of the disbursement so made.

3. If in a particular instance such a required voucher cannot be obtained, the expenditure must be supported by an affidavit executed by an officer of the insurer stating the reasons for such inability and the particulars of such expenditure as otherwise hereinabove required in this section.

Sec. 48. 24-A MRSA § 4203, sub-§ 4 is enacted to read:

4. Each application for a certificate of authority shall be made in duplicate. Upon receipt of an application for a certificate of authority, the superintendent shall immediately transfer one copy to the Commissioner of Human Services.

Sec. 49. 24-A MRSA § 4204, sub-§ 1, ¶ B, first sentence, as repealed and replaced by PL 1979, c. 216, § 2, is amended to read:

The superintendent shall take no final action with regard to the application until he has been informed by the Department of Human Services whether or not the application for the certificate of need has been approved or, denied or deemed not to be required.

Sec. 50. 24-A MRSA § 4204, sub-§ 2, as last amended by PL 1979, c. 216, §§ 3 to 5, is repealed.

Sec. 51. 24-A MRSA § 4204, sub-§ 2-A is enacted to read:

2-A. The superintendent shall issue or deny a certificate of authority to any person filing an application pursuant to section 4203 within 50 business days of receipt of the notice from the Department of Human Services that the applicant has been granted a certificate of need or, if a certificate of need is not required, within 50 business days of receipt of notice from the Department of Human Services that the applicant is in compliance with the requirements of paragraph B. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 4220 if the superintendent is satisfied that the following conditions are met.

A. The Commissioner of Human Services certifies that the health maintenance organization has received a certificate of need or that a certificate of need is not required pursuant to Title 22, chapter 103.

B. If the Commissioner of Human Services has determined that a certificate of need is not required, the commissioner makes a determination and provides a certification to the superintendent whether the following requirements have been met.

(1) The applicant has demonstrated the willingness and potential ability to assure that the health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility and continuity of service.

(2) The applicant has arrangements, established in accordance with regulations promulgated by the Commissioner of Human Services with the advice of the Maine Health Systems Agency or any successor agency, for an ongoing quality of health care assurance program concerning health care processes and outcomes.

(3) The applicant has a procedure, established in accordance with regulations of the Commissioner of Human Services, to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services and such other matters as may be reasonably required by the commissioner.

The Commissioner of Human Services shall make the certification required by this paragraph within 60 days of the date of the written decision that a certificate of need was not required. If the commissioner certifies that the health maintenance organization does not meet all of the requirements of this paragraph, he shall specify in what respects it is deficient.

C. The health maintenance organization conforms to the definition under section 4202, subsection 5.

D. The health maintenance organization is financially responsible and shall, among other factors, reasonably be expected to meet its obligations to enrollees and prospective enrollees.

In making this determination, the superintendent may consider:

(1) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;

(2) The adequacy of working capital;

(3) Any agreement with an insurer, a nonprofit hospital or medical service corporation, a government or any other organization for insuring or providing the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

(4) Any agreement with providers for the provision of health care services; and

(5) Any arrangements for insurance coverage or an adequate plan for self-

insurance to respond to claims for injuries arising out of the furnishing of health care services.

E. The enrollees are afforded an opportunity to participate in matters of policy and operation pursuant to section 4206.

F. Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 4203 or by independent investigation, is contrary to the public interest.

The applicant shall furnish, upon request of the superintendent, any information necessary to make any determination required pursuant to this subsection.

Sec. 52. 32 MRSA § 280, sub-§ 3, as enacted by PL 1979, c. 478, § 2, is amended to read:

3. **Selling real estate.** If an auctioneer sells real estate, offers to sell real estate or offers to negotiate the sale of real estate, he is considered to be acting in the capacity of a real estate broker and shall be licensed as a broker, **except that a real estate broker license shall not be required when the auctioneer is employed by the owner or his agent for services limited to "crying the sale."**

Sec. 53. 32 MRSA § 571, sub-§ 1, as enacted by PL 1965, c. 430, § 1, is repealed and the following enacted in its place:

1. **Collection agency.** "Collection agency" means and includes any person conducting business in the State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due another. It includes persons who furnish collection systems carrying a name which simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor. Notwithstanding section 572, the term includes any creditor who, in the process of collecting its own debts, uses any name other than his own which indicates that a 3rd person is collecting or attempting to collect these debts.

Sec. 54. 32 MRSA § 571, sub-§ 1-A is enacted to read:

1-A. **Debt.** "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment.

Sec. 55. 32 MRSA § 571, sub-§ 2, as last amended by PL 1975, c. 381, § 6, is further amended to read:

2. **Superintendent.** "Superintendent" means the Superintendent, Bureau of Consumer Credit Protection.

Sec. 56. 32 MRSA § 574, last sentence, as last amended by PL 1975, c. 381, § 6, is further amended to read:

The bond may be cancelled by the surety thereon by giving 30 days' notice to the ~~Superintendent, Bureau of Consumer Protection~~ **superintendent** but such cancellation shall not in any manner affect the liability of the surety as to anything occurring prior thereto.

Sec. 57. 32 MRSA § 578, first sentence, as last repealed and replaced by PL 1977, c. 694, § 554-A, is amended to read:

The Bureau of Consumer Credit Protection may investigate the records and practices of a licensee in accordance with Title 9-A, section 6-106 **and may charge for expenses incurred pursuant to Title 9-A, section 6-203, subsection 4.**

Sec. 58. 32 MRSA § 584, first sentence, as enacted by PL 1975, c. 486, § 4, is amended to read:

The aggregate of license fees provided for by this chapter is appropriated for the use of the Bureau of Consumer Credit Protection.

Sec. 59. 32 MRSA § 1102-A, first sentence, as enacted by PL 1973, c. 363, is amended to read:

The licensing provisions of this chapter shall not apply to **regular employees of the following plants:**

Sec. 60. 32 MRSA § 1656, sub-§ 1, 2nd and 3rd sentences, as repealed and replaced by PL 1977, c. 398, § 10, are amended to read:

A certificate of registration limited to demonstrations only may be issued upon complying with such requirements as may be determined by the board and upon payment of the fee of \$25 **for an initial license, which is valid until the next renewal date.** Certificates shall be renewed **biennially** on or before July 1st ~~each year~~ by paying a renewal fee of \$30 ~~biennially~~.

Sec. 61. 32 MRSA § 3112, 2nd sentence, as enacted by PL 1979, c. 555, § 2, is amended to read:

It shall consist of 2 physical therapists, one physical therapist assistant, ~~2 physicians from the Board of Registration in Medicine~~ **one physician** and one public member.

Sec. 62. 32 MRSA § 3114, as enacted by PL 1979, c. 555, § 2, is repealed.

Sec. 63. 32 MRSA § 3114-A is enacted to read:

§ 3114-A. **Qualification; application**

1. Qualification. To qualify for a license as a physical therapist or physical therapist assistant an applicant shall meet the following requirements:

A. Be of good moral character;

B. Be a graduate of an educational program for the physical therapist or the physical therapist assistant which is accredited by an agency recognized by the United States Commissioner of Education or the Council on Post-Secondary Accreditation, or both, and approved by the board; or if the applicant has been trained in another country, present satisfactory evidence that he has graduated from a school of physical therapy approved or accredited in the country where the school is located and have educational credentials equivalent to those of the United States trained physical therapist or physical therapist assistant; and

C. Pass an examination, approved by the board, to determine the applicant's fitness to practice as a physical therapist or to act as a physical therapist assistant. The board may waive the examination requirement for an applicant who is currently licensed in another state by virtue of having previously passed a qualifying examination acceptable to the board, provided that the passing standards for the examination were substantially equal to those then required by the law of this State.

Applicants trained in another country must demonstrate proficiency in written and spoken English and complete up to one year experience in employment approved by the board under the supervision of a licensed physical therapist.

2. Application. To apply for a license as a physical therapist or physical therapist assistant, an applicant shall:

A. Submit a written application with supporting documents to the board on forms provided by the board;

B. Pay an application fee which shall not exceed \$50; and

C. Pay an examination fee which shall not exceed \$95.

In case the application is denied and permission to take the examination refused, the examination fee only shall be returned to the applicant. Any applicant who fails to pass the examination shall be entitled to a reexamination within 6 months upon repayment of the examination fee only. If an applicant fails one section of the examination, he shall be reexamined on that particular section only. If he fails more than one section, he shall repeat the entire examination. No applicant may be allowed to take any part of the examination more than 3 times, unless he submits evidence of having acquired additional formal education related to the previously failed examination section or sections.

Sec. 64. 32 MRSA § 3115, as enacted by PL 1979, c. 555, § 2, is repealed and the following enacted in its place:

§ 3115. Licensure

The board shall license any applicant who meets the requirements of this chapter and pays the biennial licensure fee specified in section 3116. The fee for original licenses effective for one year or less during the biennial licensing period shall be 1/2 the fee specified in section 3116. Each person licensed shall receive a certificate signed by the chairman of the board. Every certificate of licensure and renewal certificate for the current biennium shall be conspicuously displayed at the place of employment of the licensee. A certificate of licensure as a physical therapist shall entitle the person to whom it is granted to engage in the practice of physical therapy anywhere in this State and to use the words "physical therapist" or letters "P.T." to indicate that he is licensed in this State. A certificate of licensure as a physical therapist assistant shall entitle the person to whom it is granted to act as a physical therapist assistant and to use the words "physical therapist assistant" or letters "P.T.A." to indicate that he is licensed in this State.

Sec. 65. 32 MRSA § 3116, first 5 sentences, as enacted by PL 1979, c. 555, § 2, are repealed and the following enacted in their place:

All licenses shall be renewed biennially on or before March 31st of each even-numbered year or at such other times as the Commissioner of Business Regulation may designate. The biennial licensure renewal fee shall not exceed \$50. The Central Licensing Division shall notify each licensee, at his last known address, 30 days in advance of the expiration of his license. Renewal notices shall be on forms provided by the board. Any license not renewed by March 31st automatically expires. The board may renew an expired license without penalty if the renewal notice is returned within 30 days of the expiration date. A license which has expired for more than 30 days may be reinstated only by a majority vote of the board after the following conditions are met:

Sec. 66. 32 MRSA § 3821, 4th sentence, as repealed and replaced by PL 1975, c. 575, § 43, is repealed as follows:

~~Selection of the psychologist or psychological examiner members of the board shall be made from a list submitted annually, previous to the time when the term of such a member expires, by the Maine Psychological Association~~

Sec. 67. 32 MRSA § 3821, as repealed and replaced by PL 1975, c. 575, § 43, is amended by adding at the end a new sentence to read:

Prior to the filling of any vacancies of professional members, the Governor shall solicit recommendations.

Sec. 68. 32 MRSA § 4001, last ¶, is amended by adding at the end a new sentence to read:

This chapter does not apply to an auctioneer employed by an owner or his agent for services limited to "crying the sale."

Sec. 69. 32 MRSA § 4057, as last amended by PL 1975, c. 767, § 59, is repealed and the following enacted in its place:

§ 4057. List of licensees

The commission shall maintain a list of the names and addresses of all licensees licensed by it under this chapter. A central register maintained by the Central Licensing Division under Title 10, section 8003, subsection 2, is deemed to satisfy this requirement. The commission may publish the names of persons whose licenses have been revoked or suspended and such other information relative to the enforcement of this chapter as it deems to be of interest to the public.

Sec. 70. 32 MRSA § 4903, as enacted by PL 1973, c. 558, § 1, is repealed and the following enacted in its place:

§ 4903. Effect of law

1. Prohibition against practice of geology or soil science without certification. No person may practice or offer to practice geology or soil science in the State without certification in accordance with this chapter, unless specifically exempted from the certification requirement by this chapter.

2. Effect. This chapter shall not be construed to affect or prevent the practice of any other legally recognized profession.

Sec. 71. 32 MRSA § 4905, as enacted by PL 1973, c. 558, § 1, is repealed.

Sec. 72. 32 MRSA § 4906, first sentence, as enacted by PL 1973, c. 558, § 1, is amended to read:

The following persons shall be exempt from the certification requirement imposed by this chapter:

Sec. 73. 32 MRSA § 4906, sub-§ 3, as enacted by PL 1973, c. 558, § 1, is amended to read:

3. Certain employees. An employee, associate or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person exempted from registration by subsections 1 and 2; provided his practice that the work of all such employees, associates or subordinates does not include responsible charge of work or evaluation; and

Sec. 74. 32 MRSA § 4906, sub-§ 4, as last amended by PL 1979, c. 89, § 2, is further amended to read:

4. United States Government employees. Officers and employees of the Government of the United States while engaged within this State in the practice of the profession of geologist or soil scientist for the government; and.

Sec. 75. 32 MRSA § 4906, sub-§ 5, as enacted by PL 1975, c. 760, § 7, is repealed.

Sec. 76. 32 MRSA § 4906-A is enacted to read:

§ 4906-A. Subsurface sewage disposal

Persons who have been licensed by the Department of Human Services pursuant to Title 22, section 42, subsection 3-A, to evaluate soil for subsurface sewage disposal are exempt from the certification requirement if their soil evaluation work relates solely to subsurface sewage disposal systems.

Sec. 77. 32 MRSA § 4909, 6th ¶ from the end, as enacted by PL 1973, c. 558, § 1, is amended to read:

An applicant for certification shall meet all the requirements of this chapter and, in addition, shall have 3 years years' experience in the practice of geology or soil science as defined by this chapter and in the rules and regulations of the board to be provided.

Sec. 78. 32 MRSA § 4916, as enacted by PL 1973, c. 558, § 1, is repealed.

Sec. 79. 32 MRSA § 4917, as enacted by PL 1973, c. 558, § 1, is repealed.

Sec. 80. 32 MRSA § 6213, sub-§ 2, as enacted by PL 1977, c. 466, § 2, is amended to read:

2. Qualifications. Have been employed in the profession of substance abuse counseling for a minimum of 2 years in the 4 year period immediately preceding the date on which application is made or have the equivalent of 2 years of paid employment as a substance abuse counselor. In determining such equivalent, an applicant shall have been employed at least one year in the profession of substance abuse counseling and the board may substitute work-based educational experience for the remaining period of required paid employment at a rate of no less than 2 months of work-based educational experience for each one-month period of required paid employment. ~~Both the paid employment and the work based educational experience shall have taken place within the 4 year period immediately preceding the date on which application is made; or have the equivalent of 2 years of paid employment as a substance abuse counselor~~ In determining such equivalent, an applicant shall have been employed at least 1 1/2 years in the profession of substance abuse counseling and the board may substitute volunteer work for the remaining period of required paid employment at a rate of no less than 2 months of volunteer work for each one-month period of required paid employment ~~Both the paid employment and the volunteer work have taken place within the 4 year period immediately preceding the date on which application is made; and~~

Sec. 81. 35 MRSA § 1642, sub-§ 8, last sentence, as enacted by PL 1979, c. 609, § 2, is amended to read:

The business of organizing and operating a car pooling or van pooling system, including the selection and approval of cars, vans and drivers, the fixing and collection of fees, the establishment of routes and the provision of backup transportation, is exempt from regulation under this chapter provided that proof of adequate insurance coverage, as determined by the ~~Bureau of Insurance and the~~ Public Utilities Commission, is filed with the Public Utilities Commission prior to commencing operation.

Sec. 82. Revision clause. Wherever in the Revised Statutes the words "Bureau of Consumer Protection" appear or reference is made to that name, they shall be amended to read and mean "Bureau of Consumer Credit Protection."

Effective September 18, 1981

CHAPTER 502

S. P. 261 — L. D. 743

AN ACT to Equalize the Tax Burden of Rural Community Health Centers.

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

36 MRSA § 1760, sub-§ 16, first sentence, as last amended by PL 1977, c. 559, is further amended to read:

Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit home health care agencies certified under Title XVIII of the Social Security Act of 1965 as amended, **incorporated nonprofit rural community health centers engaged in the delivery of comprehensive primary health care**, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations, schools and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities which are mainly commercial enterprises.

Effective September 18, 1981

CHAPTER 503

S. P. 287 — L. D. 813

AN ACT Concerning the Use Tax on Used, Damaged or Returned Merchandise Donated to Charitable Organizations.