

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

- (1) A rotor;
- (2) Power processing components;
- (3) Tower; and
- (4) Control components.

Sec. 2. **Effective date.** This Act shall be effective for systems or components of systems purchased after January 1, 1984.

Effective July 25, 1984, unless otherwise indicated.

CHAPTER 841

H.P. 1770 - L.D. 2337

AN ACT to Clarify the Laws Relating to
Private Business, Trade and Technical Schools.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the approval and regulation of schools of barbering and schools of cosmetology were repealed by Public Law 1983, chapter 140; and

Whereas, there are no comprehensive statutes or regulations in place to govern the operation of these schools; and

Whereas, there were repealed inadvertently certain provisions of the Revised Statutes, Title 32 relating to the issuing of student permits to student barbers and cosmetologists in school clinics; and

Whereas, there were certain provisions of Title 32 regarding the regulation of schools of barbering and cosmetology which inadvertently were not repealed, causing confusion over the proper authority for regulation of these schools; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 20-A, c. 323, first 2 lines are repealed and the following enacted in their place:

CHAPTER 323

PRIVATE BUSINESS, TRADE AND TECHNICAL SCHOOLS

Sec. 2. 20-A MRSA §9501, as amended by PL 1983, c. 140, §1, is further amended to read:

§9501. License; exemptions; definitions

1. Requirement of license. Any person, ~~partnership, corporation or school~~ located either within or outside the State shall obtain a ~~certificate of approval~~ license from the commissioner before ~~conducting~~ operating or maintaining any ~~course of instruction~~ proprietary school or before collecting any tuition, fee or other charge for ~~conducting operating or maintaining~~ or soliciting for any ~~educational services or related training~~ proprietary school within the State.

2. Exemptions. Educational programs related to the real estate professions which are subject to approval under Title 32, chapter 59, commercial driver educational schools subject to approval by the Board of Commercial Driver Education under Title 32, chapter 95, educational programs offered by any Maine nonprofit corporation, any educational programs offered by any professional or trade association primarily for the benefit of its own members and any educational institution authorized by the laws of this State to grant a degree are exempt from the requirements of this chapter.

3. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Person" includes a person, partnership, association or corporation, but does not include any public agency.

B. "Proprietary school" means a school as defined in the rules of the commissioner, but means, at a minimum, any school maintained or course of instruction conducted for the purpose

of teaching any trade or any industrial, occupational, vocational, business or technical skill, except as exempt under subsection 2.

Sec. 3. 20-A MRSA §9502, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§9502. Application form; fee; bond

1. Application requirements; licensing; bonding and revocation of license. The application for a certificate of approval license required in section 9501 by this chapter shall be made on forms furnished by the commissioner and shall be accompanied by a fee of \$100, except as provided in section 9505 for schools of barbering and cosmetology, and a surety bond in the penal sum of ~~\$1,000~~ \$10,000.

A. A certificate of approval license is valid for the calendar year in which it is issued.

B. The bond shall be continuous and shall provide indemnification to any student suffering loss as a result of any fraud or misrepresentation. The bond shall provide for written notification by the surety to the department commissioner in the event of cancellation. Cancellation of the bond by the surety shall result in the revocation of the certificate of approval license.

2. Renewal fee. A fee of \$50 shall be charged for the renewal of a certificate license, except as otherwise provided in section 9505 for schools of barbering and cosmetology.

3. General Fund. All fees collected for the issuance or renewal of a certificate license shall be deposited in the State Treasury.

Sec. 4. 20-A MRSA §9503, as enacted by PL 1981, c. 693, §§5 and 8, is repealed and the following enacted in its place:

§9503. Penalties

1. Fines. Any person, who operates or maintains a proprietary school in violation of this chapter, or represents itself as operating and maintaining such a school, is subject to a civil penalty of not more than \$5,000, payable to the State, to be recovered in a civil act.

2. Enforcement actions. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

Sec. 5. 20-A MRSA §9504, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

§9504. Rules

The commissioner may adopt rules for the administration and enforcement of this chapter. The rules may establish requirements relating to advertising, records and recordkeeping, health and sanitation, safety, personnel, tuition, fees, contracts and other matters which may protect the public and consumer interests.

Sec. 6. 20-A MRSA §§9505 to 9507 are enacted to read:

§9505. Regulation of schools of barbering and schools of cosmetology

The commissioner shall adopt rules for the licensing of persons to maintain and operate schools of barbering and schools of cosmetology which shall include standards relating to educational programs, instructor qualifications and physical facilities. An annual fee not to exceed \$500 shall be charged the schools for the cost of that regulation.

§9506. License; refusal to renew; suspension; revocation

The commissioner may investigate complaints involving a school, including any allegation of noncompliance with or violation of this chapter and applicable rules. The commissioner may, after a hearing in conformance with Title 5, chapter 375, subchapter IV, to the extent applicable, amend, modify or refuse to renew any license and may revoke, suspend or refuse to renew a license as provided in Title 5, section 10004.

The Administrative Court may suspend or revoke the license of any person found to have violated any provision of this chapter or any lawful order or rule issued by the commissioner.

§9507. Hearings

The commissioner shall not refuse to renew a license for any reason other than failure to pay the required fee, unless the licensee has been given an opportunity for a hearing.

Hearings may also be conducted by the commissioner, at the commissioner's discretion, to assist with investigations of complaints, to determine whether grounds exist for suspension, revocation, denial or nonrenewal of any license, or as otherwise deemed necessary to fulfill the responsibilities under this chapter.

The commissioner may subpoena witnesses, records and documents in any hearing conducted pursuant to this chapter.

Sec. 7. 32 MRSA §301, sub-§1, ¶C, as amended by PL 1967, c. 137, is further amended to read:

C. Singeing, dyeing, tinting, bleaching or shampooing the hair or applying cosmetic preparations to the hair, scalp, face, neck or upper part of the body; such dyeing, tinting or bleaching shall not be practiced unless the barber has taken a course in such practices, approved by the board;

Sec. 8. 32 MRSA §301, sub-§2 is amended to read:

2. Apprentice or student barber. "Apprentice barber" ~~shall mean~~ means any person who is engaged in learning and acquiring a knowledge of the practice of barbering under the direction and supervision of a person duly authorized licensed under this chapter to practice barbering. "Student barber" means any person who is engaged in learning and acquiring a knowledge of the practice of barbering as a duly enrolled student in a school of barbering licensed by the Commissioner of Educational and Cultural Services.

Sec. 9. 32 §352, sub-§2, as amended by PL 1983, c. 339, §3 and as repealed and replaced by PL 1983, c. 413, §25, is repealed and the following enacted in its place:

2. Rules. The board shall adopt rules pursuant to the authority vested in it by this chapter, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, except as otherwise provided in this subsection and subject to the approval of the Commissioner of Human Services.

The rules shall include, but not be limited to, the following matters:

A. The proper use of appliances, apparatus and electrical machines used in any establishment in connection with the practice of barbering, as defined in section 301;

B. The sanitary requirements for proprietors of barber shops and persons engaged in the practice of barbering, as defined in section 301; and

C. Requirements for licenses and certificates of registration consistent with this chapter.

The rules may also include reasonable requirements, including sanitary standards, to govern the practice of barbering by persons outside of licensed shops, as authorized by section 302, subsection 2.

A copy of all valid rules issued by the board shall be sent to all persons licensed or registered under this chapter.

Sec. 10. 32 MRSA §352, sub-§4, as enacted by PL 1977, c. 398, §8, is amended to read:

4. Diseases. No person shall who has a communicable disease may give service in any barber shop or school who has a disease in a communicable stage. The board shall have the right to require the physical examination of any person who, while employed in any such barber shop or school, is suspected of having any contagious or infectious communicable disease. Failure to submit to such an examination shall be grounds for suspension or revocation of the person's certificate of registration, license or permit.

Sec. 11. 32 MRSA §353 is amended to read:

§353. Register

The board shall keep a register in which shall be entered the names of all persons to whom certificates and, licenses and permits are issued under this chapter and said that register shall be at all times open to public inspection.

Sec. 12. 32 MRSA §401, 7th ¶, as amended by PL 1979, c. 694, §2, is further amended to read:

Each student upon enrollment in an approved a school of barbering licensed by the Commissioner of Educational and Cultural Services shall make written

application for a student permit therefor on a form prescribed and supplied by the board. The application shall contain satisfactory evidence of the qualifications required of the applicant under this chapter and shall be notarized. The applicant shall pay to the secretary of the board a fee of \$5 and the permit shall expire with termination or completion of the school course for which the permit was obtained. No permit ~~shall~~ may be issued to a person who has not attained 17 years of age.

Sec. 13. 32 MRSA §401, as amended by PL 1979, c. 694, §§1 and 2, is further amended by adding at the end a new paragraph to read:

A student permit shall not be required of an apprentice who obtains a certificate of registration pursuant to section 405.

Sec. 14. 32 MRSA §402, sub-§3, as repealed and replaced by PL 1977, c. 398, §9, is amended to read:

3. Training. Who has satisfactorily completed a course of instruction of 1,500 hours in not less than 9 months in a school of barbering approved licensed by the board Commissioner of Educational and Cultural Services, or in lieu thereof has had a total experience as an apprentice in the practice of barbering of 2,500 hours distributed over a period of at least 18 months; and

Sec. 15. 32 MRSA §402, 2nd ¶, as repealed and replaced by PL 1977, c. 398, §9, is amended to read:

Any person licensed as a cosmetologist pursuant to chapter 23 and who has satisfactorily completed a course of instruction of at least 500 hours in a school of barbering approved licensed by the board Commissioner of Educational and Cultural Services, or in lieu thereof has had a total experience as an apprentice in the practice of barbering of at least 900 hours, shall be entitled to take the examination, upon payment of the fees prescribed in this section.

Sec. 16. 32 MRSA §1551, sub-§5, as enacted by PL 1977, c. 398, §10, is amended to read:

5. Apprentice cosmetologist. "~~Student or apprentice~~ Apprentice cosmetologist" shall mean any person who is engaged in learning and acquiring a knowledge of the practice of cosmetology under the direction and supervision of a person ~~duly~~ authorized licensed under this chapter to teach

practice cosmetology and under in accordance with the rules and regulations of the board relating to students and apprentices.

Sec. 17. 32 MRSA §1551, sub-§6 is enacted to read:

6. Student cosmetologist. "Student cosmetologist" means any person who is engaged in learning and acquiring a knowledge of the practice of cosmetology as a duly enrolled student in a school of cosmetology licensed by the Commissioner of Educational and Cultural Services.

Sec. 18. 32 MRSA §1553-A is enacted to read:

§1553-A. Instructors of cosmetology

No person may be engaged to instruct in any of the branches of cosmetology unless that person has a certificate to practice cosmetology under this chapter, except physicians as specified.

The board and the Department of Educational and Cultural Services shall make rules for the examination of applicants for certificates of registration as instructors of cosmetology, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. Examination applications shall be furnished by the board. The application shall be filed with the secretary of the board and shall be accompanied by an examination fee of \$50 which shall include registration, if examination is satisfactory. All certificates of registration as instructors shall expire June 30th biennially. The renewal fee for instructors shall be \$16 biennially.

Sec. 19. 32 MRSA §1602, sub-§4, as enacted by PL 1977, c. 398, §10, is amended to read:

4. Diseases. No person shall who has a communicable disease may give service in any beauty shop or school of cosmetology who has a disease in a communicable stage. The board shall have the right to require the physical examination of any person who, while employed in any such beauty shop or school, is suspected of having any contagious or infectious communicable disease. Failure to submit to such an examination shall be grounds for suspension or revocation of the person's certificate of registration, license or permit.

Sec. 20. 32 MRSA §1603, as repealed and replaced by PL 1977, c. 398, §10, is amended to read:

§1603. Register of names

The board shall keep a register in which shall be entered the names of all persons to whom certificates, licenses and permits are issued under this chapter and said that register shall be at all times open to public inspection.

Sec. 21. 32 MRSA §1652, sub-§3, as repealed and replaced by PL 1977, c. 398, §10, is amended to read:

3. Training. Who has satisfactorily completed a course of instruction of 1,500 hours in not less than 9 months in a school of cosmetology approved licensed by the board Commissioner of Educational and Cultural Services, or in lieu thereof has had a total experience in the practice of cosmetology or as an apprentice of 2,500 hours distributed over a period of at least 18 months; and

Sec. 22. 32 MRSA §1652, 2nd ¶, as repealed and replaced by PL 1977, c. 398, §10, is amended to read:

Any person licensed as a barber pursuant to chapter 7 and who has satisfactorily completed a course of instruction of at least 500 hours in a school of cosmetology approved licensed by the board Commissioner of Educational and Cultural Services, or in lieu thereof has had a total experience in the practice of cosmetology as an apprentice of at least 900 hours, shall be entitled to take the examination upon payment of the fees prescribed in this section.

Sec. 23. 32 MRSA §1654, last ¶, as enacted by PL 1981, c. 92, is repealed.

Sec. 24. 32 MRSA §1655-A is enacted to read:

§1655-A. Student cosmetologists

The board shall furnish each student cosmetologist with a student permit upon the student's completion and filing of an application form supplied by the board which demonstrates the students's eligibility for this permit.

To be eligible for a student permit, a student cosmetologist must be at least 16 years of age and have completed the 10th grade in a secondary school. The application shall include evidence of the student cosmetologist's enrollment in a school of cosmetology

licensed by the Commissioner of Educational and Cultural Services. The student shall pay a registration fee of \$5.

The student permit shall expire 12 months from the date of issue.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 30, 1984.

CHAPTER 842

H.P. 1802 - L.D. 2394

AN ACT to Replace the Franchise Tax on Financial Institutions.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, in January, 1983, the United States Supreme Court, opinion in Memphis Bank and Trust Company v. Garner called in to question the validity of Maine's bank franchise law because it, like the tax considered in Garner excludes state and local obligations from its base; and

Whereas, it is necessary to replace the existing franchise tax with a tax on financial institutions based on both the income and assets of financial institutions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §5102, sub-§6, as amended by PL 1971, c. 61, §2, is further amended to read: